

QUEENSBOROUGH COMMUNITY COLLEGE

FACULTY EXECUTIVE COMMITTEE

REPORT

In the Matter of the Complaint of Ted Rosen

Related to the Election for

Chairperson of the Business Department

conducted on May 7, 2014

Prepared by

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June 13, 2014

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Preamble

The Faculty Executive Committee (FEC) entered reluctantly into the matter of charges levied by Professor Ted Rosen of the Department of Business alleging violations of the faculty bylaws by several members of his department. The FEC always holds a preference for matters to be settled within a department and amongst colleagues acting in good faith and with respect for one another. The FEC prefers such matters be handled in a manner that supports community rather than rends community apart. Professor Rosen chose to handle his allegations in a manner that went beyond his department, severely undermining the sense of community in his department and potentially damaging the reputation of several members of the department, including his own.

Professor Ted Rosen accepted the nomination for the position of Chairperson of the Department of Business and was one of two candidates for election at the meeting held on May 7, 2014. Several days after the election ended he brought charges and the request for the nullification of the election which he lost. Some members of his department have called into question his actions and have asked him to reconsider and withdraw his charges (EXHIBIT L).

To our extreme regret and dismay after announcing to the faculty of the Department of Business that the FEC would be examining the charges, members of the FEC thereafter, without their request, were recipients of numerous reports and pleas from several members of the Department of Business who reported that they personally experienced a climate of fear, intimidations and apprehension and worked within an atmosphere colored by secrecy and conspiracy. Furthermore, there were reports that such experiences have been reported to the administration in the past and in the most recent days only to be met with no response and inaction.

While the FEC regrets several aspects of this matter, including the fact that the Chairperson of the Business Department did not conduct an election meeting that was recognized as proper by all members of the Department, that no objections were raised during the elections that could have resolved any issues during the election meeting itself, and that the objections that were raised were not attempted to be resolved within the department itself, the FEC has acted to fulfill its responsibilities in matters of faculty rights and welfare of the faculty.

Jurisdiction

The Faculty Bylaws (EXHIBIT B) at Article VI POWERS OF THE FACULTY clearly states that :“ The Faculty shall be responsible for the academic status, role, rights, obligations, and freedoms of the Faculty, and such other matters that may affect the welfare of the Faculty consistent with this document. The Faculty through its Faculty Executive Committee may address communications to the Board of Trustees. “ (6.1)

The charges brought forth by Professor Ted Rosen in his communication of May 12, 2014(EXHIBIT C) raise possible violations of the Faculty Bylaws and call for the nullification of the election that took place in the Department of Business on May 7, 2014. Such charges and remedy involve the role and rights of the faculty and matters that affect the welfare of the faculty in the Department of Business and in certain aspects all faculty of the College. Thus, the FEC has its charge to examine those charges, their circumstances and their consequences for faculty.

The FEC does not see anywhere in the documents of authorization any indication that it is within the sole authority of the President to make determinations as to violations of the faculty bylaws or to overturn an election. The President has authority to accept or reject any person for the position of chairperson of an academic department and to recommend to the CUNY Board of Trustees such persons as the President thinks fit to so serve. There is a process in place for department to vote on their choice for chairperson of a department and the procedures for such activity as set forth in

the QCC Faculty Bylaws which provide for certain rights to faculty. The charges brought forth by Ted Rosen upon his loss of the election relate to the process of the election and the QCC Faculty bylaws.

The FEC holds the position that it has both the right and the duty to defend the rights of faculty and the observance of the Faculty Bylaws and thus jurisdiction for determinations concerning the charges brought by Professor Ted Rosen and some of their consequences.

The Two Charges

There is confusion created by Professor Ted Rosen when in his email of June 5th (EXHIBIT G) he states that " First, the matters set forth in my May 12, 2014 email were objections to the election, not 'inquiries about how the election was conducted' ". It appears clear that, whatever his response is to the outcome of the election, Professor Ted Rosen's objections are to the manner in which the election was conducted and more precisely the ballots used and the manner in which the ballots were counted by the tellers. In objecting to the election itself, he wishes to direct attention to the manner in which certain aspects of the election were conducted.

Physical Ballots

Professor Ted Rosen alleges that "The Use of Paper Ballots on the Second Ballot Contained Names of the Candidates Listed in a Different Sequence than the Paper Ballots Used on the First Ballot Although There is No Provision in Section 8.5 for Changing Such Sequence of Names on the Paper Ballots Used on Successive Ballots."

There is no provision for such an arrangement of candidates for election nor is there a prohibition against making such a change in the faculty bylaws. Further, the practice has been extant in the Department of Business for more than 15 years and well established as a past practice. It was instituted at the request of faculty who experienced a climate of fear of retaliation or consequences from colleagues if they learned of how someone voted for a candidate not of their preference. In response, the Department accepted a practice of arranging the candidate names from A to Z and on alternate ballots from Z to A.

Before, during and after the department elections in 2011, 2008, 2005, 2002, 1999 there were no objections to this practice. Before, during and after the department elections in 2014 there were no objections to this practice until 5 days after when Professor Ted Rosen, who lost the election for Chairperson, brought the matter up in a demand for nullification of the election results. He did not register in any manner a problem with this practice in any other election in the department when the same practice was used. There are no reports on record of any faculty being confused by the use of the alternate ballots in any of the years it was so employed. At no time did the Chairperson of the Department, responsible for the conduct of the meeting and the elections,(EXHIBIT A CUNY BOT Bylaws 9.3 a.5 and 12), raise this matter. He did not draw attention to it as a concern nor note it as a problem nor halt the election due to the practice in question. He did not so act on May 7, 2014 nor during the elections in 2011, 2008, 2005, 2002.

There is no supporting evidence that the alternation of alphabetical order of the ballots violated bylaws. No one raised this as an issue in the past, nor did any one raise it as an issue during the first balloting or during the second ballot in the election on May 7, 2014. Nor was there a problem with the election balloting for the members of the Department P&B Committee.

Professor Rosen had participated in elections in the Department using this form of balloting in 2011 and 2008 and at no time before during or after those elections did he raise any objections or concerns or problems or indicate that the reversed alphabetical order caused confusion for him or for anyone else. Nor did any other members of the department raise any problem or concerns during or after those elections.

At this time Professor Rosen claims that (EXHIBIT C) “When I first received my paper ballot on the second ballot, I experienced confusion after not initially locating my name in the same position it had been on the paper ballot used in the first ballot. Similar experiences were reported to me by two other people who voted in the Election.” Professor Ted Rosen does not report that either he or any other person was so confused that they may have cast their ballot for a person other than for whom they intended to vote because they could not tell the difference in the names on the ballot of “Kathy Villani” from “Ted Rosen.”

The timing of Professor Rosen’s claims is also curious, as no such confusion was reported during the meeting itself when, presumably, the confusion was occurring and if others were experiencing the confusion it would be in their direct awareness and they would have made note of it. According to Professor Rosen it was only after the conclusion of the meeting, and we note after he realized he was not elected, that he and two other unnamed persons recall having been so confused that they could not decipher the ballot so as to distinguish the name of “Kathy Villani” from “Ted Rosen.” Given the reversal in the arrangement of names on alternate ballots reflected a practice in place for well more than a decade, it is also difficult to understand why neither Professor Rosen nor anyone else in the Department had ever raised an objection about this practice before. Furthermore, given these circumstances, a reasonable person might well conclude that it is the outcome of the election and not the procedures that prompted the raising of the objections communicated by Professor Ted Rosen of which some of his colleagues have reported that they find difficult to accept as being seriously intended.

Having communicated with more than half of the Department faculty present for the vote there are none who do so claim that they did not nor could not decipher the ballot so as to distinguish the name of “Kathy Villani” from “Ted Rosen.” It is difficult to understand how persons would make such claims of confusion so great as to incapacitate them from deciphering the ballot and voting for the person they intended to vote for until after the meeting and not during the meeting. If there was any issue with this manner of balloting it is much more difficult, if not impossible, to fathom why persons who had in previous years experienced the method of alternate ballots would not have so made this known in prior years when the same method was used.

Two Tellers

In addition to questioning the use of alternate ballots, Professor Rosen has raised an objection to the actions of two tellers, suggesting that the ballots were not properly verified and recorded by both tellers during the counting of the votes. Again, it is curious that no such objections were raised during the meeting nor was any challenge raised to the way the meeting was being conducted by the Department Chairperson at the time. Furthermore, this is an example of an accusation that can best be handled within the department, preferably during the meeting itself, for if Professor Rosen’s allegations are to be believed, then one would necessarily be asserting that either his colleagues who served as tellers are guilty of gross corruption or so incompetent that they cannot complete a basic clerical task. Fortunately, no such evidence exists to support that there is any substance to these allegations; on the contrary, verbal and visual evidence supports that the two tellers conducted their duties in a competent and professional manner.

At no time did the Chairperson of the Department, responsible for the conduct of the meeting and the elections, raise this matter of either teller not looking at each ballot. He did not draw attention to it as a concern nor note it as a problem nor halt the election. He did not ask to see the ballots nor did he request a recount nor did he invite voters to consider the option of calling for a recount or an inspection of the ballots.

At no time during the meeting on May 7, 2014 did Professor Ted Rosen raise this matter of either teller not looking at each ballot. He did not draw attention to their counting and reporting of the ballots as a concern nor note it as a

problem nor ask for a halt of the election. He did not ask to see the ballots nor did he request a recount nor did he request an inspection of the ballots during or immediately after the meeting on May 7, 2014.

