

MEETING OF THE  
COMMISSIONERS OF ELECTIONS  
HELD ON TUESDAY, AUGUST 28, 2012  
AT 1:30 P.M.  
42 BROADWAY, 6<sup>th</sup> FLOOR, COMMISSIONERS' HEARING ROOM  
NEW YORK, NY 10004

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PRESENT: President Maria R. Guastella  
Secretary Frederic M. Umane

Commissioners Barrera, Dent, Polanco, Schacher, Soumas, Stupp

Dawn Sandow, Deputy Executive Director  
Pamela Perkins, Administrative Manager  
Steven H. Richman, General Counsel  
John Ward, Finance Officer  
Dorothy Delayo, Director, Personnel  
Raphael Savino, Director, Campaign Finance Enforcement Reporting  
Valerie Vazquez, Director, Communications and Public Affairs  
John Naudus, Manger, Electronic Voting Systems  
Troy Johnson, Coordinator, Candidate Records Unit  
Steven Ferguson, Director, Management Information Systems  
Joel Bermejo, Temporary Contract Attorney, OGC  
Giacomo Kmet, Temporary Contract Attorney, OGC  
Stephen Thompson, HAVA Training Specialist, EDO  
Charles S. Webb, III, Counsel to the Commissioners  
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Kate Doran, LWV  
Teodora Dopovsca, Citizens Union  
Marjorie Shea, Women's City Club  
Lauren Rothman, NY News Service  
Judd Ryan, ES&S  
Will Colegrove, for Council Member Gale Brewer  
Sharif Shens  
Shauna Denkenson, NYC CFB  
Keen Berger, DL of Manhattan

Camela Johns  
Garth Marchant  
Everly Brown  
Cathy Gray  
A.B. Britton, KLC GOP USA  
Herbert Binger, for Garth Marchant  
Alan Flacks, Member of NY Democratic County Committee  
Mariana Blume

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Secretary Umame called the meeting to order at 1:38 P.M.

Commissioner Schacher requested to discuss a Brooklyn personnel matter in Executive Session.

Mr. Johnson reported that there are no Hearings on Special Elections, 12<sup>th</sup> Congressional District, Bronx County, relating to the September 13, 2012 Primary Election because no Specifications of Objections were filed with the Board.

Secretary Umame noted that President Guastella joined the meeting.

Commissioner Dent moved to adopt the minutes of the July 30, 2012 meeting. Commissioner Barrera seconded the motion, which was unanimously adopted. Commissioner Stupp moved to table the minutes of

the July 31, 2012 meeting. Commissioner Dent seconded the motion, which was unanimously adopted.

Commissioner Stupp requested for ratification of the Commissioners' Committee approval of the Election Night Results Reporting (ENR) Procedures. She and Commissioner Soumas reviewed and approved the procedures pursuant to last week's meeting. A copy of the procedures is in the agenda. Commissioner Stupp moved to adopt the ENR Procedures. President Guastella seconded the motion, which was unanimously adopted. President Guastella and Commissioner Stupp thanked Stephen Thompson and Lisa Sattie for their hard work on these procedures.

Mr. O'Grady reported on the post-Primary Election Day retrieval of Scanners and BMDs from the Public School poll sites. A copy of his memorandum is in the agenda. Mr. O'Grady stated that Rosh Hashanah begins the weekend immediately after the Thursday, September 13, 2012 Primary Election which presents multiple problems concerning the retrieval of equipment. The retrieval of Scanners and BMDs normally takes up to three (3) days to complete, but due to the holidays he anticipates up to seven (7) days. Mr. O'Grady stated that the recanvass process and the

retrieval of the Scanners and BMDs will be delayed significantly due to the 572 Public School poll sites being closed. He asked the Commissioners for guidance on this matter. Ms. Perkins stated that in the past the Board would send a request to the Department of Education (DOE) to keep open the schools on holidays, if needed, but there is a cost to have DOE personnel to open and close the schools. Mr. Ward stated that the DOE would invoice the Board. Ms. Sandow stated that these Public Schools are 60% of the poll sites. Mr. Richman stated that the Board has to be aware of Court Orders as well. Secretary Umame suggested scheduling the equipment retrieval at half of the Public Schools on one day and half on the next day to save on costs. Secretary Umame moved to authorize the additional expenditure planning in such a way to minimize the extra expense for the rapid retrieval of Scanners and BMDs. Commissioner Soumas seconded the motion, which was unanimously adopted.

Mr. Richman reported on the August 20, 2012 letter from candidate Garth Marchant asking the Board to modify Rule A3 of the Board's Independent Nominating Petition Rules for the 2012 Special Elections. Copies of Mr. Richman's memorandum and Mr. Marchant's letter are in the agenda. Mr. Richman recommended that at this time the Commissioners

should not amend the provisions of Rule A3 for the November 6, 2012 Special Election. He stated that to change the Rules after “the game has begun” is inherently unfair and these rules were adopted by the Commissioners on December 20, 2011 before any Special Election was contemplated. These rules have been the subject of repeated reviews by the U.S. Department of Justice and in each instance they have been found by the Attorney General of the United States to be in conformance with the requirements of federal law, specifically Section 5 of the Voting Rights Act of 1965, as amended. Rule A3 was adopted in accordance with the mandate given this Board by Section 7-116(2) of the NYS Election Law. Mr. Richman stated that the claims made by the candidate in the letter are without foundation under the Constitutions and laws of the United States and the State of New York.

