

HEARINGS RELATING TO CERTIFICATES OF
NOMINATION AND INDEPENDENT NOMINATING PETITIONS FILED
FOR THE SEPTEMBER 13, 2011 SPECIAL ELECTIONS AND THE
MEETING OF THE COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, JULY 26, 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 Araujo, Dent, Schacher, Sipp, Stupp, Umame

Dawn Sandow, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
Raphael Savino, Director, Campaign Finance Enforcement
John Ward, Finance Officer
Dorothy Delayo, Director, Personnel
Valerie Vazquez, Director, Communications and Public Affairs
John O'Grady, Chief Voting Machine Technician
Beth Fossella, Coordinator, Voter Registration
Troy Johnson, Coordinator, Candidate Records Unit
Matthew Graves, Administrative Associate, Candidate Records Unit
Ryan Deahn, Administrative Assistant, Candidate Records Unit
Richard Byrne, Summer Law Student Intern, OGC
Daniel Dugan, Summer Law Student Intern, OGC
Giacomo Kmet, Temporary Attorney, OGC
James Barron, Temporary Attorney, OGC
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Terry Hinds
Marjorie Shea, Women's City Club
Kate Doran, LWV
Frank Bolz, for Alexander L. Jacob
Alex Camarda, Citizens Union
Rima McCoy, CIDNY
Mac Beeson

Alan Flacks, Member of NY County Democratic Committee
Stewart Armstrong, CFB
Joseph G. Garber
Perrine Pradel, for Gale A. Brewer
Judd Ryan, ES&S
Jerry Amick, ES&S
Clyde Vanel
Chris Bragg, City Hall News
Marianna Blume
John D. Smith
Delco L. Cornett
A.B. Britton
Justin Wax Jacobs

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

President Polanco announced that the Commissioners would conduct the Hearings on the Certificates of Nomination and Independent Nominating petitions filed for the September 13, 2011 Special Elections in the 9th Congressional Districts in parts of Brooklyn and Queens, the 23rd and 27th Assembly Districts in Queens County, the 54th Assembly District in Kings County and the 73rd Assembly Districts in New York County. President Polanco advised the candidates and/or their representatives of the procedures to be followed during the hearings.

Mr. Richman called the calendar for the Hearings on matters appearing on the Legal Prima Facie Report. `

Following on appearances by one (1) of the candidates, Commissioner Araujo moved to adopt the Legal Prima Facie Report, as submitted. Commissioner Soumas seconded the motion. The Legal Prima Facie was adopted unanimously, except for the 54th Assembly District in Kings County matter, when Commissioner Dent abstained.

Mr. Johnson called the calendar for the Hearings on matters appearing on the CRU Prima Facie Report. No candidates appeared.

Commissioner Soumas moved to adopt the CRU Prima Facie Report, as submitted. President Polanco seconded the motion, which was adopted unanimously.

Mr. Richman reported that late last evening a Specification of Objection was filed by Alexander L. Jacob to the petition of Justin Wax Jacobs. He explained that a Counsel's Report could not be prepared for this Specification of Objection which presented a legal issue. Mr. Richman requested the Commissioners set a date for this hearing. Secretary Soumas moved that the Objector be allowed to preserve his objections in the event that the candidate is reinstated for any reason by either the Board or the Courts. President Polanco seconded the motion, which was adopted

unanimously.

Commissioner Umame moved to authorize the printing of the federal and military absentee ballots based on the Board's determinations today with respect to which candidates appear on the ballot. Commissioner Soumas seconded the motion, which was adopted unanimously. Mr. Richman stated that the Board will fully comply the applicable federal and state laws with respect to mailing all ballots for the Special Elections.

President Polanco adjourned the hearings.

Commissioner Umame requested to discuss a Manhattan personnel matter in Executive Session.

Commissioner Stupp requested to add an item to the agenda relating to the Poll Worker performance incentive.

Mr. Richman and Mr. Denkberg requested to discuss a litigation matter in Executive Session.

Mr. Richman requested to add an item to the agenda concerning the Schedule of Hearings for August 2, 2011.

Commissioner Schacher moved to adopt the minutes of the July 20, 2011 meeting. Commissioner Araujo seconded the motion, with Commissioners Soumas and Stupp. The motion was not adopted.

Commissioner Araujo moved to adopt the minutes of the June 19, 2011 meeting. Commissioner Dent seconded the motion, with Commissioner Sipp abstaining. The motion was not adopted. Commissioner Sipp withdrew his abstention. The motion was adopted.