Marilyn Katz

Marilyn Katz served as a teller along with Wendy Ford for the Election of the Chairperson of the Department of Business on May 7, 2014. She reported to us and to Liza Larios (EXHIBIT M) that she opened each ballot. This was in full view of all those in the room. There are no reports that she was observed destroying ballots or discarding ballots or secreting ballots or altering ballots in any way. On her testimony and corroboration from others, she opened the ballots in clear sight of Wendy Ford and presented each ballot to Wendy Ford for visual inspection. Marilyn Katz made announcement of the candidate indicated on each ballot opened and Wendy Ford then entered an indication of that result onto a digital file that was being displayed before the entire gathering for all to see the results as the count proceeded. No one in the room reported that they could not hear Marilyn Katz announcing the name indicated on each ballot. No one in the room indicated that they could not see the images on the large display presenting the recording of the votes and tally as it proceeded. There are eyewitness testimonies and photographic evidence of the close proximity of Marilyn Katz to Wendy Ford and of the ability of each teller to see clearly each ballot. (See photos in EXHIBIT K)

Wendy Ford

Wendy Ford served as a teller for the election of the Chairperson of the Department of Business on May 7, 2014. She had served previously as a teller in 2011 and 2008. After the election and after Ted Rosen's charges concerning the election, she informed Kathy Villani and Marilyn Katz that she indeed did see each submitted ballot and the name indicated on it as selected and then entered it into the spreadsheet for display. She heard Marilyn Katz call out the name indicated on each ballot as that ballot was opened and presented to her at the podium where both tellers stood side by side. Wendy Ford informed us directly that she did see each and every ballot clearly noting how each was marked. She agreed with the statement of Marilyn Katz to Liza Larios (EXHIBIT M) that each teller did indeed look at and note how each ballot was marked.

There is no report from anyone that Wendy Ford closed her eyes in order not to see how any ballot was marked. It is difficult to understand how Wendy Ford could not have seen how each ballot was marked except through a deliberate decision to do so and then a clever aversion of her eyes that was undetected by those viewing the proceedings. If Wendy Ford did not see each ballot it would have of necessity involved a deliberate act on her part to deceive Marilyn Katz and those viewing the proceedings. There is no evidence whatever to support such a contention, charge or allegation that Wendy Ford did not see each and every ballot noting for whom that ballot was cast.

Ed Volchok

At first Ed Volchok agreed to meet with FEC members Pecorino and Clingan (EXHIBIT I) to be interviewed concerning his experiences at the meeting on May 7, 2014 and then retracted his agreement in an email message (EXHIBIT J) in which he claimed that "At that time I was not aware that under Dr. Call's direction, Dean Larios has started an investigation." This communication appears capable of at least two interpretations. One would be that on its face it is disingenuous as it contains the evidence that he was so aware as the communications from both President Call and Liza Larios are within his own email claiming he was unaware of what would be a message within his own email. A second interpretation is that it is so fashioned as to indicate that it is sent in a manner deliberately insincere since it contains the claim of being

unaware of the very communication contained within his communications to the FEC. What purpose was to be served in so doing would be left to the recipients of the email, which included all members of the Department of Business.

Ed Volchok did not place into any record nor did he make known before, during or after department elections in 2005,2008,2011,or 2014 that he had any problem with the alternate ballot listings nor with the method of counting nor did he ask for a recount nor for an examination of the ballots. Ed Volchok did not report during or after the election meeting of May 7, 2014 that he was so confused that he may have filled out his ballot for the wrong person, not being able to tell the name of Kathy Villani from that of Ted Rosen. Ed Volchok did not allege that either teller failed to look at any ballot either during the counting of the ballots or after the meeting. Ed Volchok did not so inform the Department Chairperson of any such allegations during the counting or reporting of the count. Ed Volchok did not inform the Department Chairperson during the counting or reporting of the count that anything was happening that violated any rule, procedure or bylaw.

Mona Seiler

Mona Seiler did not place into any record nor did she make known before during or after department elections in 2005,2008,2011,or 2014 that she had any problem with the alternate ballot listings nor with the method of counting nor did she ask for a recount nor for an examination of the ballots. Mona Seiler did not report during or after the election meeting of May 7, 2014 that she was so confused that she may have filled out her ballot for the wrong person, not being able to tell the name of Kathy Villani from that of Ted Rosen. Mona Seiler did not allege that either teller failed to look at any ballot either during the counting of the ballots or after the meeting. Mona Seiler did not so inform the Department Chairperson of any such allegations during the counting or reporting of the count. Mona Seiler did not inform the Department Chairperson during the counting or reporting of the count that anything was happening that violated any rule, procedure or bylaw. In addition Mona Seiler gave testimony to FEC members Pecorino and Clingan further supporting that she acted in such a manner because she had no problem with or concern about the ballots or the behavior of the tellers.

Anthony Kolios

Anthony Kolios did not place into any record nor did he make known before during or after department elections in 2005,2008,2011,or 2014 that he had any problem with the alternate ballot listings nor with the method of counting nor did he ask for a recount nor for an examination of the ballots. Anthony Kolios did not report during or after the election meeting of May 7, 2014 that he was so confused that he may have filled out his ballot for the wrong person, not being able to tell the name of Kathy Villani from that of Ted Rosen. Anthony Kolios did not allege that either teller failed to look at any ballot either during the counting of the ballots or after the meeting. Anthony Kolios did not so inform the Department Chairperson of any such allegations during the counting or reporting of the count. Anthony Kolios did not inform the Department Chairperson during the counting or reporting of the count that anything was happening that violated any rule, procedure or bylaw. In addition Anthony Kolios testimony to FEC members Pecorino and Clingan further supporting that she acted in such a manner because she had no problem with or concern about the ballots or the behavior of the tellers.

Other Faculty

Several other faculty of the department gave testimony to the same result as with those above. They include James Rosa, Nina Sarkar, Sebastian Ben Murolo and several others. None had a problem with how the election was conducted and none saw anyone else having any problems.

Ted Rosen

At no time before, during, or immediately after the meeting of May 7, 2014 did Ted Rosen raise this matter of the alternate form of the ballots as being confusing. He did not draw attention to it as a concern nor note it as a problem nor ask for a halt of the election due to the ballots being confusing. Ted Rosen does not claim that he himself was so confused that he may have filled out his ballot for the wrong person, not being able to tell the name of Kathy Villani from that of Ted Rosen. Professor Rosen had participated in elections in the Department using this form of balloting in 2011 and 2008 and at no time before, during, or after those elections did he raise any objections or concerns or problems or indicate that the reversed alphabetical order caused confusion for him or for anyone else.

At no time during the meeting of May 7, 2014 did Ted Rosen raise this matter of either teller not looking at each ballot. He did not draw attention to it as a concern nor note it as a problem nor ask for a halt of the election. He did not ask to see the ballots nor did he request a recount nor did he request an inspection of the ballots.

Jonas Falik

At the time of the election in question, Jonas Falik was Chairperson of the Business Department and chaired the meeting on May 7, 2014. He deliberately directed a delay in the proceedings of approximately 15 minutes or more until one specific member of the faculty, Leslie Francis, could be present. The Chairperson used a cell phone to communicate with the missing faculty members in transit to the meeting. At no time did the Chairperson of the Department, responsible for the conduct of the meeting and the elections, (EXHIBIT A CUNY BOT Bylaws 9.3 a.5 and 12) raise this matter of the alternate form of the ballots. He did not draw attention to it as a concern nor note it as a problem nor halt the election due to the practice in question. He did not so act on May 7, 2014 nor during the elections in 2011, 2008, 2005, 2002

At no time did the Chairperson of the Department, responsible for the conduct of the meeting and the elections, raise this matter of either teller not looking at each ballot. He did not draw attention to it as a concern nor note it as a problem nor halt the election. He did not ask to see the ballots nor did he request a recount nor did he invite voters to consider the option of calling for a recount or an inspection of the ballots.

Professor Ted Rosen sent his communication including charges of violations of faculty bylaws directly to his department chairperson, Jonas Falik, who was responsible for the running of the meeting and the election. There was no reply from Professor Jonas Falik evidenced in the email being sent to those on the distribution lists in relation to those charges nor testimony that there were any actions taken by the Department Chairperson to settle the matter within the department. To date, there is no evidence that Professor Rosen or any other faculty members filing a grievance or any other complaint against Professor Falik for his failure to chair a meeting with an election in a proper manner.

We are quite concerned to have learned that after Professor Rosen sent his communication on May 12, 2014 raising concerns over the election, Professor Jonas Falik has informed selected members of his department that there would indeed be a revote. How he could convey such certainty is unknown and troubling.

The deliberate delay and then refusal of Professor Jonas Falik to communicate with the FEC concerning the manner in which he conducted the election on May 7, 2014 and his compliance with the CUNY Bylaws and the QCC Faculty Bylaws is more than simply troubling to the FEC as the elected faculty leaders of the College.

Findings

The Faculty Executive Committee (FEC) finds Professor Ted Rosen's complaints groundless and further finds that if there has been any deviation from the bylaws, then it would be the result of Professor Jonas Falik failure to perform his duties as chairperson under the bylaws of the CUNY Board of Trustees Article 9.3 a.5 and 12 and QCC Faculty Bylaws to insure against such deviations or violations.

Professor Ted Rosen made the assertion on May 12, 2014 that the two tellers (Wendy Ford and Marilyn Katz) acted improperly by not consulting on the ballots together and further that the ballots were irregular inducing confusion, and implicitly, that the chair did not supervise the election properly. He does not state whether any of these allegations were the result of negligence, incompetence, or malfeasance.

