

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, AUGUST 30, 2011
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR, COMMISSIONERS' HEARING ROOM
NEW YORK, NY 10004

PRESENT: President Juan Carlos "J.C." Polanco
Secretary Gregory C. Soumas

Commissioners Dent, Guastella, Schacher, Sipp, Stupp, Umane

Dawn Sandow, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
Raphael Savino, Director, Campaign Finance Reporting
John Ward, Finance Officer
Dorothy Delayo, Director, Personnel
Valerie Vazquez, Director, Communications and Public Affairs
Rosanna Rahmouni, Coordinator, Election Day Operations
Steven Ferguson, Manager, MIS
John O'Grady, Chief VMT, Voting Equipment Operations Unit
Daniel Lavelle, Supervisor, Phone Bank and Front Counters
Giacomo Kmet, Temporary Attorney, OGC
James Barron, Temporary Attorney, OGC
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Gale A. Brewer, NYC Council Member
William Colegrove, for Council Member Gale A. Brewer
Marjorie Shea, Women's City Club
Catherine Gray
Dan Detampor, ES&S
Jerry Amick, ES&S
Kate Doran, LWV
Alex Camarda, Citizens Union
Lisa Smith, Candidate for 55th AD - Kings County
John D. Smith
A.B. Britton

President Polanco called the meeting to order at 1:35 P.M.

Mr. Richman noted that a quorum was not present. President Polanco stated that only the informational items will be presented until there is a quorum.

Mr. Richman presented an update on judicial proceedings relating to the September 13, 2011 Primary Elections. Copies of the decisions are in the agenda. Mr. Richman reported that he and Mr. Savino have to appear in Federal Court today relating to the Queens District Attorney Democratic Primary Election case. He reported that there is a pending matter in the Appellate Division, Second Department, which has scheduled a hearing for Everly Brown V. BOE on September 6, 2011. A copy of Mr. Richman's affirmation which was submitted is in the agenda. Mr. Richman stated that he will update the Commissioners on these matters.

Ms. Vazquez presented the Poll Worker recruitment update. She reported that the Board hosted an Open House on August 25, 2011 in the Executive Office. There was a mock poll site and Poll Worker recruitment. Ms. Vazquez stated that the goal was to work with various

organizations and good government groups engaging conversation to recruit Poll Workers.

President Polanco announced that Commissioner Dent joined the meeting and a quorum is present.

Ms. Vazquez reported that she hosted more than fifteen (15) organizations which included the League of Women Voters, Five Borough Technical Services, Asian American Legal Defense Fund, Citizens Union, Common Cause, Groundwork, Hispanic Federation, and the NALEO Education Fund. She thanked the organizations for attending the Board's Open House via email and encouraged them to make awareness of the Poll Worker recruitment program. Ms. Vazquez reported that it was a positive hands-on experience. A representative from Groundwork submitted seventy-five (75) Poll Worker applications that they have recruited in their offices. Ms. Vazquez thanked Ms. Sandow and Ms. Perkins who gave remarks at the Open House. Commissioner Umane recalled that the Commissioners were anticipating a detailed report concerning Poll Worker statistics. Ms. Vazquez stated that the Poll Worker Awareness Month has come to an end and she will provide a report to the

Commissioners. She noted that there are a total of 4,100 Poll Worker applicants.

Mr. Ward presented the Vacancy Report dated August 30, 2011. A copy of the report is in the agenda.

President Polanco noted that Commissioners Guastella and Sipp joined the meeting.

Mr. Ferguson gave a PowerPoint presentation concerning posting sample ballots on the Board's website. He distributed copies of a memorandum to the Commissioners. Mr. Ferguson explained the following key points:

- The sample ballots feature is an extension of the Poll Site Locator feature;
- There is a disclaimer stating that the sample ballots can have changes due to court orders or if there is no contest;
- The sample ballots are in PDF format which can be increased or decreased in size, and rotated to landscape view;
- There is a "Sample" watermark and no timing marks on the ballots which make it unscannable;

- Each ballot is translated into the four (4) covered languages;
- There are instructions for using the Adobe Reader program.