Mr. Richman reported on the selection of method for determining ballot order by lot for the September 13, 2011 Primary Election. He recalled that this item was presented at the previous meeting. Mr. Richman stated that the NYS Election Law requires the order of the Primary Election ballot by lot. He stated that Section 6204.3 of Title 9 of New York Codes, Rules and Regulations (NYCRR) set forth three (3) different yet approved methods of determining ballot order in the Primary. Mr. Richman requested for the Commissioners to determine which option the Board should utilize. He noted that the provisions of Section 7-116(6) of the NYS Election Law

are not applicable because it requires rotation of the candidates' names in the Primary Election for the ballot on the lever voting machine, but the Board uses scanners now. Commissioner Umane stated that the test decks for the scanners in last year's Primary Election was a very lengthy process due to the rotation. Mr. Richman explained the three (3) options and noted that it would be a "BINGO" type device. The first option is a rotating device with spheres that would release automatically and the other two options would be manual shaker devices. Commissioner Umane moved to adopt the first option and to authorize the purchase of the automatic rotating device with spheres. Commissioner Soumas seconded the motion, with Commissioner Araujo abstaining. The motion was adopted.

Mr. Johnson presented the draft schedule for the August 2, 2011 Hearings relating to Designating Petition Matters for the September 13, 2011 Primary Election. He distributed copies of the draft schedule to the Commissioners. Mr. Johnson recited the schedule for the Commissioners. Commissioner Umane suggested for the hearings to continue without a break. Mr. Richman stated that Brooklyn matters can be changed to 10:30A.M. and Manhattan matters to 2:00P.M. Commissioner Umane agreed. Commissioner Umane moved to adopt the schedule for

the August 2, 2011 Hearings relating to Designating Petition Matters for the September 13, 2011 Primary Election, as amended. President Polanco seconded the motion, which was adopted unanimously. Mr. Richman noted that the schedule will be posted on the Board's website and at the Front Counters in the Executive and Borough Offices. The schedule will be emailed to the Commissioners as well.

Ms. Vazquez presented the public education and Poll Worker recruitment update. She reported that the Board's Outreach Team has been continuing to conduct events for Poll Worker and Interpreter recruitment which have been very positive to this date. The Outreach Team will continue to make telephone calls to secure recruitment events. Ms. Vazquez reported that she had a meeting with the Employment Director of Job Corps and they are interested in helping the Board recruit Poll Workers. She reported that the New York City Service has posted the Board's Poll Worker opportunity on their website and they will collect information from applicants and forward it to the Board on a weekly basis. Ms. Vazquez has a meeting on August 3, 2011 with the Director of NYCHA Resident of Economics and Industry Partnerships who is interested in distributing the Board's Poll Worker flyers and applications. Ms. Vazquez reported on Poll Worker Awareness Month. She stated that she and her

team are planning an Open House at the Board this month. She is working with community groups and the media to promote the Open House. Ms. Vazquez is also working on creating a round table discussion with Chinese, Korean and Latino groups. The Board's EDO Translators will be participating in the meeting as well. Ms. Vazquez has been seeking to place ads in community newspapers to promote the round table meeting which would be at no cost. She is currently preparing a tool kit that will contain the Board's literature, flyers, press releases and applications in one (1) user friendly file so she could email it to her contacts who could then forward it to their contacts. Ms. Vazquez reported that the 311 Call Center would have the Board's Poll Worker recruitment advertisement used on their hold time. She will write the script then present it to the Commissioners for their approval. Commissioner Sipp inquired how many Poll Worker applicants are not registered voters. Ms. Vazquez replied approximately 600 out of 3,000 applicants. She stated that when the Outreach Team identifies that the applicants are not registered they send them a letter notifying they could only serve as a Door Clerk, but if they register to vote then they could serve in other capacities. In addition, the Team encloses a voter registration form with the letter. Commissioner Sipp inquired how many of those applicants have sent the voter registration form back. Ms. Vazquez replied that she would have to research that

number and report back. She reported that she is preparing two (2) press releases to highlight the Board's accomplishments to date and to announce Poll Worker Awareness Month. They will be released within the next two (2) weeks. Ms. Vazquez reported that the Board's "Mark It, Scan It, Vote the New Way" Campaign has been selected as a finalist in the Platinum PR Awards in the category of a multicultural campaign and public affairs. The Gala will be held on September 14, 2011 and she is honored that the Board is a finalist in the nationwide contest.