President Guastella recognized Garth Marchant, Pamela Johnson and David Savage who argued that Rule A3 violates various provisions of the Federal and State Constitutions, the “fair Campaign Code” and his rights under HAVA.

Commissioner Polanco stated that the Rules were set and cannot be changed in the middle of an election. He asked Mr. Marchant to present this matter in December 2012 before the Commissioners vote on the Rules for next year's elections.

Mr. Richman reported on the names of Independent Bodies for the November 6, 2012 General Election. A copy of his memorandum is in the agenda. Following the filing of the independent nominating petitions, the staff of the Candidate Records Unit and Office of the General Counsel reviewed and identified the following issues:

- The names of the independent bodies that filed petitions exceeding 15 characters are:
  - 1) Nachman Caller's Community First – 28 characters
  - 2) Socialist Workers – 16 characters

Mr. Richman stated that based on prior determinations of the Board, staff recommends that the Commissioners should determine that the foregoing names exceed the statutory standard, and given the need to present the most readable and voter friendly ballot as possible that notice be issued forthwith to enable each of the independent bodies to select a name in conformance with the provisions of the NYS Election Law.

Secretary Umane moved to adopt Mr. Richman's report. President Guastella seconded the motion, which was unanimously adopted.

Mr. Richman reported that a copy of the decisions concerning Feliciano V. BOENYC and Sementelli V. BOENYC are in the agenda.

Mr. Sattie reported on the Absentee ballots for the November 6, 2012 General Election. He distributed copies of the State Board's email and sample ballots to the Commissioners. The State Board recommends three (3) ballots this year:

- Federal only (President, US Senate and Congress) – sent to Military and Special Federal voters
- State/Local only (Supreme Court, State Senate and Assembly, and local offices and ballot props) – sent to Military voters only
- Combined Federal and State/Local – sent to regular absentee voters and used on Election Day

Secretary Umane asked how much the double mailing will be to the Military voters. Mr. Sattie stated that he will research his request. Secretary Umane moved to adopt the proposal of the additional mailing in order to comply with the applicable law. Commissioner Soumas seconded the motion, which was adopted unanimously.

Ms. Vazquez provided an update on the Board's website. She reported that Alex Camarda, a representative of Citizen's Union, asked the Board to link out to the NYS Department of Motor Vehicles (DMV) website so people can register online or update their registration. This new system is for New Yorkers who have a valid NYS Driver's License and/or Non-Driver's License ID. Mr. Ferguson advised that the DMV's new online voter registration system is not fully functional yet. Commissioner Soumas moved to add the DMV's link on the Board's website when their new online voter registration system is available. Commissioner Polanco seconded the motion. In a roll call vote, there were six (6) in favor (Barrera, Dent, Guastella, Polanco, Schacher, Soumas) and two (2) opposed (Umane, Stupp). The motion was adopted.

President Guastella recognized Shauna Denkenson, a representative of the Campaign Finance Board (CFB), who reported that the CFB posted the DMV's link on their website.

President Guastella recognized Marjorie Shea, a representative of Women's City Club, who stated that the DMV's new online registration system is working.

President Guastella inquired about the Board's Public Education Outreach Program. Ms. Vazquez reported that the Mobile Education Trucks have been launched and they will cover all boroughs. There will be a "Request a Demonstration Near You" button posted on the Board's newly designed website which will be launched on September 7, 2012. Ms. Vazquez stated that the Public Education Outreach Team is working with CUNY Colleges, NYC Public Library, Elected Officials, and various Community Group Festivals in all boroughs. Commissioner Dent inquired about the stationary Public Outreach events. Ms. Vazquez stated that she contacted the NYC Department of Parks and Recreation Commissioners for park reservations in all boroughs and the NYC Office of the Mayor for parking permits. She will report back to the Commissioners when she receives more information.

President Guastella recognized Alan Flacks, a member of the public, who raised concerns about the DMV's new online registration system.

Mr. Ward presented the Vacancy Report dated August 28, 2012. A copy of the report is in the agenda.

Commissioner Dent moved to convene an Executive Session to discuss personnel and litigation matters. Commissioner Schacher seconded the motion, which was unanimously adopted.

Following the Executive Session, the open public meeting resumed and President Guastella reported on the actions taken in Executive Session.:

- I. The Commissioners unanimously granted an advance of ten (10) days of sick leave to William Rodriguez-Badger, a Clerk in the Manhattan Office, in accordance with the citywide Personnel Policies;
- II. The Commissioners unanimously determined that Terrance Ray, a Voting Machine Technician, and Domingo Dilan, a Clerk, in the Brooklyn Voting Machine Facilities, are placed on one (1) year of probation and are required to attend the applicable Employee Assistance Program. The suspension of Domingo Dilan ends today with the full report of the Commissioners. The suspension of Terrance Ray ends today as well, but Mr. Ray requested that he does not return to his duties on or before September 1, 2012.

President Guastella moved to adjourn the meeting. Secretary Umane seconded the motion, which was adopted unanimously.

The next stated meeting of the Commissioners is scheduled for Tuesday, September 4, 2012 at 1:30 P.M.