After the PowerPoint presentation, there were some questions from the Commissioners and members of the public. A member of the public asked if the ballots were printable and searchable. Mr. Ferguson replied yes. Commissioner Stupp raised concerns about the dark color of the “Sample” watermark. Mr. Ferguson explained that the watermark is a light pink color, but the presentation screen makes it appear darker. Commissioner Schacher asked if the ballot instructions can be read as well. Mr. Ferguson replied yes. Commissioner Umane noted that the Board’s Poll Site Locator is similar the NYC Department of Emergency Management’s Hurricane Zone Locator which was used during the recent storm. Mr. Ferguson explained that the Board developed the Poll Site Locator in-house in 2002. In 2008, the Board’s server crashed because there was a high volume of hits, so NYC DOITT hosts the website now. Mr. Richman noted that NYC.gov’s Hurricane Zone Locator crashed during the recent storm. Alex Camarda, a representative of Citizens Union, asked if there will be a Sample Ballot button on the Board’s Homepage. Mr. Ferguson replied yes. Commissioner Stupp commended Mr. Ferguson and his team for doing a great job posting the sample ballots online. President Polanco moved to approve the website and requested Mr. Richman to contact the DOJ for

pre-clearance on providing the voters in the City of New York sample ballots on the Board's website. Commissioner Dent seconded the motion, which was adopted unanimously. President Polanco asked how long it will take the DOJ to pre-clear the submission. Mr. Richman stated that the cover letter has been drafted, but needs to be revised with the Commissioners' approval date today and it will be sent via Express Mail. The DOJ has up to sixty (60) days to respond, but he believes the Board will get a response within thirty (30) days. President Polanco stated that it is very important for staff to work in perfect synergy. He requested that the Office of the General Counsel work with staff and if anything requires DOJ pre-clearance to get the procedure started in a timely fashion. Commissioner Umane suggested that if Board staff, good government groups, or members of the public know a contact person at the DOJ, to please call them to get the approval expedited. He added that the Board only needs DOJ approval for the covered counties which are Brooklyn, Manhattan and the Bronx. Commissioner Umane stated that there are Primary Elections in Queens this year that do not touch district lines in Brooklyn. He suggested for the Board to run a Pilot Program for the elections that can be done without DOJ approval. Commissioner Schacher asked what the Board does if there is an emergency. Mr. Richman stated that the Board has to make a submission to the DOJ. He added that every

action that affects a voter or a candidate has to be pre-cleared. President Polanco asked if the sample ballot online project can go live for the counties that are not covered. Mr. Ferguson believed it could go live, but the 9th Congressional District in Queens would be excluded. He stated that he will research with his staff before the meeting is adjourned. President Polanco asked Mr. Richman, Mr. Savino and Executive Management to work together and move rapidly concerning DOJ pre-clearance. Mr. Ferguson reported that there are Special Elections in Queens and cross-overs between the 9th, 23rd and 27th Congressional Districts which are all on one ballot. Mr. Ferguson stated that it could be confusing for those districts. Commissioner Umane referred this matter to the Queens Commissioners. Commissioner Stupp stated that she likes the sample ballots online, but it is complicated in the Queens County Primary Election. She stated that she does not want to do it for Queens at this time.

President Polanco recognized Marjorie Shea, a representative of Women's City Club, who inquired if the Poll Site Locator on the Board's website was pre-cleared by the DOJ. Mr. Richman replied yes.

Commissioner Dent moved to adopt the minutes of the August 23, 2011 meeting. Commissioner Stupp seconded the motion,

which was adopted unanimously.

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

Commissioner Guastella requested to discuss a Staten Island personnel matter in Executive Session.

Commissioner Sipp requested to discuss a Staten Island personnel matter in Executive Session.

Secretary Soumas reported that there was a disciplinary hearing two (2) weeks ago for Carmen Rosado, an employee in the Executive Office. Ms. Rosado failed to appear at the hearing. The hearing was adjourned to allow her to appear on the adjourned date. Ms. Rosado did not appear on the adjourned date. The Executive Committee determined that she be terminated, effective immediately. The Commissioners unanimously adopted the Executive Committee's Report.

President Polanco presented the reports of the Executive Committee. He requested the following ratifications:

