

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, AUGUST 12, 2008
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR HEARING ROOM
NEW YORK, NY 10004

P R E S E N T: Secretary Frederic Umane

Commissioners Dent, Graham, Schacher, Soumas, Polanco, Yennella

Marcus Cederqvist, Executive Director
Steven H. Richman, General Counsel
John Ward, Finance Officer
John Owens Jr., Campaign Finance Enforcement
Joseph LaRocca, Coordinator, Candidate Records Unit
Matthew Graves, Candidate Records Unit
Shanette Brown, Candidate Records Unit
John O'Grady, Chief Voting Machine Technician
Rosanna Rahmouni, Coordinator, EDO
Lisa Swanson, Consultant, Gartner
Steven Denkberg, Counsel to the Commissioners
Charles Webb III, Counsel to the Commissioners

GUEST: Andrea Senteno, Citizens Union
Marjorie Shea, Women's City Club
Alyssa Usui, Voters Assistance Commission
Isreal Rodriguez, NYC Council
Teresa Hummel, Community Church of New York

Secretary Umane called the meeting to order at 1:47 P.M. in the absence of the President.

Secretary Umame tabled the minutes of the July 8th, July 15th, July 22nd, and July 29th meetings for revisions, which was agreed to unanimously by all the Commissioners.

The Executive Director reported that:

- A) All BMDs have been delivered and have undergone acceptance testing. 50 BMDs must be repaired or replaced by the vendor.
- B) The Board conducted public demonstrations in all five Boroughs. Additional demonstrations will be held prior to the General Election.
- C) Burson-Marsteller will give a presentation at a Commissioner's meeting on their public information/education services plan. The date is being scheduled.
- D) The Board can be reimbursed, under HAVA, for the floor mats that were purchased for the BMDs. He asked the Commissioners for permission to pursue this.

Secretary Umame moved to approve the use of HAVA monies to

reimburse the NYC Board for the purchase of the BMD floor mats. Commissioner Graham seconded the motion, which was adopted unanimously.

The General Counsel reported on the following litigation:

A In the matter of Guillermo Philpott, et. al. v. The Board of Election in the City of New York, et. al. [U.S. District Court/Eastern District of New York, Case No. 08-2938 – Judge Ross]. Mr. Richman advised that the Judge denied the temporary restraining order (TRO) and advised Mr. Philpott that he has no federal claim under Rivera-Powell.

B A proceeding was commenced before Judge Trager in the U.S. District Court, Eastern District of New York on the Lawsuit of Andre Soleil, v. Board of Elections, et al, Case No. CV-08-3015, for want of federal jurisdiction as per the Rivera-Powell, et al v. New York City Board of Elections, 470 F.3d 458 (2d Cir., 2006). After review the action against the New York City Board of Elections was dismissed and a discontinuance of both the State Court proceeding as well as any remaining Federal Voting Rights claim is being sought.

The General Counsel provided the Commissioners with a copy of the Notice of Motion/Order to Show Cause in the matter of Arthur Schwartz v. The Board of Elections in the City of New York [Supreme Court of the State of New York, New York County, Case No. 110076/08–Judge Jacqueline Silbermann]. Notwithstanding the provisions of Rule C4 [*that an amended cover sheet must be filed on or before the last day to file the petition, unless the amended cover sheet is filed to cure a failure to comply with the Rules after the Board has made a determination on non-compliance with the Rules*] the Court found that there was substantial compliance and restored Mr. Schwartz to the ballot. Mr. Richman suggested that the Commissioners confirm the standard practice and not appeal the Court’s decision, which was agreed to unanimously by all the Commissioners.

In addition the General Counsel advised that Commissioner Graham has been subpoenaed in the matter of Nelson Castro, et. al. v. The Board of Elections in the City of New York [NYS Supreme Court, Bronx County – Index No. 260293/08] tomorrow afternoon. Mr. Richman reported that Board staff [Thomas Sattie, William Truscio, and himself] have testified before the referees in this proceeding on Monday, August 4, 2008 and Friday, August 8, 2008. Additionally on Wednesday, August 13, 2008

Steve Kitzinger, John Owens, and he will be in Court as defendants along with Commissioner Graham.

Secretary Umame directed the General Counsel to give his final litigation report in Executive Session. Commissioner Dent seconded the motion, which was agreed to unanimously.

The General Counsel reported that, pursuant to the Commissioners' direction, he issued a Notice of Public Hearing to the Political Party Chairs for New York State, Kings County, and Richmond County concerning the designation of Delegates and Alternate Delegates to a Judicial Convention, 2nd and 13th Judicial Convention. A copy of the notice is on the Board's website.

The Coordinator of the Candidates Records Unit presented the Commissioners with a draft copy of the Notice to Candidates for the September 9, 2008 Primary Election for their approval. Commissioner Graham moved to adopt the Notice to Candidates as submitted. Commissioner Yennella seconded the motion, which was adopted unanimously.

The Candidate Records Unit Coordinator, Joseph LaRocca provided the Commissioners with a Prima Facie report relating to the disqualification of six candidates due to the late filing of Guillermo Philpotts. Mr. LaRocca requested that the Commissioners remove the candidates prima facie. Commissioner Dent moved to find the various documents filed by Guillermo Philpotts invalid and authorized the Candidate Records Unit to remove the candidates prima facie. Commissioner Soumas seconded the motion, which was adopted unanimously.

The Director of MIS reported that 311 are offering 50 additional seats for Board staff use at their office on Maiden Lane during the General Election.

In addition, Mr. Ferguson reported that State Board of Elections asked the NYC Board of Elections to re-verify DMV records against the Voter Registration Records to reduce the number of I.D. required voters on the Statewide Duplication List. The General Counsel advised that through this process NYC has been able to reduce its potential duplication list from 37,552 as of July 6th to 5,719 as of July 31st.

The Coordinator of Election Day Operations asked the Commissioners to approve the Draft HAVA Grant Spending Plan provided to them at the last meeting. The Commissioners unanimously agreed to table consideration of the Draft HAVA Grant Spending Plan until the next meeting.

The Finance Officer John Ward provided the Commissioners with the Comparative Expenditure Report dated August 12, 2008.

Commissioner Soumas moved to convene an Executive Session to discuss litigation matters. Commissioner Polanco seconded the motion, which was adopted unanimously.

The Secretary reported that in the Executive Session the Commissioners took the following action:

- A) Unanimously approved the filing of a HAVA Complaint.

Secretary Umane moved to adjourn. Commissioner Graham seconded the motion, which was agreed to unanimously.

Secretary Umame announced that the next Board meeting will be held on Tuesday, August 19, 2008 at 1:30 P.M.