

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, JULY 10, 2012
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR EVS CONFERENCE ROOM
NEW YORK, NY 10004

PRESENT: President Maria R. Guastella

Commissioners Araujo, Dent, Polanco, Schacher, Sipp, Stupp, Soumas

Dawn Sandow, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
Raphael Savino, Director, Campaign Finance Enforcement
Dorothy Delayo, Director, Personnel
Valerie Vazquez, Director, Communications & Public Affairs
John Luisi, Agency Chief Contract Officer
Rosanna Rahmouni, Coordinator, Election Day Operations
John O'Grady, Chief Voting Machine Technician, VEOU
Troy Johnson, Coordinator, Candidate Records Unit
Rayvon Weaver, Administrative Associate, CRU
Anthony Ribustello, Deputy Chief Clerk, Bronx Office
Marricka Scott-McFadden, Deputy Chief Clerk, Bronx Office
Diane Rudiano, Chief Clerk, Brooklyn Office
Maryrose Sattie, Deputy Chief Clerk, Brooklyn Office
Greg Lehman, Chief Clerk, Manhattan Office
Timothy Gay, Deputy Chief Clerk, Manhattan Office
Marie Lynch, Deputy Chief Clerk, Queens Office
Robert Pataky, Administrative Associate, Queens Office
Anthony Andriulli, Deputy Chief Clerk, Staten Island Office
Lisa Sattie, Administrative Associate, Staten Island Office
Joel Bermejo, Temporary Contract Attorney, OGC
Jeffrey Lederman, Law Student Summer Intern, OGC
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Antoinette Fuoto, Campaign Finance Board
Pat McClellan, for Assembly Member Brian Kavanagh
Seth Grossman, New York City Council
Marjorie Shea, Women's City Club
Cathy Gray
Kate Doran, League of Women Voters
Alan Flacks, Member of NY County Democratic County Committee

President Guastella called the meeting to order at 1:32 PM and immediately announced an Executive Session.

President Guastella announced that pursuant to the provisions of Title 2 of Article 9 of the New York State Election Law, specifically Section 9-204, the Commissioners would conduct the meeting of the Board of Canvassers in the City of New York for the purposes of certifying the recanvass of votes cast on June 26, 2012 in the Democratic and Republican Federal Office Primary Elections in the City of New York.

President Guastella designated Commissioner Dent as the second Democratic Commissioner for the respective counties and to serve with her for Richmond County and the multi-county recaps.

President Guastella asked the Senior Republican Commissioner Nancy Mottola-Schacher to designate the Republican in the absence of Commissioner Umane. Commissioner Nancy Mottola-Schacher designated Commissioner Polanco as the second Republican Commissioner for the respective counties and to serve with her for Kings County and the multi-county recaps.

Deputy Chief Clerks Anthony Ribustello and Marricka Scott-McFadden presented the Statement and Return of Canvass for the Democratic and Republican Party Federal Office Primary Elections conducted in Bronx County on June 26, 2012. Deputy Chief Clerks Anthony Ribustello and Marricka Scott-McFadden confirmed that the results presented in the reports are accurate and correct. Commissioner Polanco moved to certify the Statement and Return of Canvass for the Democratic and Republican Party Federal Office Primary Elections conducted in Bronx County on June 26, 2012. Commissioner Soumas seconded the motion, which was adopted unanimously.

Ms. Rudiano and Ms. Sattie presented the Statement and Return of Canvass for the Democratic and Republican Party Federal Office Primary Elections in Kings County. Ms. Rudiano and Ms. Sattie confirmed that the

results presented in the reports are accurate and correct. Commissioner Schacher moved to certify the Statement and Return of Canvass for the Democratic and Republican Party Federal Office Primary Elections conducted in Kings County on June 26, 2012. Commissioner Dent seconded the motion, which was adopted unanimously.

Mr. Lehman and Mr. Gay presented the Statement and Return of Canvass for the Democratic and Republican Party Federal Office Primary Elections in New York County. Mr. Lehman and Mr. Gay confirmed that the results presented in the reports are accurate and correct. Commissioner Polanco moved to certify the Statement and Return of Canvass for the Democratic and Republican Party Federal Office Primary Elections in New York County on June 26, 2012. Commissioner Araujo seconded the motion, which was adopted unanimously.

Ms. Lynch and Mr. Pataky presented the Statement and Return of Canvass for the Democratic and Republican Party Federal Office Primary Elections in Queens County. Ms. Lynch and Mr. Pataky confirmed that the results presented in the reports are accurate and correct. Commissioner Stupp moved to certify the Statement and Return of Canvass for the Democratic and

Republican Party Federal Office Primary Elections in Queens on June 26, 2012. Commissioner Araujo seconded the motion, which was adopted unanimously.