- The August 23, 2011 determination of the Executive Committee to close all Board facilities and direct employees to return to their homes as of 3:00 PM on Tuesday, August 23, 2011 following the earthquake that was felt in New York City. Commissioner Schacher moved to ratify the decision of the Executive Committee. Commissioner Dent seconded the motion, which was adopted unanimously.
- The August 23, 2011 determination of the Executive Committee, pursuant to Section 3-108(5) of the NYS Election Law, that as a direct consequence of an earthquake, the ability to make the filing of Independent Nominating Petitions was substantially impaired and that the time for filing an Independent Nominating Petition for the November 8, 2011 was extended by one business day, until Midnight, Wednesday August 24, 2011. Secretary Soumas moved to ratify the decision of the Executive Committee. Commissioner Umame seconded the motion, which was adopted unanimously.
- The August 24, 2011 determination of the Executive Committee that effective August 24, 2011, the resolution of all outstanding 2010 Poll Worker Payroll issues for the Borough of Manhattan relating to the 2010 election cycle are removed from

the jurisdiction of the Manhattan Borough Office staff and transferred to the Board's Executive Office and that the Administrative Manager assign sufficient Executive Office staff to promptly review all outstanding 2010 Election Cycle Poll Worker Payroll issues for Manhattan and to resolve the same in accordance with the Board's standard policies and practices. Commissioner Umane moved to oppose the ratification of this determination. He stated that this is a Borough Office matter and he does not understand why this task would be removed from the Manhattan Office. Secretary Soumas stated that there is a law that applies directly and the Borough Office staff violated the law by not directly paying the Poll Workers. He was not pleased that a Poll Worker was going to commence litigation against the Board. Mr. Richman stated that there was a Notice of Claim. President Polanco asked if this litigation matter should be discussed in Executive Session. Commissioner Umane moved to discuss the litigation matter in Executive Session. He stated that this is a Policies and Procedure issue that needs to be reviewed internally. He stated that the Poll Worker raising this issue is entitled to money, but not all of the money that they claimed based upon

the review of the Executive Office. Commissioner Umane suggested establishing a policy, based upon the review that was internally audited, because a certain amount of Poll Workers that were overpaid. The Poll Workers that were overpaid should be given letters by the Board seeking to recover the money from 2010. Commissioner Umane stated that he would like to discuss this matter in open forum. He stated that some Poll Workers that are owed money should be paid and some Poll Workers that were overpaid should be notified and asked for the money. Secretary Soumas agreed, but stated that some Poll Workers were not paid in order to offset overpayments from a prior year. He was advised by Mr. Richman that it is against the law. Secretary Soumas was concerned that some Poll Workers have not been paid to this date. President Polanco stated that there is an issue for Policies and Procedures and asked to put this on the agenda next week. Commissioner Umane stated that this is a new issue and the Board should send letters to the overpaid Poll Workers. He asked if there is a City procedure for this matter. Mr. Richman stated that the agency would first seek to recoup the money, and if not, then it is forwarded to the NYC Law

Department for litigation. Commissioner Umame moved to send letters to the overpaid Poll Workers requesting payment and then be brought back to the Commissioners for a determination for litigation. Commissioner Schacher seconded the motion, which was adopted unanimously.

Mr. Richman reported that the OGC's Legal Team is leaving the meeting to go to Federal Court. President Polanco asked when the DOJ submission will be mailed. Mr. Richman replied that he will make the changes to the letter and will be mailed after court. Commissioner Umame suggested for Mr. Savino to stay in the office to make the revisions and then be brought to Federal Court for Mr. Richman's signature.

Mr. Naudus reported on the ES&S findings and recommendations related to the Center Bar issue on the ballot and orientation on the Ballot Marking Device (BMD). He stated that as the Manhattan VMF staff was testing ballots on the BMD equipment, the BMD scanner would not recognize that the ballot was being inserted. Board staff, ES&S staff and Phoenix Graphics staff determined that the thick black line at the top of the ballot was causing a sensor in the BMD to not recognize that a ballot was inserted into the machine. Mr. Naudus explained that the sensor read a

black surface which made it assume there was no ballot instead of a white plain surface of paper. He stated that ballot can be flipped over and inserted upside down to be read and marked. Mr. Naudus recommended sending special instructions to all Poll Workers to inform the voters to insert their ballot upside down if using a BMD. The other alternative is to reprint all of the Primary Election ballots, but it is very costly. He stated that the turnout for the Primary Election will be low and the use of the BMD will be lower. Mr. Naudus stated that ES&S offered to send representatives to assist voters in those poll sites with a high percentage of BMD use in the past. Commissioner Schacher asked if staff knew about this thick black line on the ballot. Mr. Naudus reported that the black line was added to the ballot when the Commissioners directed Mr. Richman to compare the ballot with the NYS Election Law. The law specifically requires that a ¼" black line be placed on the break between party positions and public offices. Mr. Naudus stated that they are trying to change the law to eliminate the thick black line because there is not a purpose for it. If the law does not change, then the Board would have to move everything down on the ballot so it is not at the same point of the sensor. Commissioner Sipp stated that a legislative letter should be sent out immediately. Commissioner Umame asked if the law does not change then the machine should be changed to read it. He felt that the black line serves a purpose. Commissioner Sipp

