

MEETING OF THE BOARD OF CANVASSERS  
AND THE MEETING OF THE COMMISSIONERS OF ELECTIONS  
IN THE CITY OF NEW YORK  
HELD ON TUESDAY, OCTOBER 8, 2013  
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 Frederic M. Umane  
                  Secretary Gregory C. Soumas

Commissioners Jose Araujo, Naomi Barrera, Julie Dent, Maria Guastella,  
Michael Michel, Michael Rendino, Simon Shamoun

Michael J. Ryan, Executive Director  
Dawn Sandow, Deputy Executive Director  
Pamela Perkins, Administrative Manager  
Steven H. Richman, General Counsel  
Raphael Savino, Deputy General Counsel  
John Naudus, Manager, Electronic Voting Systems  
John Ward, Finance Officer  
Dorothy Delayo, Director, Personnel  
Giacomo Kmet, Temporary Contract Attorney, OGC  
Anibal Luque, Temporary Contract Attorney, OGC  
Thomas Sattie, Associate Staff Analyst, Candidate Records Unit  
Matthew Graves, Administrative Associate, Candidate Records Unit  
Gregory Lehman, Chief Clerk, Manhattan Office  
Alvin Samuels, Administrative Associate, Manhattan Office  
Kenneth Moltner, Counsel to the Commissioners

GUEST:       Bishop D. Yorbrough  
                  Kate Doran, LWV  
                  Marjorie Shea, LWV  
                  Monica Bartley, CIDNY  
                  Anna-Maria Thomas  
                  Else G., DOI  
                  Carolyn Sheehan, DOI

K. Loving, CFB  
A. Camarda, CU  
Cathy Gray  
Will Colegrove, City Council  
Michael Benjamin  
Alan Flacks, Member of NY County Democratic Committee  
Albert Britton, KLC GOP Kings NY  
Eric Friedman, CFB  
John D. Smith

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President Umame called the meeting to order at 1:41 P.M.

Pursuant to the provisions of Title 2 of Article 9 of the New York State Election Law, specifically Sections 9-200 and 9-204, President Umame announced that the Commissioners will conduct the Meeting of the Board of Canvassers in the City of New York to provisionally certify the results of the October 1, 2013 Run-off Primary Election for Public Advocate of the City of New York.

To serve as the other Republican Member of the Canvassing Board, President Umame designated Commissioner Michel to serve with him to sign the Provisional Certification for the Democratic Run-off Primary for Public Advocate.

To serve as the other Democratic Member of the Canvassing Board, Secretary Soumas designated Commissioner Dent to serve with him to sign the Provisional Certification for the Democratic Run-off Primary for Public Advocate.

In Mr. Johnson's absence, Mr. Sattie presented the Provisional Certification for the votes cast on the lever voting machines in the City of New York for the October 1, 2013 Run-off Primary Election. Mr. Sattie confirmed that the results presented for the recanvass of votes cast on the lever voting machines are accurate and correct. Based on that report, Commissioner Dent moved for the Board of Canvassers to approve the Provisional Certification of votes cast within the City of New York for the October 1, 2013 Run-off Primary Election on the lever voting machines for the Democratic Party candidate for Public Advocate of the City of New York. Commissioner Michel seconded the motion, which was unanimously adopted.

President Umane stated that by law, ballots for our servicemen and women defending our nation were required to be mailed no later than 32 days before the November 5, 2013 General Election which was last

Friday. To ensure that those men and women are not disenfranchised, last Thursday, the Executive Committee authorized and directed Board staff to print the military ballots with the name of the candidates that the Board just certified as the Democratic candidate for Public Advocate based on the preliminary and unofficial results which show a clear winner. Commissioner Dent moved that the Board of Canvassers ratifies the actions of the Executive Committee. Commissioner Michel seconded the motion, which was unanimously adopted.

Mr. Lehman and Mr. Samuels, on behalf of Mr. Gay, presented the manual recanvass results for the 69<sup>th</sup> AD Judicial Delegate, 72<sup>nd</sup> AD Judicial Delegate, and 75<sup>th</sup> AD Alternate Delegate races in New York County for the September 10, 2013 Primary Election. President Umane reported that these paper ballots were manually recanvassed. Mr. Lehman and Mr. Samuels confirmed that the results presented for the manual recanvass are accurate and correct and there were no discrepancies. Secretary Soumas moved for the Board of Canvassers to approve the Certifications for the 69<sup>th</sup> AD Judicial Delegate, 72<sup>nd</sup> AD Judicial Delegate, and 75<sup>th</sup> AD Alternate Judicial Delegate races in New York County for the

September 10, 2013 Primary Election. President Umane seconded the motion, which was unanimously adopted.

Secretary Soumas moved to authorize the use of the Commissioners signature stamps as appropriate on the Provisional Certifications for the October 1, 2013 Run-off Election, and for the Certifications for the 75<sup>th</sup> AD Alternate Delegate, 69<sup>th</sup> AD Judicial Delegate, and 72<sup>nd</sup> AD Judicial Delegate races in New York County for the September 10, 2013 Primary Election. Commissioner Barrera seconded the motion, which was unanimously adopted.