FEC members Pecorino and Clingan invited all members of the Department to speak with them. They interviewed Professors Katz, Seiler, Villani and Kolios and received valuable evidence from Professor Volchok. Others spoke with them on the record and still others spoke off the record stating that this mode of speaking was at their request and necessary for fear of retaliation from the current chairperson. The FEC also received photographs taken during the election and numerous unofficial e-mails and telephone conversations and some direct communications. The FEC considered the pertinent bylaws and rules governing elections and meetings of department members.

1. The testimonies and photo evidence prove false the claim that the two tellers did not look at and count the opened ballots together. The job of the tellers in an election is to agree on the final tally, which they did do, and to "tell" the supervising officer (Professor Falik), which they did do. They did so in full view and hearing before the faculty assembled in the room used for the election. On the evidence before us the tellers are completely blameless of violating the bylaws of the faculty or behaving in a manner that should cause nullification of the election.
2. Claims that ballot irregularities caused confusion in voting have proven to be false and unreasonable. We were informed that the ballot format was standard operating procedure in the Business Department for more than fifteen years, and there is not one person who states that he or she could not tell whether they were voting for Ted Rosen or Kathy Villani when using the ballots provided.
3. The faculty of the Department of Business agreed in advance to all the procedures used in the election. They were quite similar to the methods used for many years in elections in the Department of Business. No one, not even Professor Rosen, objected or raised any issues or concerns during the election.
4. In his complaint lodged days after his loss of the election, not only did Professor Rosen demand procedures that are not in the by-laws, Robert's Rules of Order, or the procedures agreed to by the Business faculty, but his main charges are not substantiated. It is beyond the scope of this report to determine why Professor Rosen would have brought forth such charges against colleagues with so little evidence or reason or why such charges lodged so long after the meeting and difficult to accept on their face and unsubstantiated by the department chairperson would result in an investigation on the part of the administration and not first by the department.
5. In the course of conversations with faculty of the Business Department and examination of the record and authorities pertinent to the events brought into question by Professor Ted Rosen, the FEC submits that, if any bylaws of CUNY and our College were violated in the operation of the election, that might be the failure of Department Chairperson, Professor Jonas Falik, to fulfill his duties as Chairperson of the Business Department to conduct a fair and impartial

departmental election that is free of violations of bylaws and regulations. If Professor Rosen's claims were to be upheld then it would follow that the Department Chairperson, Professor Jonas Falik, either a) did not seem to understand, after quite a few years as chairperson of the department, his proper role in the election under CUNY BOT Bylaws and QCC Bylaws and Robert's Rules of Order or b) he refused to assume his proper role and fulfill his duties to insure the proper conduct of the election. In the absence of an election chair or FEC supervision, the department chair is in charge and testimony from numerous sources and without any counter testimony does indicate that Dr. Falik did not so act fully in accordance with the bylaws appertaining to the chairperson of an academic department.

6. Furthermore, there is no evidence submitted or alleged to indicate that Professor Falik attempted in any manner to handle the matters raised by Professor Rosen internal to the department and in a manner that would avoid charging faculty of his own department with violations of the bylaws. We have observed that the actions of Professor Rosen and the failure of Professor Jonas Falik to have mitigated those actions and their consequences for faculty in the Business Department have resulted in considerable disturbance and pain. This raises our concern over the ability of Professor Jonas Falik to handle positions of responsibility over faculty.

7) There is a climate of fear and intimidation reported by several members of the Business Department, as evident in shared communications with members of the Business Department. It is beyond the scope of this report to determine who or what has created this climate. However, there is no evidence that Professor Falik has done anything to address or dispel it. Likewise, it would seem that the manner in which an investigation has been pursued by agents outside of the department and outside of faculty governance have not been productive in countering this climate or building a sense of community more generally.

Conclusion

The FEC finds nothing in the allegations of Ted Rosen or in the record or testimony to suggest that the election of May 7, 2014 should be cast in doubt. Therefore, the FEC supports President Diane Call's confirmation of Professor Kathy Villani as Chair of the Business Department and of her recommending such to the CUNY Board of Trustees for their approval. Not only would these actions be consistent with the faculty bylaws and the evidence at hand, but we believe that such actions would contribute to an improved climate in the Business Department and across the campus and remove unnecessary clouds of suspicion that have become attached to certain faculty members, not the least of whom is Professor Rosen himself.

June 12, 2014 *Supporting documents and references and parliamentary references are available upon request.*

EXHIBITS:

- A. Excerpts of CUNY BOT Bylaws
- B. Excerpts from QCC Faculty Bylaws
- C. Email of Ted Rosen
- D. Email of Liza Larios
- E. Email of FEC to President Call
- F. Email response of President Call to the FEC
- G. Email of Ted Rosen in Response to emails of the FEC to President Call
- H. Email inviting members of Department of Business to meet with Professors Clingan and Pecorino
- I. Ed Volchok response to invitation
- J. Ed Volchok second email refusing to meet
- K. Photographs of Tellers at the Podium during the election
- L. Email of Layne Bonaparte to the Department and President
- M. Statement of Marilyn Katz to Liza Larios , June 10, 2014

EXHIBIT A. CUNY BOT Bylaws

ARTICLE IX ORGANIZATION AND DUTIES OF FACULTY DEPARTMENTS > SECTION 9.3. DUTIES OF DEPARTMENT CHAIRPERSON. :

SECTION 9.3. DUTIES OF DEPARTMENT CHAIRPERSON.

a. The department chairperson shall be the executive officer of his/her department and shall carry out the department's policies, as well as those of the faculty and the board which are related to it. He/she shall:

1. Be responsible for departmental records.
2. Assign courses to and arrange programs of instructional staff members of the department.
3. Initiate policy and action concerning the recruitment of faculty and other departmental affairs subject to the powers delegated by these bylaws to the staff of the department in regard to educational policy, and to the appropriate departmental committees in the matter of promotions and appointments.
4. Represent the department before the faculty council or faculty senate, the faculty, and the board.
5. Preside at meetings of the department.
6. Be responsible for the work of the department's committee on appointments or the department's committee on personnel and budget which he/she chairs.
7. Prepare the tentative departmental budget, subject to the approval by the department's committee on appointments or the department's committee on personnel and budget.
8. Transmit the tentative departmental budget with his/her own recommendations to the president or the dean or provost as the president may designate.
9. Arrange for careful observation and guidance of the department's instructional staff members.
10. Make a full report to the president and to the college committee on faculty personnel and budget of the action taken by the department committee on personnel and budget or department committee on appointments when recommending an appointee for tenure on the following, as well as any other criteria set forth in university policies:
 - a. Teaching qualifications and classroom work.
 - b. Relationship of the appointee with his/her students and colleagues.
 - c. Appointee's professional and creative work.
11. Hold an annual evaluation conference with every member of the department after observation and prepare a memorandum thereof.
12. Generally supervise and administer the department.

b. Each library, where size makes it practicable, shall constitute an instructional department of the college. The chairperson thereof shall be designated by the president. Such chairperson, in addition to the duties of department chairperson as enumerated in paragraph "a" of this section, shall be charged with the administration of the library facilities of his/her college and shall perform such other duties as the president may assign. Such chairperson is hereby authorized to use the additional title of "chief librarian."

c. Where student personnel services are constituted an instructional department of the college, the dean of students shall be the department chairperson.

EXHIBIT B. QCC FACULTY BYLAWS

Article VI POWERS OF THE FACULTY

6.1 The Faculty shall be responsible for the academic status, role, rights, obligations, and freedoms of the Faculty, and such other matters that may affect the welfare of the Faculty consistent with this document. The Faculty through its Faculty Executive Committee may address communications to the Board of Trustees.

6.2 Review of Academic Senate Actions: The Faculty shall have the right to review any action of the Academic Senate. A special meeting shall be called by a petition of at least ten percent (10%) of the Faculty to discuss the issues involved. A majority of those present can initiate a referendum to be held no later than four (4) weeks after the general meeting. If the majority vote is against a referendum, one may still be called by a second petition of one-third of the Faculty. The actions of the Academic Senate shall be nullified by a two-thirds vote of the Faculty voting by poll provided at least fifty percent [50%] of the total Faculty cast ballots.

6.3 Initiation of Academic Senate Agenda Items

6.3a The Faculty may initiate policy, bylaws, or regulations for consideration by the Academic Senate either by a simple majority of a faculty meeting or by a petition of ten percent (10%) of the Faculty; such items shall be placed on the agenda of the next meeting of the Academic Senate in accordance with the Bylaws of the Academic Senate.

6.3b The Faculty may initiate policy, bylaws, or regulations directly through an initiative voting by poll, conducted by the Faculty Executive Committee.

The faculty may request such a referendum at a regular or special meeting. A special meeting shall be called by a petition of at least ten percent (10%) of the Faculty to discuss the issues involved; a majority of those present can initiate a written referendum to be held no later than four weeks after the general meeting. A poll regarding amendments to these bylaws shall require an affirmative vote of the majority eligible to vote as noted in 13.2.

6.4 The Faculty may adopt its own Bylaws consistent with the Bylaws of the Board of Trustees and with the Governance Plan.

6.5 The Faculty through its Faculty Executive Committee shall have access to all relevant information as it deems necessary for the fulfillment of its responsibilities.

8.6 Duties of Department Chairperson

8.6a The department chairperson shall be the executive officer of his/her department, and shall carry out the department's policies, as well as those of the Faculty and the Board which are related to it (Section 9.3, Bylaws of the Board of Trustees).