stated that the law and technology are not meeting. Mr. Naudus stated that ES&S will look into this matter as well. He stated that this issue was part of the Board's ideal ballot for the Legislative Package submission. Commissioner Dent inquired if the size of the print would change if the thick black line was moved down on the ballot. Mr. Naudus stated that if it is moved down then there is less real estate on the ballot which would make it go onto a larger size ballot. If there is no room on the 19" ballot then the print would get smaller. Commissioner Dent stated that the Commissioners do not want the print on the ballot to get any smaller. Commissioner Stupp asked if this matter is citywide. Mr. Naudus replied yes; any place that there is a party position, second column, on the ballot. He stated that it is easier to tell the voters citywide who use the BMD to flip the Primary Election ballot upside down. There would be a special instruction to the Poll Workers and ES&S would provide support, at their expense. Commissioner Stupp stated that she was not comfortable with that recommendation and does not want to incur costs for reprinting the ballots. She did not think it would hold up well to public scrutiny and particularly some disabled voters who could not identify if the ballot was flipped upside down. Commissioner Stupp recommended putting the BMD marked ballots into a box then at the close of the polls a bipartisan team of Poll Workers would feed the ballots into a scanner. Mr. Naudus stated that the thick

black line it does not affect the scanners, just the BMDs. Commissioner Stupp asked what would happen if the ballot was not flipped upside down. Mr. Naudus explained that the BMD would not recognize the ballot and would not let the voter continue. The voter would have to call over a Poll Worker who would reject the ballot and then be inserted it the right way. He stated that the special instructions to the Poll Workers would prevent that issue. Commissioner Umane moved to adopt Mr. Naudus' recommendations to distribute special instructions to the Poll Workers, train the Poll Workers on this issue, and thank ES&S for providing extra staff, at their cost, to assist voters using the BMDs. Before a vote, Secretary Soumas asked if there would be any additional costs incurred to the Board. Mr. Naudus stated that there will be a small cost for printing the special instructions. Secretary Soumas inquired if ES&S has proposed a permanent fix to this problem. Mr. Naudus reported that they advised the Board to move the black bar down on the ballot, or to remove the bar, or to shade the bar to a gray color. Mr. Naudus stated that the only legal option would be to move the black line down on the ballot, but it reduces space on the ballot. Commissioner Sipp reiterated that the Election Law and new technology do not meet and will fall on the Board. He stated that a letter should be mailed to the Legislature correcting the law. Secretary Soumas seconded Commissioner Umane's motion, which was adopted

unanimously. President Polanco stated that it is important to include Commissioner Sipp's recommendation in the Legislative Package. Mr. Naudus reported that the thick black line does not appear on the General Election ballot.

President Polanco welcomed and recognized Council Member Gale A. Brewer. Hon. Brewer stated that she came to the Board to view the sample ballot online presentation. She stated that she will work hard with the DOJ to get the project pre-cleared. Hon. Brewer stated that she appreciates the Board's hard work and thanked the Board's MIS staff and DOITT. She stated that the voters in her district could visit the Board's sample ballots online which will reduce phone calls, emails and letters to her office. Also, it will also reduce phone calls to the 311 Call Center and the Board. Hon. Brewer stated that she is very excited about the sample ballot online project. President Polanco thanked Hon. Brewer. He stated that there is a misconception that the Board does not answer to anyone. He stated that the Board reports to the voters in the City of New York, NYC City Council and Hon. Brewer's Governmental Operations Committee. President Polanco thanked Hon. Brewer for allowing a fair forum where the Board can present projects that the Commissioners and staff work very hard developing. President Polanco thanked Hon. Brewer for the

continued opportunity to work with her and for helping the Board go live with the sample ballots online. On behalf of the Commissioners, President Polanco announced that the Commissioners signed a Proclamation for Hon. Brewer for her help and dedication to the Board. Hon. Brewer accepted the Proclamation and thanked the Commissioners.

Ms. Rahmouni presented the Poll Worker Exception Report for the September 13, 2011 Primary and Special Elections in Manhattan and Queens. Ms. Rahmouni requested for the full Board to approve the report. Secretary Soumas moved to adopt the Poll Worker Exception Report for the September 13, 2011 Primary and Special Elections for Manhattan. Commissioner Umane seconded the motion, which was adopted unanimously. Commissioner Stupp moved to adopt the Poll Worker Exception Report for the September 13, 2011 Primary and Special Elections for Queens. President Polanco seconded the motion, which was adopted unanimously.