Secretary Soumas moved to adjourn the meeting of the Board of Canvassers and to convene the weekly stated meeting of the Commissioners of Elections. Commissioner Dent seconded the motion, which was unanimously adopted.

President Umane called the Hearings on Specifications of Objections to Certificates of Nomination for Judge of the Civil Court, City of New York in the Borough of the Bronx, and announced the procedures to be followed during the Hearings. Mr. Richman called the Calendar for the Hearings.

There was an appearance by the candidate and/or their representative. Mr. Richman presented the Counsel's Report concerning Specifications of Objection #BX 3-1. Based on the information, Commissioner Barrera moved to adopt the Counsel's Report. Commissioner Guastella seconded the motion, which was unanimously adopted. Mr. Richman presented the Counsel's Report concerning Specifications of Objection #BX 4-1. Based on the information, Commissioner Barrera moved to adopt the Counsel's Report. Secretary Soumas seconded the motion, which was unanimously adopted.

President Umane announced that litigation will be added to Executive Session.

Secretary Soumas moved to table the minutes of the September 17, 2013 and September 24, 2013 meetings. President Umane seconded the motion, which was unanimously adopted.

Mr. Ryan reported on the October 1, 2013 Run-off Primary Election. It was a very low voter turnout; the unofficial amount of total votes cast citywide is 187,877. 3 out of 4,984 voting machines citywide had to be

replaced, and 3 out of 1,232 poll sites citywide opened late.

Mr. Sattie reported on the printing of the ballots for the 2013 General Election. He reported that a lawsuit has been filed against the State Board challenging the approved ballot language for Proposal #1 “Casino Gambling Amendment” on the General Election ballot. The Hearing on this matter is scheduled for October 11, 2013 in NYS Supreme Court. The testing of all the scanners and ballot marking devices (BMDs) using the actual Election Day ballots is a time consuming and intensive process. The time needed to complete the testing this year is greater due to the number of candidates and questions appearing on the ballot. After consultation with Mr. O’Grady and Mr. Naudus, Mr. Sattie requested authorization to begin building ballots for the General Election on October 9, 2013, and recommended that the City Board advise the State Board of the approved timetable so that it can be shared with the Court later this week. Secretary Soumas moved to adopt Mr. Sattie’s recommendation. Commissioner Dent seconded the motion, which was unanimously adopted.

Mr. Sattie reported on the amounts of ballots to order for the 2013 General Election. His department reviewed both the results and the total

amount of registered voters from the 2009 General Election. Based on that information, plus the expectation that voter turnout is higher for this year's General Election than 2009, Mr. Sattie recommended the following:

- Election Day Ballots – 90% of the registered voters in the City of New York as well as 50 per ED as backups
- Absentee Ballots – 1,000 per Lot. Amounts of Lots by borough:  
Manhattan – 35, Bronx – 26, Brooklyn – 49, Queens – 96,  
Staten Island – 3
- Affidavit Ballots – 150 per ED

Mr. Sattie requested approval to use this methodology to order all ballots. Executive Management confirmed that they agree with the amount presented. Mr. Ryan stated that the amount of ballots to order was based on a value judgment. Secretary Soumas recommended ordering 100% or more. President Umane reminded that the Board can print additional ballots in-house on standard paper if they should run low on Election Day. Mr. Sattie stated that the cost of each ballot with the current vendor is .39 cents for 14" and 17" ballots, and .45 cents for 19" ballots. Mr. Ryan reported that the Board is exploring another print vendor for the future which will be revisited in the spring. He stated that it would be an additional cost of \$450,000 if the Board should order more than 115%.



President Umane requested for the sample ballots to be circulated to the Commissioners for review.

President Umane opened the floor for questions and/or comments from Alex Camarda, a representative of Citizens Union, who spoke about voter turnout in previous years.

President Umane moved to approve Mr. Sattie's recommendation on the amounts of ballots to order for the 2013 General Election. Commissioner Michel seconded the motion, with Secretary Soumas abstaining. The motion was adopted.

Mr. Sattie distributed the "worst case scenario" sample ballot to the Commissioners which included the 5 required languages and many contests in Queens County. The font size is 6 point due to the amount of information on the ballot. There was a consensus among the Commissioners that the font is too small. Commissioner Dent recalled that the Commissioners have discussed the small font size issue in the past. Mr. Ryan recalled that the U.S. Department of Justice approved a 5 point font size in the past due to the same ballot issues. He reported that the

ballots for each specific ED/AD would be enlarged to poster size so it can be posted on the wall in the poll sites citywide. The poster sized ballots will be packed with the regular sized ballots. Commissioner Shamoun raised concerns with the font style and recommended changing the font to a more legible style, and for the kerning to be adjusted so that the letters are not squeezed together. Mr. Naudus confirmed that he will change the font style to Arial and he will adjust the kerning. A sample ballot will be circulated to the Commissioners. Mr. Naudus reported that the ballot software does not support certain font styles and adjustments which would make the ballot more readable. President Umame recommended adding that issue to the list of ballot software changes. Mr. Naudus noted that the current font style has been used since 2011. Mr. Ryan recalled that there has been a question if each borough is bound by the same small font size. He stated that Sections 7-106 and 7-104 of the NYS Election Law do not correlate well. The law states that the font must be uniform at a polling site. The law does not state that it should be the same citywide. Mr. Ryan reported that yesterday he asked Mr. Savino to research if there were any equal protection cases on this matter. Mr. Savino reported that he did not find any New York State or Federal cases relating to equal protection claims made regarding font sizes on a ballot. Commissioner Guastella