8.6b The department chairperson shall call and preside at a minimum of two (2) department meetings per semester. Such meetings shall be conducted according to the most recently revised version of Robert's Rules of Order.

8.6b.2 Call a special meeting upon request of petition from at least one-third of the members of the faculty of the department.

8.6b.3 Keep and distribute minutes of departmental meetings to all members of the department at least one week prior to the next meeting of the department.

8.6b.4 Keep and distribute minutes of departmental subcommittees to all members of the department within two (2) weeks after the subcommittee has met.

8.6b.5 Report to the department the results and actions of the departmental personnel and budget committee on matters concerning personnel and budget.

8.6b.6 Inform the faculty at departmental meetings on matters of educational and personnel policy, and shall inform the members of the department as a whole and consult with members of the department on matters including but not limited to: preparation of teaching schedules; registration assignments; guidelines for summer session and evening schedules; other departmental assignments and responsibilities; and disseminate same expeditiously to all members of the department.

8.6b.7 Consult and inform the departmental personnel and budget committee on summer session and evening assignments.

8.6b.8 Include in the agenda of each departmental meeting a report concerning matters of College and University interest.

8.6b.9 Follow, in all matters not covered by these bylaws, Robert's Rules of Order (latest revised edition). In accordance with Robert's Rules, a parliamentarian should be elected to advise the chair with regard to the application of these rules.

8.6b.10 Detail and make known criteria to be met for reappointments and promotions.

From: Rosen, Ted

Sent: Monday, May 12, 2014 5:45 PM

To: Larios, Liza J.; Florman, Lois; Falik, Jonas

Cc: Ford, Wendy G.; Katz, Marilyn; Villani, Kathleen

Subject: Queensborough Community College Business Department Chairperson Election Conducted on May 7, 2014

Ladies and Gentleman:

As the candidate for Chairperson of the Business Department who was declared to have been the unsuccessful candidate following the May 7, 2014 Queensborough Community College ["QCC"] Business Department Chairperson Election ["the Election"], I write this email to respectfully request a determination: (1) setting aside the announced results of the Election; (2) directing a revote be conducted as soon as practicable under the supervision of the QCC Human Resources and Labor Relations Department ("Department of Human Resources") ; and (3) in the event that the foregoing requested remedies are not granted, and without waiver of my right to seek the foregoing, directing the immediate impounding of all of the paper ballots voted in the first and second ballots of the Election, the recounting of such paper ballots and providing both candidates the right to be present during such recount and the opportunity to inspect such paper ballots.

These requests are made because: (1) the Election was not conducted in accordance with the By-Laws of the Faculty of Queensborough Community College ["Faculty By-Laws"]; and (2) as a result of such non-compliance with the Faculty By-Laws, there remains a cloud over the reported results of the Election which may only be resolved through a properly conducted revote.

I state at the outset that the making of the requests set forth herein and all statements set forth in support of such requests are not, and should not be construed as, any claim, contention or allegation, whether express or implied, that anyone involved in the Election, including without limitation, my two colleagues who serve on the Business Department Election Committee and who conducted the Election, and my colleague who was my opponent in the Election, intentionally engaged in any impropriety or wrongful conduct of any nature whatsoever. I do not claim, contend or allege that anyone intentionally engaged in improper or wrongful conduct in the conduct of the Election.

The Reasons for the Requested Revote

The announced results of the Election should be set aside and a revote directed because the Election conducted failed to comply with the Faculty By-Laws.

1. Failure to Comply with Section 8.5d.1 of the Faculty By-Laws

The election of a QCC department chairperson is governed by Article IX, Section 9.1 (a) and (b) of the By-Laws of the Board of Trustees of the City University of New York [By-Laws of the Board of Trustees"], Article III, Section A of the Governance Plan of Queensborough Community College [" QCC Governance Plan"] and Section 8.5 of the Faculty By-Laws. Section 8.5d.1 of the Faculty By-Laws provides:

"8.5d.1 *All ballots* herein provided for shall be secret ballots, *and shall be counted by at least two (2) tellers*, and the results of the vote, including number of abstentions, shall be reported to the President." [Emphasis supplied.]

Clearly, this section requires that "all ballots" be "counted by at least two (2) tellers". The procedure followed in the Election did not comply with this mandate. The Election was conducted in Room 112 of the QCC Science Building. The

two faculty members of the QCC Business Department who are on the Department's Election Committee presided over the Election. One member of the Election Committee was observed opening each of the ballots, looking at each of the ballots and then announcing aloud the name of one of the two candidates. While this was happening, the second member of the Election Committee was observed operating the podium-based computer in that room, recording the vote announced by the other committee member on an Excel spreadsheet which was displayed on the large computer screen in that room. To my observation and recollection, the committee member who was posting on the computer the vote announced aloud by the other committee member *did not* visually inspect each of the ballots, and therefore did not "count" each of the ballots, but rather recorded the results as was announced by her colleague. This constituted a breach of the mandate of Section 8.5d.1 that all ballots be counted by at least two tellers.

Moreover, to my observation and recollection, and upon information and belief, at the end of each of the two ballots, there was no double-checking of the paper ballots by either or both of the Election Committee members. Within minutes following the announcement of the first ballot results, the second ballot was conducted. Following the results of the second ballot, a winner was announced based on the announced and posted votes. There was, to my knowledge, no double-checking of the paper ballots on either the first or second ballot before the results were stated. I do not have knowledge as to how the paper ballots cast on the first or second ballots were left after the Election, but to the best of my belief, the paper ballots were *not* sealed, impounded or otherwise securely stored and no provision was made for properly securing and documenting the chain of custody of such paper ballots.

Clearly, the reasoning behind the mandate of Section 8.5d.1 that all ballots shall be counted by at least two (2) tellers is that there should be two sets of eyes reviewing each of the ballots to detect and prevent not only possible fraud (of which no claim is made here), but also to avoid possible inadvertent, human error committed by one person in reviewing, discerning, announcing and/or recording the vote believed to be observed from each of the ballots. The possibility that any such inadvertent human error may have occurred in the Election cannot now be excluded because the mandated procedure was not followed.

Moreover, a recount at this time, does not cure the non-compliance with Section 8.5d.1 because, upon information and belief, the paper ballots were not properly sealed, impounded, or otherwise securely stored, and no provision was made for properly securing and documenting the chain of custody of such paper ballots following the Election. While again, no accusation is made herein of any intentional impropriety by anyone involved in the Election, the results of any recount undertaken at this time will be under a cloud regardless of the results because of what is believed to be the failure to have properly secured such paper ballots and safeguard and document the chain of custody of such paper ballots after the Election. The only remedy that will properly cure the non-compliance with 8.5d.1 is a revote conducted under the supervision of the QCC Department of Human Resources.

2. The Use of Paper Ballots on the Second Ballot Contained Names of the Candidates Listed

in a Different Sequence than the Paper Ballots Used on the First Ballot Although There is No Provision in

Section 8.5 for Changing Such Sequence of Names on the Paper Ballots Used on Successive Ballots

After the first ballot of the Election, the results reported were 14 votes for myself, 13 votes for my opponent and one abstention. Since neither candidate obtained the required 15 votes, a second ballot was immediately undertaken. The paper ballots used on the second ballot contained the names of all of the members of the Department eligible to serve as Department chair in a revised sequence from the way such names appeared on the first ballot. To the best of my recollection, no announcement was made by the Election Committee members that these ballots contained this revision of the sequence of names. The announced results of the second ballot were 16 votes for my opponent and 12 for myself, an apparent change of three votes from the votes reported on the first ballot, minutes earlier.

Whether or not revising the sequence of names on the paper ballots used on the second ballot as compared to the paper ballots used on the first ballot effectively mitigates position bias in an election conducted over two successive ballots (as distinguished from randomizing the name sequence in all of the ballots in an election conducted in one ballot) is subject to debate. However, what is critical here is that the use of a paper ballot containing a revised sequence of names on the second ballot is not expressly authorized under the pertinent section of the Faculty By-Laws, Section 8.5c:

"8.5c Election. Voting takes place immediately following nomination. Voting members of the department shall, by secret ballot, cast their votes for one of the candidates chosen under 8.5b above . . . After the second election ballot, if a decision is not reached, the two (2) persons receiving the largest number of votes shall be the only candidates considered."

Moreover, there is no express authorization for the use of such paper ballots containing a modification of the sequence of names over successive ballots contained in any sub-section of Section 8.5. The possibility that the use of paper ballots on the second ballot containing a revised sequence of names may have improperly impacted the Election cannot now be excluded. When I first received my paper ballot on the second ballot, I experienced confusion after not initially locating my name in the same position it had been on the paper ballot used in the first ballot. Similar experiences were reported to me by two other people who voted in the Election. The apparent lack of announcement of the use of the paper ballots containing the revised sequence may have contributed to the confusion. The possibility that such confusion may have improperly impacted the Election cannot now be excluded, particularly, given the puzzling change in two votes from the first ballot to the second ballot (excluding the vote of the individual who abstained on the first ballot), even though the second ballot followed just minutes after the first, without any intervening activity. Whether these vote changes were the result of choice or confusion cannot now be determined. However, the confusion experienced by at least some of the voters resulting from the revised sequence of names on the paper ballots used on the second ballot cannot be disputed and such confusion leaves a cloud over the results announced. The only effective remedy for the use of the revised papers ballots on the second ballot, without any authorization for such revision in the Faculty By-Laws, is a revote.