Mr. O'Grady presented a report on Mobile Poll Sites. He distributed copies of his report to the Commissioners. Mr. O'Grady recalled that at the March 22, 2011 Commissioners' Meeting he reported on Mobile Poll Sites and the Commissioners directed him to seek cost estimates on the

vehicles. He requested for the Commissioners to review the report that he distributed for their consideration at the next meeting. Mr. O'Grady stated that staff developed specifications for the Mobile Poll Site bids. He reported that there is a balance of \$991,817 in the HAVA HHS Voting Access Improvement Grant which can be used for temporary poll site improvements. Since the HAVA Grant has been issued, various amounts of equipment have been bought to make poll sites accessible on Election Day. The items include various sizes of ramps and handrails, platforms, portable suitcase ramps, threshold ramps, directional signage, wireless doorbells, cones and door stops. President Polanco asked if this project was reviewed by the OGC. Mr. O'Grady replied yes; the State Government and Federal Government also approved the plan. President Polanco stated that a Mobile Poll Site is an exciting proposal. Mr. O'Grady stated that the City Board would be the first in the country. He reported that six (6) vendors were solicited by the Board, but only three (3) vendors responded with proposals. He stated that the side by side comparisons are in the report. President Polanco inquired about NYPD presence at a Mobile Poll Site. Mr. O'Grady reported that they would be present because it is a poll site. President Polanco inquired if the Commissioners could view a Mobile Poll Site in front of the Executive Office. Mr. O'Grady stated that one of the vendors is willing to drive a Mobile Poll Site from Texas to

New York City. Commissioner Umame stated that it is an interesting idea, but he is concerned about the cost of gas and issues of parking and storage. Mr. O'Grady reported that those details are in the report. He stated that a part of the HAVA Grant will expire on September 30, 2011. He stated that poll site emergencies have happened in the past and a Mobile Poll Site would be equipped and deployed for Election Day. Mr. O'Grady reported that a Certified Commercial Driver's License (CDL) Operator would be needed to drive the Mobile Poll Site. Estimated operational costs for a Mobile Poll Site per day would be \$1,755 which includes gas, operator, car wash and waste disposal pumping. An estimated annual cost of \$5,364 would be per vehicle, if used three (3) times per year. President Polanco asked how many vehicles would be purchased. Mr. O'Grady replied two (2); one (1) for Brooklyn and Staten Island areas and one (1) for Manhattan, Queens, and Bronx areas. The vehicles could be stored in the 645 Clinton Street warehouse. President Polanco stated that the Board could use these vehicles for public education events as well. Commissioner Schacher inquired about the access of the Mobile Poll Site. Mr. O'Grady stated that it is ADA Compliant; there is an undercarriage lift for wheelchairs. Commissioner Stupp asked if a Winnebago could be retrofitted as a Mobile Poll Site for cost savings. Mr. O'Grady reported that two (2) vendors have converted Winnebagos into

Mobile Poll Sites, but it is cheaper to use the vendor who converted a Ford Chassie. Commissioner Schacher asked when the Commissioners can view a Mobile Poll Site. Mr. O'Grady reported that he would have to contact the vendor which is located in Texas. Commissioner Umane stated that there should be real interest among the Commissioners before the vendor drives to NYC. President Polanco requested for Mr. O'Grady to ask the vendor if they would charge the Board to drive the Mobile Poll Site from Texas to NYC.

President Polanco moved to convene an Executive Session to discuss personnel matters. Secretary Soumas seconded the motion, which was adopted unanimously.

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

- I. The Commissioners granted an advance of 210 hours of sick leave from the Sick Bank to Palmerino "John" Sagnelli, a Clerk in the Brooklyn Office, effective immediately.
- II. The Commissioners granted an advance of twelve (12) days of sick leave for Gudren Vogler, a Clerk in the Staten Island

Office, effective immediately.

- III. The Commissioners unanimously agreed to pay Trainers prep time, at a rate of \$17.00, for every six (6) hour course. The Trainers who teach the trio of specialty classes will be allotted one (1) prep time payment.

President Polanco moved to adjourn the meeting. Secretary Soumas seconded the motion, which was adopted unanimously.

The next stated meeting of the Commissioners is scheduled for Thursday, September 8, 2011 at 1:30 P.M.