President Polanco recognized Alan Flacks, a member of the public, who asked if the Board can solicit Poll Workers in NYC Co-op buildings. Ms. Vazquez stated that she will work with Mr. Flacks to develop additional Poll Worker outreach methods.

Mr. O'Grady reported that there is an outstanding bill for \$227,000 from the NYC Department of Education (DOE). The bill relates to the DOE keeping their public schools opened (that are used for polling places) from September 9 – 13, 2010 in order for the Board to deliver the voting equipment that was needed for the September 14, 2010 Primary Election. Mr. O'Grady recalled that he presented this item last week and was directed to compile a detailed summary report of the bill and delivery

receipts. Mr. O'Grady distributed copies of his report as well as the DOE emails to the Commissioners. He requested for the Board to pay the DOE bill because the DOE is holding up the Memorandum of Understanding (MOU) for permanent public school improvements for accessibility. Commissioner Umame stated that the Board and the DOE both have shortfalls in their budget. He stated that the DOE is holding up funds that the Board arranged to get them to permanently improve their public schools and he does not understand the linkage of the two (2) matters. Commissioner Umame stated that the Board uses the public schools as poll sites approximately three (3) times a year and the permanent improvements would be more beneficial to the DOE. Commissioner Umame asked what category the funds would come out of if the Board pays the bill and if there are funds. Mr. Ward replied the FY11 OTPS allocation and that there are available funds available. Commissioner Umame stated that he would not vote to pay the bill because the DOE is trying to hold up the MOU funds for accessibility, but it should be clear to the DOE that the Board will pay the bill because they need cooperation moving forward with the elections. He added that the DOE should plan their budget to ensure they have the funds available for their staff to accept the voting machines during the elections which is required by the NYS Election Law. Mr. Richman stated that the overtime for the DOE staff is not required in

the NYS Election Law, but there is a proposal to mandate every public entity that has a poll site to be available to receive the voting machines. He added that there are no explicit statutes concerning the delivery of the voting machines. Commissioner Umame moved to support paying the DOE bill under the conditions described. Before a vote, Secretary Soumas suggested writing a letter to Council Member Gale Brewer notifying her that the DOE is trying to hold up the MOU permanent accessibility improvements. He stated that the Board has to serve the voters of New York City. Mr. O'Grady stated that the DOE kept their public schools open for the Board during the Jewish holiday and weekend. President Polanco inquired if City agencies are allowed to charge other City agencies. Mr. Richman stated that the custodians are independent contractors; they are not DOE employees. Commissioner Sipp asked what the duties of the custodians were on the voting machine delivery days. Mr. O'Grady stated that the custodians opened the public schools on the Jewish holiday and weekend and waited until the deliveries were complete. Ms. Sandow stated that the DOE opened the public schools for four (4) days for the deliveries. She stated that they normally do not charge the Board, but the Board was behind schedule due to the testing of the machines. Secretary Soumas inquired if the DOE has statutory authority to bill for the services. Mr. Richman believed that after school activities and

other programs with community groups would charge necessary fees. He stated that it is required for the DOE to make their public schools available for poll sites and voter registration sites. Secretary Soumas asked if the DOE has accepted the MOU funds. Mr. Richman replied yes. Mr. Ward stated that the DOE received \$1.9 million and they spent approximately \$290,000 to this date. Secretary Soumas was concerned that the DOE was not using the funds for permanent accessibility improvements at their public schools. President Polanco stated that the Board has to remind the DOE that they have to make the permanent accessibility improvements. He suggested writing a letter to the DOE. Commissioner Umane was concerned about cooperation with conducting elections in the future. He expressed that the Board has had a very good relationship with the DOE and they have to move forward. He reiterated that he does not want to pay the DOE because they are holding up MOU funds that the Board acquired for them, but the funds are available to pay the bill. Commissioner Schacher seconded Commissioner Umane's motion, which was adopted unanimously. Mr. Richman asked if the appropriate New York City Council Chairs should be copied on the DOE letter. The Commissioners agreed to copy them on the letter. Secretary Soumas stated that it is not the Board's fault when the good government groups and ADA groups sue the Board for

not having accessible poll sites. He reiterated that there are permanent improvement funds available for the DOE to utilize.

Mr. Ward presented the Comparative Expenditures report dated July 26, 2011. A copy of the report is in the agenda.