Request for Recount

For the reasons set forth above, a revote is requested and such a revote is the only proper remedy to cure the failure to comply with the Faculty By-Laws. Alternatively, and in the event a revote is not directed, and without waiver of the right to request such revote, the request is made for a recount of all of the paper ballots on both the first and second ballot conducted in the Election. As set forth above, the results of such a recount would be under a cloud regardless of the outcome because the paper ballots are believed not to have been properly secured following the Election. If a recount is directed, the paper ballots should be immediately impounded by the Department of Human Resources, the recount should be conducted by the Department of Human Resources and each of the candidates should be permitted to be present during such recount and should be permitted to inspect each of the paper ballots.

As we all know, the election of the chairperson of the Business Department is very important to the members of the Business Department and to the greater QCC community. All parties are entitled to be assured that proper procedures were followed in accordance with the applicable Faculty By-Laws, that no confusion affected the voting in the election and that the votes cast in the election are correctly counted and reported.

I respectfully request the remedies requested herein be granted, as set forth above.

Respectfully Submitted,

Ted M. Rosen
Assistant Professor, Business Department

Administration Building, Room 405
QueensboroughCommunity College
222-05 56th Avenue
Bayside, New York 11364-1497
(718) 281-5488

EXHIBIT D. Email of Liza Larios

From: [Larios, Liza J.](#)

Sent: Thursday, May 29, 2014 2:09 PM

To: [Rosen, Ted](#), [Florman, Lois](#), [Falik, Jonas](#)

Cc: [Ford, Wendy G.](#), [Katz, Marilyn](#), [Kathleen Villani](#), [Florman, Lois](#)

Professors Rosen, Falik, Villani, Ford and Katz ---

President Call has asked me to conduct a fact finding with regard to the concerns and issues expressed below. To that end, I will reach out to each of you and probably other members of the department during the next week and will, thereafter, report the findings to the President.

- Liza

EXHIBIT E. Email of FEC to President Call

From: Pecorino, Philip

Sent: Tuesday, June 03, 2014 12:23 PM

To: Call, Diane B.

Cc: _Faculty Executive Committee; Clingan, Edmund; Humphries, David; Pecorino, Philip; Lin, Maan; Sinclair, Alicia; Kolios, Anthony; Fletcher-Anthony, Wilma; Larios, Liza J.; Ford, Wendy G.; Rosen, Ted; Villani, Kathleen; Katz, Marilyn; Florman, Lois

Subject: Re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

President Call:

The current Faculty Executive Committee (FEC) asserts that the issues raised by Ted Rosen concerning the conduct of the Election for Chairperson of the Department of Business on May 7, 2014 should be handled in a most timely way that reflects the substance and intent of the QCC Faculty Bylaws, as well as ongoing efforts to build and sustain a sense of community on campus.

In short, inquiries about how the election was conducted should involve the FEC in a more substantive way that reflects its mandate and mission. As the election was conducted under the auspices of the QCC Faculty Bylaws and the FEC is overseer of those bylaws we regard the matter as a faculty matter. The faculty should direct how it is handled. Professor Rosen raises no issues other than related to the QCC Faculty Bylaws and how faculty have observed them.

You first directed a communication to the FEC through Alexandra Tarasko in which you were calling for the FEC to perform a fact finding task and then you reserved to yourself the act of responding to the results. Professor Tarasko informed you that this was not appropriate as the FEC is not explicitly given fact finding authority. She advised you to consider another course of action available under current policies and rules and contracts.

The FEC is aware that it does however have considerable other functions and responsibilities to perform other than mere fact finding. As given in the QCC Faculty Bylaws:

2.2 The Faculty Executive Committee of Queensborough Community College shall be the principal agency of the Faculty in carrying out its Bylaw responsibilities. Any requests for clarifications of meaning and interpretations are to be directed to the Faculty Executive Committee who are the interpreters of its meaning at the College.

6.1 The Faculty shall be responsible for the academic status, role, rights, obligations, and freedoms of the Faculty, and such other matters that may affect the welfare of the Faculty consistent with this document. The Faculty through its Faculty Executive Committee may address communications to the Board of Trustees.

Elections of Department Chairpersons are conducted according the QCC Faculty Bylaws and under the more general auspices of the CUNY BOT bylaws and policies and according to all the Robert's Rules of Order(RRO).

8.6b.9 Follow, in all matters not covered by these bylaws, Robert's Rules of Order (latest revised edition). In accordance with Robert's Rules, a parliamentarian should be elected to advise the chair with regard to the application of these rules.

Professor Rosen directed his communication to Liza Larios, Lois Florman, and Jonas Falik. The FEC holds that it should have been directed to the FEC and its Parliamentarian (currently Edmund Clingan). The matter at hand is one of deciphering the meaning of the bylaws and whether they were observed and then what remedy if any would be in order in the event that there was some transgression of the bylaws. This task would most likely involve consulting key governance documents and Robert's Rules, which are applicable, such as:

"The tellers' report is prepared from a vote tally sheet listing candidates to the left and running a tally of fives to the right for quick count. After the ballots have been counted the chairman of elections brings in the report. The tellers' report should contain the number of votes cast, the number necessary for election, the number of votes received by each candidate, and the number of illegal votes. Votes should be credited to a candidate when the intent of a voter is clear."

There is nothing in RRO about a double counting or double checking of the ballots: just that the tellers should be in agreement and able to report to the chairman of elections. It appears from Professor Rosen's account that the tellers were in agreement and made their report. It sticks to the spirit, even if the letter is not absolutely followed because modern technology had been employed with the suggestion and agreement of the electorate, as no one at all raised any issue with the process before or during the elections and not for five days following the election when Professor Rosen sent his communication.

If there were concerns by members of the Department of Business over the conduct of the elections there was recourse through the QCC Faculty Bylaws: if 40% of the Department Faculty petitioned the FEC, then the FEC would supervise their elections, under the QCC Faculty Bylaws.

8.5f Upon petition of at least forty per cent (40%) of the voters within a department, the Faculty Executive Committee shall appoint a committee to conduct the elections of that department.

If there were concerns at the time they should have been raised. There is an issue of timeliness. By not making immediate complaint, demanding recount and sealing ballots, Professor Rosen may have effectively forfeited those rights.

President Call, if you continue the process now begun, we have these concerns:

It is now annual leave and many of those who were in the room at the time of the election, including the two faculty who served as teller, contractually are not available during annual leave and they should not be expected to be available. We are not certain by what authority the faculty are to be questioned at all, let alone during annual leave. They might have recourse through the Professional Staff Congress to ask for postponement of any investigation until the end of the annual leave period.

We would want clarified if faculty who acted as tellers need to know if they have legal liability. Should they have legal representation?

We also are concerned whether or not the remedy sought, which is primarily a revote and alternatively a recount, can be considered actions that can be imposed by any authority in the College.

If by some legitimate means and some legitimate authority it would be determined that the vote was in some manner improper in the process but not the result of the ballot, i.e., the total, then would not at best a recount be in order and nothing more? But, we question whether there can even be a valid recount now as there is certainly reason for those involved to challenge a recount where there is no clear evidence that the ballots were kept secure by impartial parties. The chain of evidence is not at all secure.

We must raise the question of the faculty of the department having a right to know about the complaint and the investigation.

Do the faculty of the department have a right to complain themselves over the reasons being offered by Ted Rosen? Do the faculty of the department have a right to complain that their votes may be invalidated by some process that is not clearly provided for in governance or by some official who is not clearly authorized to do so? What if faculty in the department then wish to grieve any nullification of their vote due to lack of authority for doing so under the bylaws?

We ask for your reconsideration of the fact finding activity and ask for you to call a halt to it to allow the FEC to handle this matter.

If Professor Rosen truly believes there was misconduct or mishandling, at the first department meeting of the year, he may move to recall the Chair. If he is truly supported by his colleagues, the Chair will be recalled and then he may run again.

And again there may be other processes provided through which his concerns can properly be addressed. Professor Rosen might have a grievance filed under contract provision Article 20.2(2) where there are violations of bylaws.

We are concerned as to what your investigation is doing to the department and then by extension to all the faculty of the College as they learn of this attempt, based on the reasons given by Professor Rosen, to overturn an election.

We know that you are quite concerned about the atmosphere of the College and want community building activities to create and maintain the highest order of mutual respect. We hold that the investigation now begun works against that aim which we share.

Please halt the inquiry and direct Professor Rosen to the FEC for what recourse he may have under our bylaws or pursuant to actual processes available we would offer the option to file a formal grievance. The FEC stands ready to assist Professor Rosen and you with the production of a report on this matter with its recommendations and to do so quite soon. It has already started a process of inquiry into the prevailing authorities that govern department meetings and elections. The FEC will proceed to conduct interviews and issue its report and recommendations before the end of the month of June.

Philip Pecorino,

Chairperson, Faculty Executive Committee

Edmund Clingan

Wilma Fletcher-Anthony

David Humphries

Anthony Kolios

Jenny Maan Lin

Alicia Sinclair

EXHIBIT F. Email response of President Call to the FEC

From: Call, Diane B.

Sent: Tuesday, June 03, 2014 12:30 PM

To: Pecorino, Philip

Cc: _Faculty Executive Committee; Clingan, Edmund; Humphries, David; Lin, Maan; Sinclair, Alicia; Kolios, Anthony; Fletcher-Anthony, Wilma; Larios, Liza J.; Ford, Wendy G.; Rosen, Ted; Villani, Kathleen; Katz, Marilyn; Florman, Lois

Subject: RE: Re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

Dr. Pecorino

Based on several communications with the outgoing chair of the FEC, and in the interest of a timely response to the query received from a member of the Business Department, I agreed to a fact finding process conducted by Dean Larios.

