

MEETING OF THE COMMISSIONERS OF ELECTIONS
IN THE CITY OF NEW YORK
HELD ON TUESDAY, MARCH 26, 2024 AT 1:00 P.M.
42 BROADWAY, 6th FLOOR, COMMISSIONERS' HEARING ROOM
NEW YORK, NY 10004

PRESENT: President Rodney L. Pepe-Souvenir
*Secretary Frederic M. Umame

Commissioners Jose M. Araujo, Carol R. Edmead, Gino A. Marmorato, Jodi Morales, Simon Shamoun, Michele A. Sileo

Michael J. Ryan, Executive Director

Vincent M. Ignizio, Deputy Executive Director

Georgea Kontzamanis, Operations Manager

Michael D. Corbett, Administrative Manager

Raphael Savino, Deputy General Counsel

Steven B. Denkberg, Counsel to the Commissioners

Kenneth Moltner, Counsel to the Commissioners

Debra Leible, Coordinator – Election Day Operations

GUESTS: Kate Doran, League of Women Voters
Robert Stepanek
Rigodis Appling, Legal Aid Society

*Secretary Umame appeared remotely, but not at a publicly accessible location, and therefore did not cast any votes.

Mr. Ryan opened the meeting, and provided the following updates:

Today is the 4th day of Early Voting for the April 2, 2024 Presidential Primary. All polls opened today at 7:00 A.M. and will close at 4:00 P.M.

At the close of polls last night, 20,865 New Yorkers voted early in the first three days. Early Voting will continue until Saturday, March 30, 2024.

As a reminder, the Board is only conducting 8 days of Early Voting for this election, as for many, Sunday, March 31, 2024 is the Easter holiday.

The legislature set that as eight days instead of 9 days, and that was not an option for the Boards of Election.

Mr. Ryan also confirmed that although Friday is Good Friday, the Board is still open.

President Pepe-Souvenir noted that Election Day is Tuesday, April 2, 2024.

Mr. Ryan stated that the hours and poll site locations for Early Voting can be found on the Board's website at www.vote.nyc or by contacting the Board Offices, the same holds true for Election Day next week.

Preparations and voting equipment testing are still ongoing for Election Day. We are scheduled to deploy roughly 67,125 pieces of equipment at 1,213 poll sites on April 2nd.

Deliveries began yesterday and will be ongoing until the day before the election, and we always have a few that are delivered on the day before. We are on track for this election and expect to meet all targets.

The Board has mailed out 86,355 ballots in a combination of early mail ballots and absentee ballots. As of the close of business last night, 25,581 ballots have been returned. 21,982 have already been canvassed and deemed valid. 1,255 have been deemed invalid, and the cure process and the canvass process is ongoing. We will continue to receive and process mail ballots for the Primary, and the last day to apply in person is April 1st. Implicit within that is, we are beyond the date for a ballot to be mailed to your location.

That concluded the announcements and Mr. Ryan continued with item #1 of the meeting agenda, the approval of the minutes of the March 12, 2024 Commissioners Meeting.

Mr. Ryan acknowledged the presence of Commissioner Morales.

Hearing no objections, the minutes of the March 12, 2024 Commissioners Meeting were adopted.

Mr. Ryan continued with item #3 of the meeting agenda, the Poll Worker Exception Reports for each borough.

Mr. Ryan acknowledged Debra Leible, the Election Day Operations Coordinator, to present the reports before the Commissioners.

Ms. Leible informed the Commissioners that there were only two boroughs that requested exceptions, the Bronx: 2 Coordinators and 4 Inspectors, in Staten Island: 12 Coordinators and 5 Information Clerks. Ms. Leible stated that all of these have been approved by the borough Commissioners.

Commissioner Marmorato moved to adopt the Poll Worker Exception Reports. President Pepe-Souvenir seconded the motion, which was adopted unanimously.

Mr. Ryan acknowledged Raphael Savino, Deputy General Counsel, and asked that he address the FOIL Appeal in agenda item #3.

Mr. Savino stated that there was a gentleman by the name of Zachary Berman who filed a Freedom of Information Law request (FOIL). He was interested in data from the Mayoral election in 2021, specifically cast vote record data. Mr. Berman was referred to the Board's website where a lot of data can be

found, especially concerning this issue. Mr. Berman responded with some questions; staff confirmed that this is the only data we have. Mr. Berman filed an appeal, basically saying we refused to answer his questions and the data was incomprehensible. Under the law, there is nothing required for an agency to prepare any record or possess any record in any format that it doesn't originally keep it in. We do not have to change the format and are not obligated to create new records. And certainly, under the FOIL law we are not required to answer questions. The appeal was submitted to the Executive Committee who denied the appeal and is looking for ratification from the full Board. Mr. Savino stated that as per the policies and procedures, the Executive Committee acts as the appeals officers. President Pepe-Souvenir confirmed that she and Secretary Umame reviewed the information, and both thought that the appeal should be denied. Secretary Umame confirmed that the matter has to be ratified by the full Board.