Mr. Andriulli and Miss Sattie presented the Statement and Return of Canvass for the Democratic and Republican Party Federal Office Primary Elections in Richmond County. Mr. Andriulli and Miss Sattie confirmed that the results presented in the reports are accurate and correct. Commissioner Sipp moved to certify the Statement and Return of Canvass for the Democratic and Republican Party Federal Office Primary Elections in Richmond County on June 26, 2012. Commissioner Araujo seconded the motion, which was adopted unanimously.

Commissioner Araujo moved to approve and adopt the Recap Statement and Return of Canvass for the Democratic and Republican Party Federal Office Primary Elections in Richmond County on June 26, 2012 for those Congressional District which cross county lines with the City of New York. Commissioner Polanco seconded the motion, which was adopted unanimously.

Commissioner Stupp moved to authorize the use of the Commissioners' signature stamps as appropriate on each Statement and Return of Canvass. Commissioner Araujo seconded the motion, which was adopted unanimously.

There being no further business to come before the Board of Canvassers in the City of New York, Commissioner Dent moved to adjourn the meeting of the Board of Canvassers and to convene the weekly stated meeting of the Commissioners of Elections in the City of New York. Commissioner Stupp seconded the motion, which was agreed to unanimously.

Commissioner Araujo moved to tabled minutes of the June 12, 2012 meeting. Commissioner Soumas seconded his motion, which was adopted unanimously.

Mr. Richman reported that the Petition filing process began on Monday, July 9, 2012. In accordance with the NYS Election Law, this Board is required to complete its review of cover sheets and petitions filed within two (2) business days and the ultimate step is to have the Commissioners' Committee review preliminary findings of defects found by the staff. He asked the President to appoint a Commissioners' Cover Sheet Review Committee to

meet every day this week as well as next Monday in open session in the Executive Conference Room, 7th Floor, 42 Broadway for Week #1, immediately after today's meeting.

Commissioner Polanco inquired about litigation concerning the 13th Congressional District race.

Mr. Richman replied that the Board has not been formally advised that the proceeding in the 13th Congressional District, New York County has been withdrawn. The Board is scheduled to appear before Justice Carter in Bronx Supreme Court on July 11, 2012 at 10 AM unless otherwise advised.

Commissioner Polanco expressed concerns about the Board's Closing Procedures on Election Day. He reported that Professor Goldfeder spoke on Inside City Hall last night about the issue with how the Board interprets the Election Law. In Mr. Goldfeder's view, there may be a way to enforce Subsection 3 of the Election Law which prescribes the specific method by which we close the polls on Election Day. Commissioner Polanco raised the question on what the Board could do, right now, without having to wait for the legislature to act, to improve our closing procedures. In particular, providing

the flash card PMD to the police without having poll workers cut, paste, and add at the end of Election Night. He asked Mr. Richman to explain ways the Board can improve closing procedures and propose new requirements, if we did have a new method in the Training Manual, so that our Poll Workers are prepared for the September 13th Primary Election.

Mr. Richman explained the process on Election night, detailing what procedures Election Inspectors are required to perform in completing the Return of Canvass and then providing the Unofficial Returns to the media. By following the procedures set forth in the NYS Election Law as well as the Commissioners determination that it is appropriate to provide an on-site, working, back-up scanner so there are at least two scanners at every Poll Site throughout the City of New York, we ensure the integrity of the process so that everyone; watchers and the public, leave the Poll Site knowing what each candidate received in a specific Election District. When machines are returned to the respective boroughs and the paper counted, there is a fundamental basis to judge that nothing happened prior to that system. In addition, he reported that this is where the ballot accounting takes place. He reasoned that there is a greater potential for not having that accuracy without performing these tasks as some people suggest.

Commissioner Polanco accepted the General Counsel's interpretation of the laws of NYS and stated that it's up to the Board to make a courageous decision; think outside the box and, modernize this procedure administratively before the next Poll Worker Training Session. He moved the question of whether to authorize Board staff to put in motion the process necessary to execute Section 3 of the Law so that we can train the 36,000 Poll Workers in providing that Flash Card to the NYPD because the issue of integrity is a major concern.

Commissioner Stupp requested an elaboration of the motion and inquired whether the motion equaled a Return of Canvass or is it separate from the PMD Stick; is it the paper form with the results report taking.

Commissioner Polanco explained that he is trying to avoid the chaos of having Poll Workers perform the necessary calculations after working sixteen plus hours on Election Day and simply provide the NYPD with the PMD stick.