As that process is underway, it seems best to proceed. However, I appreciate the willingness of the FEC to assist with the inquiry, and will update the Committee on the general findings.

Thank you.

dc

Dr. Diane B. Call

President

Queensborough Community College/CUNY

Telephone 1.718.631.6222

EXHIBIT G. Email of Ted Rosen in Response to emails of the FEC to President Call

From: Rosen, Ted

Sent: Thursday, June 05, 2014 1:00 PM

To: Call, Diane B.

Cc: Pecorino, Philip; Clingan, Edmund; Humphries, David; Lin, Maan; Sinclair, Alicia; Kolios, Anthony; WFAnthony@qcc.cuny.edu; Larios, Liza J.; Ford, Wendy G.; Katz, Marilyn; Villani, Kathleen; Florman, Lois; Falik, Jonas

Subject: Re: The Conduct of the Election for Chairperson of the Department of Business on May 7, 2014

President Call:

I write in reply to the email dated June 3, 2014 ("the June 3 email") sent to you by Professor Philip Pecorino on behalf of all of the members of the Faculty Executive Committee ("FEC"). The June 3 email argues that "inquiries about how the election [for Chairperson of the Business Department conducted on May 7, 2014] was conducted should involve the FEC in a more substantive way that reflects its mandate and mission". I respectfully disagree with the assertion that the matters raised in my May 12, 2014 email should have been addressed to, referred to, or decided by, the FEC. A review of the election to determine *inter alia* whether the election was properly conducted is not a matter for the FEC. Rather, it is a matter for the President of the College. This is clear from Article IX, Section 9.1(b) of the By-Laws of the Trustees of the City University of New York [to which section, the June 3 email makes no direct, specific reference], and which provides in pertinent part:

"The executive officer of the department shall be the department chairperson...elected by....Such elections shall be subject to the subsequent approval of the president and the board..."

Clearly, this provision places the authority and responsibility to approve departmental chairperson elections upon the College President. The June 3 email provides no direct, explicit support for the assertion that the faculty should direct how inquiries about how the election was conducted or for the assertion that the matters set forth in my May 12, 2014 email should have been addressed to the FEC and its Parliamentarian. First, the matters set forth in my May 12, 2014 email were objections to the election, not "inquiries about how the election was conducted". Such objections must be adjudicated by the President in the process of deciding whether or not to approve the election, as required by Section 9.1(b).

Section 2.2 of the QCC Faculty By-Laws, quoted in the June 3 email, does not support the premise that the matters which I have raised should have been addressed to, and handled by, the FEC. First, Section 2.2 does not contradict or contravene Section 9.1(b). If there were any such contradiction, Section 9.1(b) of the By-Laws of the Trustees of the University, would of course, control. Section 2.2 does not give the FEC the authority and duty to review and approve faculty chairperson elections. The matters set forth in my May 12, 2014 email - objections to the May 7th election - must be determined by the President in the process of deciding whether or not to approve the election, as required by Section 9.1(b). This authority and responsibility is not transferred to the FEC by Section 2.2, as indeed it could not.

Raising objections as to how a departmental chairperson election was conducted is not a request for clarification of meaning and interpretation of the Faculty By-Laws. While it may be appropriate under certain circumstances to refer to the FEC requests for clarification of Faculty By-Laws *before* certain events occur, it is not appropriate to refer to the FEC for adjudication objections as to how an election was conducted *after* such

election was held. Adjudication of objections as to how an election *already conducted* was conducted is not the same as providing clarifications of meaning and interpretations before an event takes place. Any construction of Section 2.2 that would authorize the FEC to clarify meaning and interpretation of a Faculty By-Law provision pursuant to which departmental chairperson election objections were made would necessarily constitute a *de facto* relinquishment to the FEC of the authority and responsibility which Section 9.1(b) confers upon the President and would therefore not be proper. Moreover, by analogy, a judge charged with deciding a case involving a statute, does not refer to the then currently serving legislative body requests for clarification of meaning and interpretation of the statute.

Furthermore, there is no need for clarification of meaning and interpretation of the Faculty By-Law provisions discussed in my May 12, 2014 email. Section 8.5d.1 clearly says all ballots should be counted by at least two tellers. Section 8.5 does not expressly authorize modification of the sequence of the candidates' names on successive ballots. These provisions do not require clarification and interpretation.

For the reasons set forth above, the matters set forth in my May 12, 2014 email were properly addressed to the appropriate Administration officials of the College and should be determined by the President and not the FEC. Having said that, should the matters presented in my May 12, 2014 email be referred by the President to the FEC in the exercise of discretion? I would submit that Section 9.1(b) mandates that that question be answered in the negative.

Further, even assuming for purposes of argument, that such referrals might be appropriate in other circumstances (which is disputed), no such referral should be made in the present circumstances. The reason for this is that it is evident from the substance and the tone of the June 3 email that the FEC has already predetermined this matter. It is striking and disturbing that a body that represents all of the faculty of the College would predetermine the matters raised in my May 12, 2014 email *before* that body has concluded an investigation and before the Administration has concluded its investigation. Had an email similar to the June 3 email been sent by a judge about a case which was assigned, or was about to be assigned, to that judge, the judge would have had to recuse himself or herself or would have faced disqualification or removal. Referral in any substantive way of the matters raised in my May 12, 2014 email to the FEC at this time would necessarily involve a breach of an integral element of procedural due process - the right to have an adjudication by an impartial arbiter - and would transform this process into a sham.

I will not at this time address various irrelevant matters raised in the June 3rd email other than to note some of them in passing. The issues raised in this matter do not concern tellers' reports, pre-election requests for a committee to supervise the election or moving to recall a chairperson. The raising of these matters merely obfuscates the issues clearly presented in this matter. Equally irrelevant is whether or not the tellers were in agreement with the announced result of the election. Moreover, whether or not Robert's Rules of Order ("Robert's Rules") addresses double counting or double checking of the ballots, Robert's Rules clearly provide that the counting of the ballots should be done by at least two tellers:

"...The tellers proceed to count the ballots..." (*Robert's Rules of Order Newly Revised*, 11th Edition, 2011 [Da Capo Press], lines 19 - 20, page 415.) (Emphasis supplied.)

For the foregoing reasons, and those set forth in my prior email of May 12, 2014, it is respectfully requested that the election in question not be approved.

Respectfully submitted,

Ted M. Rosen
Assistant Professor, Business Department
Administration Building, Room 405
Queensborough Community College
222-05 56th Avenue
Bayside, New York 11364-1497
(718) 281-5488

EXHIBIT H. Email inviting members of Department of Business to meet with Professors Clingan and Pecorino

From: Pecorino, Philip

Sent: Thursday, June 05, 2014 10:14 AM

To: Ford, Wendy G.; Katz, Marilyn; Kolios, Anthony; Volchok, Edward; Seiler, Mona E; Falik, Jonas; Villani, Kathleen; Rosen, Ted

Cc: Clingan, Edmund; Fletcher-Anthony, Wilma; Humphries, David; Lin, Maan; Pecorino, Philip; Sinclair, Alicia

Subject: Complaints and communications re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

Colleagues of the Business Department,

As you are aware there has been a complaint lodged with the College concerning the recent election of a Chairperson of your department. President Call has conferred with the Faculty Executive Committee regarding the complaint by Professor Ted Rosen of the Business Department. This complaint concerned irregularities in the departmental elections held on May 9 as they relate to the QCC faculty bylaws. As this concerns the faculty bylaws and deals with faculty rights, we elected leaders of the faculty are conducting an inquiry and we wish to meet with you to discuss the complaint. You are in the first group to be invited to be interviewed. We realize that this matter is urgent and are prepared to meet with you as early as next week:

June 9, Monday 12 to 6

June 10, Tuesday 8 to 6

June 11, Wednesday 12 to 6

This meeting should not take more than 30 minutes. We are aware that we are in the annual leave period and that you are not required to participate in college activities during this period. We do hope, however, that you will be favorably disposed to meeting with us as this is a timely matter.

Sincerely,

Philip Pecorino, Chair
Edmund Clingan, Parliamentarian
Faculty Executive Committee

EXHIBIT I. Ed Volchok response to invitation

From: Volchok, Edward

Sent: Thursday, June 05, 2014 10:28 AM

To: Pecorino, Philip; Ford, Wendy G.; Katz, Marilyn; Kolios, Anthony; Seiler, Mona E; Falik, Jonas; Villani, Kathleen; Rosen, Ted

Cc: Clingan, Edmund; Fletcher-Anthony, Wilma; Humphries, David; Lin, Maan; Sinclair, Alicia

Subject: RE: Complaints and communications re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

Phil,

I am on campus next week for the Faculty eLearning Institute. I'd like to do this on Monday at 3:15. Tuesday I have a commitment. I am chairing a search committee and Tuesday our semi-finalists are delivering teaching demonstrations. Wednesday afternoon I have other commitments.