Mr. Ryan stated that the pause was to see if President Pepe-Souvenir or Secretary Umame had any additional facts that they wanted to add, and if they are comfortable resting on those facts, it would be appropriate to entertain a motion to ratify the appeal.

Commissioner Marmorato moved to ratify the appeal. Commissioner Sileo seconded the motion, with Commissioner Edmead abstaining, the motion was adopted.

Mr. Ryan acknowledged Kate Doran, who has requested to address the Board on behalf of the League of Women Voters.

Ms. Doran stated that she is from the League of Women Voters representing New York City and New York State and believes that most have heard about this movement to vote a blank ballot. Ms. Doran stated that the League Offices are getting questions about it, she has been hearing about it in the media, and is also a Poll Worker. Ms. Doran stated that her recollection is that the scanners that we use, the DS200s, will spit back and reject a blank ballot. Ms. Doran stated that she tried to check her manuals but did not find anything and would like to have confirmation on the matter.

Ms. Kontzamanis informed Ms. Doran that if you insert a blank ballot into the DS200, what will pop up is a message on the DS200 that indicates to the voter that you have made no selection on the ballot. It will then afford the voter the opportunity to do one of two things, to either correct their ballot, in which case they press the return button and then the ballot comes back out for them to go back and fill it out, or they can press the button that says cast the ballot, and in effect they can cast a blank ballot without having chosen any candidate.

Ms. Doran stated that the information provided was very helpful and asked another question regarding the scanner tapes. Do the scanner tapes indicate the number of blank ballots?

Ms. Kontzamanis stated that they are basically recorded as an undervote. Mr. Ryan answered no, much in the same way that if you vote an incomplete ballot. If there are 10 contests on the ballot and you vote 9, it won't segregate out that single contest that you didn't vote in. Where you would be able to pick that up, if you had a mind to do the statistical analysis, is post-election. If someone wanted to take a look at the post-election data and say here's how many ballots and here's how many votes were cast, you'll be able to draw a conclusion. But even that won't be a one-to-one comparison because there are other contests on the ballot.

Ms. Doran stated, so then, we can conclude that there is no way on election night, even with the unofficial results, that the Board of Elections could report the number of blank ballots. Mr. Ryan stated no, you would just record the vote total; keep in mind, at least on the Democratic ballot, it's a mixed ballot in the sense that there are candidates for President on the ballot and also candidates for Delegate. Chances are you'll get some type of recording on the ballot between one of those two contests, and if not, the totals will be what they are, and when we do the post-election canvass, they'll be some match up of the vote totals and the ballots.

Ms. Doran confirmed that there is no way that anyone would be able to know on election night, even unofficially, how many blank ballots were cast. Mr. Ryan stated that that is correct. Mr. Ryan stated that he will speak with Ms. Doran after the meeting and will address any other questions that she may have.

Mr. Ryan acknowledged Mr. Stepanek, a member of the public who has requested to address the Commissioners.

Mr. Stepanek stated that he was here on October 24th and addressed certain issues that there had been during the previous election in June. There have been some additions to that report, and also the report of the early voting in the General Election last year. Prior to this election, Mr. Stepanek stated that he contacted early voting departments in other boroughs and offered his services as a Poll Worker Coordinator and is also a Poll Worker Trainer since 2014. Mr. Stepanek stated that he is also here to let the Board know that if interested in the further reports he's making he can send those along. Also, if there are any opening or needs that the city has in any of the boroughs for an early voting Coordinator who is a Republican, in the Bronx, Queens, Brooklyn or Manhattan, he is available to step in.

Mr. Ryan acknowledged Rigodis Appling, representing the Legal Aid Society, who has requested to speak with respect to voting in New York City jails.

Ms. Appling stated that the Vote in NYC Jails Coalition is a coalition of a lot of organizations and impacted people who were in NYC jails but didn't get opportunities to vote. There is an absentee ballot program in the jails coordinated by the Coalition with the Department of Corrections and noted that this process does not reach all that should be voting in jail. The Coalition has sent letters to the Executive Director of the Board of Corrections, the Department of Corrections, and the NYC Board of Elections, addressed to President Pepe-Souvenir. Mr. Ryan stated that there were a couple of times that that letter has been written, and it was responded to by the NYC Board both times.

Ms. Appling stated that this is a new letter, from February 13, 2024, and has not received a response. Mr. Ryan stated that he has yet to receive the letter and Ms. Appling will provide a copy to the Board today.