Commissioner Sipp asked whether the Election Commissioners in the City of New York are allowed as administrators to legally do what Commissioner Polanco suggests. Mr. Richman replied that he does not

believe §9-126(3) governs the Board. Raphael Savino replied that it is important to make the distinction concerning Section 9-126, which is open to interpretation and deals exclusively with Election Night Unofficial Results. He explained that the Return of Canvass and the way it is reported by Election District requires cutting the tapes because of the multiple scanners for multiple Election Districts. He also explained that even an open interpretation, which he may agree with, in terms of Election Night Reporting, does not change the Return of Canvass Procedures whatsoever so that would not be affected by the ultimate interpretation of reported results on election night. He thinks that the Section of the law Commissioner Polanco may be referring to deals with Election Night Reporting. He does not believe that any interpretation of the law allows the Board to do away with the Return of Canvass.

Commissioner Sipp stated that he is as eager to correct this problem as Commissioner Polanco however he does not want to be rushed into a decision without the advice, a written legal memorandum, from the Board's Counsel explaining whether the Board is within legal authority as an administrator to act in a manner which potentially is in contravention of the law. Commissioner Sipp moved to authorized legal staff to provide the Commissioners with a legal memorandum in the aforesaid matter and calendared this matter for next week.

Commissioner Araujo amended the motion to include the Counsels to the Commissioners as well.

Ms. Sandow reported, in response to a question from Commissioner Polanco concerning acquiring laptops per Poll Site, the EVS staff is actively researching this, a meeting was held today and another meeting is being planned with NYPD and Associated Press; laptops are being considered per precinct, which would be 67. It's a possibility that it can be done. Logistically, in order for this to be done properly and have the PMD transported quickly, we will need approximately 16 – 18 sites, citywide to conduct a pilot similar to what was done in Queens. This was discussed with the NYPD. In addition, the discussion included having a Dem/Rep. at the 67th Precinct with laptops to upload there but there are legal issues to consider. Ms. Sandow also reported that Poll Worker Training starts July 23rd. The Poll Worker Manual should be going to print by next week.

Commissioner Soumas stated that whatever we do now for the September Primary and November General Elections is a temporary fix. We should be focusing on a permanent solution, whether wireless transmission of the results or a third PMD stick. The General Counsel reported that Article 7

prohibits the scanner from transmitting or receiving any information. Commissioner Soumas stated, “Nevertheless, based on the fact that the NYPD does not have the hardware to accommodate the PMD Stick; whether it’s a second or third one, a long term solution would be the wireless transmission”. The General Counsel advised that there are changes needed to the first part of Article 9, which would make the Poll Workers life better in terms of eliminating the requirements of publically announcing each of the ED results. Commissioner Soumas stated that from a statutory perspective, the General Counsel should put together a legal analysis with a copy to the Chair of the Election Law Committee in the Assembly and the Senate.

Commissioner Polanco moved to have Executive Management immediately present to the Commissioners, at the next scheduled meeting, a proposal for which they will logistically change Election Day Reporting for this year’s Primary and General Elections. Also, legal is to provide a memorandum, considering Commissioner Sipp’s concerns that as Election Day Administrators, we have the statutory authority to interpret the applicability of §9-126 of the New York State Election Law. Commissioner Sipp seconded the motion, which was adopted unanimously.

President Guastella recognized Alan Flacks, a member of the public.

Rosanna Rahmouni provided the Commissioners with an updated message for the Poll Workers Manual and asked for approval. Commissioner Araujo moved to adopt the corrected letter as presented. Commissioner Dent seconded the motion, which was adopted unanimously.

Commissioner Araujo moved to authorize the use of the President and Secretary's signature stamps. President Guastella seconded the motion, which was agreed to unanimously.

In the absence of Mr. Ward, the ACCO presented the Commissioners with a copy of the Comparative Expenditures report dated July 10, 2011.

President Guastella reported that in the Executive Session the Commissioners took the following actions:

- The Commissioners unanimously approved the appointment of Edward Jones as Clerk in the Brooklyn Office to fill the vacancy of Leon Francisco.

- The Commissioners unanimously approved a sick leave advance to Goody Volger, an Administrative Assistant in the Staten Island Office, retroactive to June 26, 2012
- Unanimously approved temp allocations for both the Borough and Executive Offices as amended in the report.

President Guastella moved to adjourn the meeting. Commissioner Soumas seconded the motion, which was adopted unanimously.

The next stated meeting of the Commissioners is scheduled for Tuesday, July 17, 2011 at 1:30 P.M.