Ed

--

Edward Volchok, PhD

Business Department

Queensborough Community College/CUNY

Administration Building, Room 405

222-05 56th Avenue

Bayside, NY 11364

718-281-5532

From: Pecorino, Philip

Sent: Thursday, June 05, 2014 10:14 AM

To: Ford, Wendy G.; Katz, Marilyn; Kolios, Anthony; Volchok, Edward; Seiler, Mona E; Falik, Jonas; Villani, Kathleen; Rosen, Ted

Cc: Clingan, Edmund; Fletcher-Anthony, Wilma; Humphries, David; Lin, Maan; Pecorino, Philip; Sinclair, Alicia

Subject: Complaints and communications re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

Colleagues of the Business Department,

As you are aware there has been a complaint lodged with the College concerning the recent election of a Chairperson of your department. President Call has conferred with the Faculty Executive Committee regarding the complaint by Professor Ted Rosen of the Business Department. This complaint concerned irregularities in the departmental elections held on May 9 as they relate to the QCC faculty bylaws. As this concerns the faculty bylaws and deals with faculty rights, we elected leaders of the faculty are conducting an inquiry and we wish to meet with you to discuss the complaint. You are in the first group to be invited to be interviewed. We realize that this matter is urgent and are prepared to meet with you as early as next week:

June 9, Monday 12 to 6

June 10, Tuesday 8 to 6

June 11, Wednesday 12 to 6

This meeting should not take more than 30 minutes. We are aware that we are in the annual leave period and that you are not required to participate in college activities during this period. We do hope, however, that you will be favorably disposed to meeting with us as this is a timely matter.

Sincerely,

Philip Pecorino, Chair

Edmund Clingan, Parliamentarian

Faculty Executive Committee

From: Pecorino, Philip

Sent: Wednesday, June 04, 2014 4:03 PM

To: _Business Department Faculty

Cc: Clingan, Edmund; Fletcher-Anthony, Wilma; Humphries, David; Kolios, Anthony; Lin, Maan; Pecorino, Philip; Sinclair, Alicia

Subject: Complaints and communications re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

Colleagues of the Business Department:

Several members of your department have requested that we share this information below with the entire department. Some are already recipients as indicated in the distributions below and some have only heard of these communications. They declare that the department has a right to know what is going on. The FEC shares this concern and so indicated in our communication to the President (see below).

We share the essential communications with all of you now. Any questions about the FEC actions may be directed to any member of the FEC.

We expect to issue a report on this matter fairly soon. We shall be sharing it with the entire faculty of the College.

Philip A. Pecorino, Ph.D.
Faculty Executive Committee
Chairperson, 2014-2017

Queensborough Community College, CUNY
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website: <http://www.qcc.cuny.edu/socialsciences/ppecorino/default.htm>

From: Call, Diane B.
Sent: Tuesday, June 03, 2014 12:30 PM
To: Pecorino, Philip
Cc: _Faculty Executive Committee; Clingan, Edmund; Humphries, David; Lin, Maan; Sinclair, Alicia; Kolios, Anthony; Fletcher-Anthony, Wilma; Larios, Liza J.; Ford, Wendy G.; Rosen, Ted; Villani, Kathleen; Katz, Marilyn; Florman, Lois
Subject: RE: Re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

Dr. Pecorino

Based on several communications with the outgoing chair of the FEC, and in the interest of a timely response to the query received from a member of the Business Department, I agreed to a fact finding process conducted by Dean Larios.

As that process is underway, it seems best to proceed. However, I appreciate the willingness of the FEC to assist with the inquiry, and will update the Committee on the general findings.

Thank you.
dc

Dr. Diane B. Call
President
Queensborough Community College/CUNY
Telephone 1.718.631.6222

From: Pecorino, Philip
Sent: Tuesday, June 03, 2014 12:23 PM
To: Call, Diane B.
Cc: _Faculty Executive Committee; Clingan, Edmund; Humphries, David; Pecorino, Philip; Lin, Maan; Sinclair, Alicia; Kolios, Anthony; Fletcher-Anthony, Wilma; Larios, Liza J.; Ford, Wendy G.; Rosen, Ted; Villani, Kathleen; Katz, Marilyn; Florman, Lois
Subject: Re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

President Call:

The current Faculty Executive Committee (FEC) asserts that the issues raised by Ted Rosen concerning the conduct of the Election for Chairperson of the Department of Business on May 7, 2014 should be handled in a most timely way that reflects the substance and intent of the QCC Faculty Bylaws, as well as ongoing efforts to build and sustain a sense of community on campus.

In short, inquiries about how the election was conducted should involve the FEC in a more substantive way that reflects its mandate and mission. As the election was conducted under the auspices of the QCC Faculty Bylaws and the FEC is overseer of those bylaws we regard the matter as a faculty matter. The faculty should direct how it is handled. Professor Rosen raises no issues other than related to the QCC Faculty Bylaws and how faculty have observed them.

You first directed a communication to the FEC through Alexandra Tarasko in which you were calling for the FEC to perform a fact finding task and then you reserved to yourself the act of responding to the results. Professor Tarasko informed you that this was not appropriate as the FEC is not explicitly given fact finding authority. She advised you to consider another course of action available under current policies and rules and contracts.

The FEC is aware that it does however have considerable other functions and responsibilities to perform other than mere fact finding. As given in the QCC Faculty Bylaws:

2.2 The Faculty Executive Committee of Queensborough Community College shall be the principal agency of the Faculty in carrying out its Bylaw responsibilities. Any requests for clarifications of meaning and interpretations are to be directed to the Faculty Executive Committee who are the interpreters of its meaning at the College.

6.1 The Faculty shall be responsible for the academic status, role, rights, obligations, and freedoms of the Faculty, and such other matters that may affect the welfare of the Faculty consistent with this document. The Faculty through its Faculty Executive Committee may address communications to the Board of Trustees.

Elections of Department Chairpersons are conducted according the QCC Faculty Bylaws and under the more general auspices of the CUNY BOT bylaws and policies and according to all the Robert's Rules of Order(RRO).

8.6b.9 Follow, in all matters not covered by these bylaws, Robert's Rules of Order (latest revised edition). In accordance with Robert's Rules, a parliamentarian should be elected to advise the chair with regard to the application of these rules. Professor Rosen directed his communication to Liza Larios, Lois Florman, and Jonas Falik. The FEC holds that it should have been directed to the FEC and its Parliamentarian (currently Edmund Clingan). The matter at hand is one of deciphering the meaning of the bylaws and whether they were observed and then what remedy if any would be in order in the event that there was some transgression of the bylaws. This task would most likely involve consulting key governance documents and Robert's Rules, which are applicable, such as:

"The tellers' report is prepared from a vote tally sheet listing candidates to the left and running a tally of fives to the right for quick count. After the ballots have been counted the chairman of elections brings in the report. The tellers' report should contain the number of votes cast, the number necessary for election, the number of votes received by each candidate, and the number of illegal votes. Votes should be credited to a candidate when the intent of a voter is clear."

There is nothing in RRO about a double counting or double checking of the ballots: just that the tellers should be in agreement and able to report to the chairman of elections. It appears from Professor Rosen's account that the tellers were in agreement and made their report. It sticks to the spirit, even if the letter is not absolutely followed because modern technology had been employed with the suggestion and agreement of the electorate, as no one at all raised any issue with the process before or during the elections and not for five days following the election when Professor Rosen sent his communication.

If there were concerns by members of the Department of Business over the conduct of the elections there was recourse through the QCC Faculty Bylaws: if 40% of the Department Faculty petitioned the FEC, then the FEC would supervise their elections, under the QCC Faculty Bylaws.

8.5f Upon petition of at least forty per cent (40%) of the voters within a department, the Faculty Executive Committee shall appoint a committee to conduct the elections of that department.

If there were concerns at the time they should have been raised. There is an issue of timeliness. By not making immediate complaint, demanding recount and sealing ballots, Professor Rosen may have effectively forfeited those rights.

President Call, if you continue the process now begun, we have these concerns:

It is now annual leave and many of those who were in the room at the time of the election, including the two faculty who served as teller, contractually are not available during annual leave and they should not be expected to be available. We are not certain by what authority the faculty are to be questioned at all, let alone during annual leave. They might have recourse through the Professional Staff Congress to ask for postponement of any investigation until the end of the annual leave period.

We would want clarified if faculty who acted as tellers need to know if they have legal liability. Should they have legal representation?

We also are concerned whether or not the remedy sought, which is primarily a revote and alternatively a recount, can be considered actions that can be imposed by any authority in the College.

If by some legitimate means and some legitimate authority it would be determined that the vote was in some manner improper in the process but not the result of the ballot, i.e., the total, then would not at best a recount be in order and nothing more? But, we question whether there can even be a valid recount now as there is certainly reason for those involved to challenge a recount where there is no clear evidence that the ballots were kept secure by impartial parties. The chain of evidence is not at all secure.

We must raise the question of the faculty of the department having a right to know about the complaint and the investigation.

Do the faculty of the department have a right to complain themselves over the reasons being offered by Ted Rosen? Do the faculty of the department have a right to complain that their votes may be invalidated by some process that is not clearly provided for in governance or by some official who is not clearly authorized to do so? What if faculty in the department then wish to grieve any nullification of their vote due to lack of authority for doing so under the bylaws? We ask for your reconsideration of the fact finding activity and ask for you to call a halt to it to allow the FEC to handle this matter.

If Professor Rosen truly believes there was misconduct or mishandling, at the first department meeting of the year, he may move to recall the Chair. If he is truly supported by his colleagues, the Chair will be recalled and then he may run again.

And again there may be other processes provided through which his concerns can properly be addressed. Professor Rosen might have a grievance filed under contract provision Article 20.2(2) where there are violations of bylaws.

We are concerned as to what your investigation is doing to the department and then by extension to all the faculty of the College as they learn of this attempt, based on the reasons given by Professor Rosen, to overturn an election.

We know that you are quite concerned about the atmosphere of the College and want community building activities to create and maintain the highest order of mutual respect. We hold that the investigation now begun works against that aim which we share.