Ms. Appling stated that she would like to read the important bits into the record, a memorandum on establishing an in person polling place and improving absentee voting at NYC jails. This memorandum highlights the significant barriers to eligible incarcerated people accessing the ballot, and subsequently outlines recommended best practices for improving voter registration, voting by early mail or absentee ballot, and voting access in NYC jails and detention centers. Ms. Appling shared the recommendations of the Coalition with the Board, noting that

the letter was endorsed by many organizations and elected officials in support of this effort.

Mr. Ryan stated that the Board will respond in writing as we have done with previous correspondence in this regard. As was discussed between the Board and Councilmember Lincoln Restler on this issue, the City Charter responsibility to manage this program rests with the NYC Department of Corrections, and we have in the past cooperated in the manner in which the Department of Corrections has asked us to. The other thing that needs to be kept in mind is that the prisoners that are held at Rikers Island are in the care, custody and control of the NYC Department of Corrections, and unless and until the Department of Corrections asks us to do more or invites us into the facility, there are complexities to this process that most if not all of which lie outside the purview and the authority of the Board of Elections. Mr. Ryan noted that we are here to help all voters, but the Department of Corrections has to extend that olive branch to us to pull us into the process to make improvements. Mr. Ryan stated that we pledged to the City Council and will pledge to the Coalition as well, that we will do everything that we legally and reasonably can do under the circumstances to service the voters.

Commissioner Morales stated that she has a question before concluding this portion and stated that she can appreciate the logistical issue of reviewing the absentee ballots, but how has the Department of Corrections responded to the

prospect of having voting machines on site. Because that feels like one of the biggest logistical issues and a safety concern.

Ms. Appling stated that the Department of Corrections has gone on record and news articles saying that they would work with the Board of Elections and provide any security necessary. Ms. Appling stated that she thinks that this is something that the Coalition can facilitate because they meet with the Department of Corrections once a month. The Coalition would like to have the Board of Elections sit with the Department of Corrections and come together to work through those logistics.

Georgea Kontzamanis informed Ms. Appling that she has until the day before the election to apply for an absentee ballot in person. If the application is brought into one of our borough offices, the absentee or early mail ballot application would be processed, given to her, and then would have to be delivered to the voter. So, you can apply for a ballot up until the day before an election.

Mr. Ryan stated that the Board has worked with the Department of Corrections in that regard and is aware of moments in the past where they have hand delivered batches of absentee ballot applications to us and we have processed them and got them back. Mr. Ryan noted that if the Department of Corrections is willing to and continues to do that, that by itself does not put a prisoner on Rikers

Island in any particularly worse position than a non-prisoner. Someone would still have to come in person to get the ballot from us after the deadline date. The other issue that always comes to play with NYC Department of Corrections prisoners is that it is a transient population, the population fluctuates from day to day. But as we pledged to Chair Restler, and will say to the Coalition, we will do everything that's legal and reasonably possible within our abilities.

Commissioner Umane stated that he wanted to correct something. The process that we use at nursing homes does not have any voting machines or scanners brought to those sites. It is done through the absentee voting process, so that there's no actual machines brought to any of those sites. That would pose significant issues, we would need machines, ballot printers and ballot marking devices potentially as well. It raises additional issues and is not something that we generally do for any site, other than a scheduled polling place. Mr. Savino noted that the nursing home program is spelled out in the election law, so it is actually a statute.

Mr. Ryan asked that Ms. Appling leave a copy of the letter and stated that the Board will respond directly as in the past, and the response will be sent in a traceable way, overnight mail with a record that it was sent. Mr. Ryan stated that the Board looks forward to hearing from the Coalition again and working with the Department of Corrections to improve the process in any way that we can.

Ms. Appling stated that if the Board has any questions please reach out and noted that the Coalition does have examples of cities in which they have polling sites in jails and its working and would love to discuss this with the Board.

Ms. Appling provided a copy of the Coalition's letter; the Board thanked her for appearing today.

Mr. Ryan proposed that the Commissioners set the date of the next meeting for Tuesday, April 9, 2024.

Ms. Kontzamanis stated that we definitely have to meet on April 16, 2024, to certify the election on that day.

Commissioner Shamon moved to set the date of the next meeting for Tuesday, April 9, 2024, at 1:00 P.M., and adjourn the open meeting and convene an Executive Session to discuss personnel matters. Commissioner Marmorato seconded the motion, which was adopted unanimously.

Following the Executive Session, the open meeting resumed.

Mr. Ryan stated that there are four personnel matters from Executive Session and will be reported out in the meeting minutes as legally required.

The meeting was adjourned.

The next stated meeting of the Commissioners of Elections is scheduled for
Tuesday, April 9, 2024 at 1:00 P.M.