moved to use a font size on the ballot according to each borough's needs. There was no second. Commissioner Barrera inquired about potential equal protection issues citywide. Mr. Richman stated that he believes that there would be equal protection issues if the ballot is not uniform citywide. Commissioner Araujo inquired how other jurisdictions such as Los Angeles County handle their ballots. Mr. Ryan reported that they use 17 separate ballots for their required languages. He stated that he does not believe there is an equal protection argument and asked the public to weigh in on this matter.

President Umane opened the floor for questions and/or comments from Alex Camarda, a representative of Citizens Union, who spoke about multiple page ballots.

President Umane opened the floor for questions and/or comments from Alan Flacks, a member of the public, who spoke about the need for more sans serif fonts options in the ES&S ballot software.

President Umane opened the floor for questions and/or comments from Katherine Loving, a representative of the NYC Campaign Finance

Board, who thanked Mr. Ryan discussing this matter with the public.

Ms. Sandow reminded that all sample ballots will be posted online and that voters can use the ballot marking devices (BMDs) if they need to enlarge the ballot's font size. The font size can enlarge up to 22 point on the BMD.

President Umane opened the floor for questions and/or comments from Catherine Gray, a Poll Worker, who spoke about the proposed ballot posters and limited wall space in some poll sites.

Commissioner Araujo requested for the Proposals' font size to be enlarged citywide. Mr. Naudus stated that the Proposals' font size can be enlarged and asked for the full Board's direction. Secretary Soumas recommended for the Board to ask the NYC Law Department's opinion on the font size and potential equal protection matters. There was a general consensus among the Commissioners to enlarge the Proposals' font size as big as possible uniformly citywide, and to ask for guidance from the NYC Law Department concerning equal protection and different sizes of fonts for each borough's needs. President Umane recommended for the Executive

Committee to informally vote on this matter on Thursday via conference call which would be based on the NYC Law Department's opinion and the wishes of the full Board. It was reported that there is a large amount of contests for Queens, Kings and New York County so the font would remain at 6 point; Staten Island and the Bronx have fewer contests so the font could be enlarged. Mr. Ryan stated that the Board can try to maximize the font in the areas provided so that it is consistent within the county. The Board will consult with the NYC Law Department concerning Staten Island and the Bronx. If there is no equal protection argument, then the Board can maximize the font, but if there is an issue, the ballot will be uniform citywide. President Umane requested for arrows and/or instructions to be added to the ballot to advise voters that the Proposals are on the back of the ballot. Mr. Naudus reported that adding arrows and/or instructions may interfere with the ballot's timing marks and that there would be an issue with the 5 language ballot. Mr. Richman reminded that a separate Instruction Sheet on how to vote is given to the voters and that a statement can be added to that sheet concerning the Proposals. Based on the discussion, President Umane moved to enlarge the Proposals' font size as big as possible citywide, and to hold a conference call on Thursday at 10:00 A.M. concerning Staten Island and the Bronx. Commissioner

Barrera seconded the motion, which was unanimously adopted. Mr. Ryan confirmed that if in the event that the Board receives a negative response from the NYC Law Department then there is no need for a conference call.

Mr. Sattie presented the draft Notice to All Candidates for the November 5, 2013 General Election. Commissioner Araujo moved to approve the draft notice. Commissioner Michel seconded the motion, which was unanimously adopted.

Mr. Ward presented the Comparative Expenditures Report dated October 1, 2013 and the Vacancy Report dated October 8, 2013. Copies of the reports are in the agenda.

President Umane opened the floor for questions and/or comments from Alan Flacks, a member of the public. Mr. Flacks spoke about the NYPD Officers knowledge of Exit Letters and Press Passes on Election Day, sample ballots posted on the Board's website, and the cost of ballots and democracy.

President Umane opened the floor for questions and/or comments

from Bishop Donal Yorbrough, a member of the public, who spoke about her previous position as a temporary employee at the Board.

President Umane moved to convene an Executive Session for purposes of personnel and litigation. Secretary Soumas seconded the motion, which was unanimously adopted.

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

- I. The Commissioners granted an advance of three (3) months of time to Charlotte Jordan, a Clerk in the Manhattan Office, due to illness. Ms. Jordan has more than ten (10) years of City service which complies with the rules;
- II. The Commissioners delegated to the Executive Director the determination of who would be handling Freedom of Information Act (FOIL) Requests.

President Umane moved to adjourn the meeting. The motion was

seconded and unanimously adopted.

The next stated meeting of the Commissioners will be held on Tuesday, October 15, 2013 at 1:30 P.M.