Mr. Ward reported on the proposed budget modifications in the OMB allocation for Other than Personal Services (OTPS) to conduct elections in September and November 2011. He distributed copies of his memorandum and spreadsheet to the Commissioners. Mr. Ward recalled that last week the recommended modifications in the OMB allocation for OTPS to fund the Presidential Primary and expense items approved by the Office of Management and Budget (OMB) were approved by the Commissioners. Mr. Ward summarized his report for the Commissioners. President Polanco moved to approve the proposed budget modifications in the OMB allocation for Other than Personal Services (OTPS) to conduct elections in September and November 2011. Commissioner Schacher seconded the motion, which was adopted unanimously.

President Polanco recognized Marjorie Shea, a representative of Women's City Club, who inquired about over votes in a Special Election

and commended the Board for posting the CRU Petition Volume Report on its website.

Commissioner Stupp reported on the compensation for the Poll Worker performance incentive. She stated that the incentive was \$100 in 2010 and that there is no compensation assigned for 2011 yet. Commissioner Stupp stated that a Poll Worker would receive the \$100 performance incentive if they attend the training class, pass the test, and work two (2) election events. Commissioner Stupp stated that she would like the performance incentive to be \$100 for the 2011 election cycle. President Polanco stated that he supports the performance incentive and that it is very important to provide it for the Board's committed Poll Workers. He would like the best Poll Workers to return and work the elections in the future. Commissioner Dent stated that it would be an additional \$3.00 an hour to the Poll Worker's pay and felt that it is well deserved for the hard work and long hours they endure on Election Day. Commissioner Stupp stated that it is imperative to pay the performance incentive because many Poll Workers felt that it was too many hours and that they might not return to work. Commissioner Stupp move to adopt the performance incentive at \$100 for the 2011 election cycle. President Polanco seconded the motion. Before a vote, there was discussion. Commissioner Umane stated that the

Board needs to retain Poll Workers because the training classes and Election Day are long hours and hard work. He recalled that the Commissioners increased the incentive last year due to the new voting machines. Commissioner Umane inquired where the funding would come from. Mr. Ward stated that the Poll Workers are paid in Personal Services (PS) and there will be savings because there will not be Primary Elections in Bronx and Richmond Counties in 2011. Secretary Soumas asked how much funds were used last year for the Poll Worker \$100 performance incentive. Mr. Ward replied approximately \$3 million. Mr. Richman noted that there has never been 100% Poll Worker attendance. Secretary Soumas asked if they could delay this matter until October to see what the Board actually spends on the Primary and Special Elections. He stated that he does not want to spend funds that the Board does not have. Mr. Richman stated that every year the Board's PS funds are "made whole" by the City. He stated that it is an advantage that the Poll Workers have become Board employees. President Polanco recalled that this was an issue at the New York City Council Hearings. The Council Members asked how the Board will retain competent Poll Workers. President Polanco felt that the performance incentive is very important to retain Poll Workers. President Polanco recalled that he seconded Commissioner Stupp's motion to adopt the performance incentive at \$100 for the 2011 election cycle. In a

roll call vote, there was five (5) in favor (Dent, Schacher, Sipp, Stupp, Polanco) and three (3) opposed (Araujo, Umane, Soumas). The motion was not adopted. President Polanco moved to adopt the performance incentive at \$75 for the 2011 election cycle. Commissioner Stupp seconded the motion. In a roll call vote, there was six (6) in favor (Dent, Polanco, Schacher, Sipp, Stupp, Umane) and two (2) opposed (Araujo, Soumas). The motion was adopted.

President Polanco recognized Kate Doran, a representative of League of Women Voters, who suggested having a Poll Worker split-shift on Election Day for shorter hours as an incentive.

President Polanco moved to convene an Executive Session to discuss personnel and litigation matters. Commissioner Araujo 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. Camile Montaque, a Clerk in the Manhattan Borough Office, will receive Lillie Lessington's title as an Administrative

Assistant and will receive retroactive pay from April 24, 2011.

II. Robin Walker, a Temporary Clerk in the Manhattan Borough Office, will receive Camile Montaque's title as a Clerk and will receive retroactive pay from April 24, 2011.

III. John Naudus, a Project Coordinator in the Executive Office, was hired to be the new Computer Systems Manager of Electronic Voting Systems (EVS) with an annual salary of \$119,159.00, effective Monday, August 1, 2011.

President Polanco moved to adjourn the meeting. Commissioner Dent seconded the motion, which was adopted unanimously.

The next stated meeting of the Commissioners is scheduled for Tuesday, August 2, 2011 at 12:45 P.M.