Please halt the inquiry and direct Professor Rosen to the FEC for what recourse he may have under our bylaws or pursuant to actual processes available we would offer the option to file a formal grievance. The FEC stands ready to assist Professor Rosen and you with the production of a report on this matter with its recommendations and to do so quite soon. It has already started a process of inquiry into the prevailing authorities that govern department meetings and elections. The FEC will proceed to conduct interviews and issue its report and recommendations before the end of the month of June.

Philip Pecorino,
Chairperson, Faculty Executive Committee
Edmund Clingan
Wilma Fletcher-Anthony
David Humphries
Anthony Kolios
Jenny Maan Lin
Alicia Sinclair

From: Larios, Liza J.<mailto:LLarios@qcc.cuny.edu>

Sent: Thursday, May 29, 2014 2:09 PM

To: Rosen, Ted<mailto:TRosen@qcc.cuny.edu>, Florman, Lois<mailto:LFlorman@qcc.cuny.edu>, Falik, Jonas<mailto:JFalik@qcc.cuny.edu>

Cc: Ford, Wendy G.<mailto:WFord@qcc.cuny.edu>, Katz, Marilyn<mailto:MaKatz@qcc.cuny.edu>, Kathleen Villani<mailto:KVillani@qcc.cuny.edu>, Florman, Lois<mailto:LFlorman@qcc.cuny.edu>

Professors Rosen, Falik, Villani, Ford and Katz ---

President Call has asked me to conduct a fact finding with regard to the concerns and issues expressed below. To that end, I will reach out to each of you and probably other members of the department during the next week and will, thereafter, report the findings to the President.

- Liza

From: Rosen, Ted

Sent: Monday, May 12, 2014 5:45 PM

To: Larios, Liza J.; Florman, Lois; Falik, Jonas

Cc: Ford, Wendy G.; Katz, Marilyn; Villani, Kathleen

Subject: Queensborough Community College Business Department Chairperson Election Conducted on May 7, 2014
Ladies and Gentleman:

As the candidate for Chairperson of the Business Department who was declared to have been the unsuccessful candidate following the May 7, 2014 Queensborough Community College ["QCC"] Business Department Chairperson Election ["the Election"], I write this email to respectfully request a determination: (1) setting aside the announced results of the Election; (2) directing a revote be conducted as soon as practicable under the supervision of the QCC Human Resources and Labor Relations Department ("Department of Human Resources") ; and (3) in the event that the foregoing requested remedies are not granted, and without waiver of my right to seek the foregoing, directing the immediate impounding of all of the paper ballots voted in the first and second ballots of the Election, the recounting of such paper ballots and providing both candidates the right to be present during such recount and the opportunity to inspect such paper ballots.

These requests are made because: (1) the Election was not conducted in accordance with the By-Laws of the Faculty of Queensborough Community College ["Faculty By-Laws"]; and (2) as a result of such non-compliance with the Faculty By-Laws, there remains a cloud over the reported results of the Election which may only be resolved through a properly conducted revote.

I state at the outset that the making of the requests set forth herein and all statements set forth in support of such requests are not, and should not be construed as, any claim, contention or allegation, whether express or implied, that anyone involved in the Election, including without limitation, my two colleagues who serve on the Business Department Election Committee and who conducted the Election, and my colleague who was my opponent in the Election, intentionally engaged in any impropriety or wrongful conduct of any nature whatsoever. I do not claim, contend or

allege that anyone intentionally engaged in improper or wrongful conduct in the conduct of the Election.

The Reasons for the Requested Revote

The announced results of the Election should be set aside and a revote directed because the Election conducted failed to comply with the Faculty By-Laws.

1. Failure to Comply with Section 8.5d.1 of the Faculty By-Laws

The election of a QCC department chairperson is governed by Article IX, Section 9.1 (a) and (b) of the By-Laws of the Board of Trustees of the City University of New York [By-Laws of the Board of Trustees"], Article III, Section A of the Governance Plan of Queensborough Community College [" QCC Governance Plan"] and Section 8.5 of the Faculty By-Laws. Section 8.5d.1 of the Faculty By-Laws provides:

"8.5d.1 All ballots herein provided for shall be secret ballots, and shall be counted by at least two (2) tellers, and the results of the vote, including number of abstentions, shall be reported to the President." [Emphasis supplied.]

Clearly, this section requires that "all ballots" be "counted by at least two (2) tellers". The procedure followed in the Election did not comply with this mandate. The Election was conducted in Room 112 of the QCC Science Building. The two faculty members of the QCC Business Department who are on the Department's Election Committee presided over the Election. One member of the Election Committee was observed opening each of the ballots, looking at each of the ballots and then announcing aloud the name of one of the two candidates. While this was happening, the second member of the Election Committee was observed operating the podium-based computer in that room, recording the vote announced by the other committee member on an Excel spreadsheet which was displayed on the large computer screen in that room. To my observation and recollection, the committee member who was posting on the computer the vote announced aloud by the other committee member did not visually inspect each of the ballots, and therefore did not "count" each of the ballots, but rather recorded the results as was announced by her colleague. This constituted a breach of the mandate of Section 8.5d.1 that all ballots be counted by at least two tellers.

Moreover, to my observation and recollection, and upon information and belief, at the end of each of the two ballots, there was no double-checking of the paper ballots by either or both of the Election Committee members. Within minutes following the announcement of the first ballot results, the second ballot was conducted. Following the results of the second ballot, a winner was announced based on the announced and posted votes. There was, to my knowledge, no double-checking of the paper ballots on either the first or second ballot before the results were stated. I do not have knowledge as to how the paper ballots cast on the first or second ballots were left after the Election, but to the best of my belief, the paper ballots were not sealed, impounded or otherwise securely stored and no provision was made for properly securing and documenting the chain of custody of such paper ballots.

Clearly, the reasoning behind the mandate of Section 8.5d.1 that all ballots shall be counted by at least two (2) tellers is that there should be two sets of eyes reviewing each of the ballots to detect and prevent not only possible fraud (of which no claim is made here), but also to avoid possible inadvertent, human error committed by one person in reviewing, discerning, announcing and/or recording the vote believed to be observed from each of the ballots. The possibility that any such inadvertent human error may have occurred in the Election cannot now be excluded because the mandated procedure was not followed.

Moreover, a recount at this time, does not cure the non-compliance with Section 8.5d.1 because, upon information and belief, the paper ballots were not properly sealed, impounded, or otherwise securely stored, and no provision was made for properly securing and documenting the chain of custody of such paper ballots following the Election. While again, no accusation is made herein of any intentional impropriety by anyone involved in the Election, the results of any recount undertaken at this time will be under a cloud regardless of the results because of what is believed to be the failure to have properly secured such paper ballots and safeguard and document the chain of custody of such paper ballots after the Election. The only remedy that will properly cure the non-compliance with 8.5d.1 is a revote conducted under the supervision of the QCC Department of Human Resources.

2. The Use of Paper Ballots on the Second Ballot Contained Names of the Candidates Listed in a Different Sequence than the Paper Ballots Used on the First Ballot Although There is No Provision in Section 8.5 for Changing Such Sequence of Names on the Paper Ballots Used on Successive Ballots

After the first ballot of the Election, the results reported were 14 votes for myself, 13 votes for my opponent and one abstention. Since neither candidate obtained the required 15 votes, a second ballot was immediately undertaken. The paper ballots used on the second ballot contained the names of all of the members of the Department eligible to serve as Department chair in a revised sequence from the way such names appeared on the first ballot. To the best of my recollection, no announcement was made by the Election Committee members that these ballots contained this revision of the sequence of names. The announced results of the second ballot were 16 votes for my opponent and 12 for myself, an apparent change of three votes from the votes reported on the first ballot, minutes earlier.

Whether or not revising the sequence of names on the paper ballots used on the second ballot as compared to the paper ballots used on the first ballot effectively mitigates position bias in an election conducted over two successive ballots (as distinguished from randomizing the name sequence in all of the ballots in an election conducted in one ballot) is subject to debate. However, what is critical here is that the use of a paper ballot containing a revised sequence of names on the second ballot is not expressly authorized under the pertinent section of the Faculty By-Laws, Section 8.5c:

"8.5c Election. Voting takes place immediately following nomination. Voting members of the department shall, by secret ballot, cast their votes for one of the candidates chosen under 8.5b above . . . After the second election ballot, if a decision is not reached, the two (2) persons receiving the largest number of votes shall be the only candidates considered."

Moreover, there is no express authorization for the use of such paper ballots containing a modification of the sequence of names over successive ballots contained in any sub-section of Section 8.5. The possibility that the use of paper ballots on the second ballot containing a revised sequence of names may have improperly impacted the Election cannot now be excluded. When I first received my paper ballot on the second ballot, I experienced confusion after not initially locating my name in the same position it had been on the paper ballot used in the first ballot. Similar experiences were reported to me by two other people who voted in the Election. The apparent lack of announcement of the use of the paper ballots containing the revised sequence may have contributed to the confusion. The possibility that such confusion may have improperly impacted the Election cannot now be excluded, particularly, given the puzzling change in two votes from the first ballot to the second ballot (excluding the vote of the individual who abstained on the first ballot), even though the second ballot followed just minutes after the first, without any intervening activity. Whether these vote changes were the result of choice or confusion cannot now be determined. However, the confusion experienced by at least some of the voters resulting from the revised sequence of names on the paper ballots used on the second ballot cannot be disputed and such confusion leaves a cloud over the results announced. The only effective remedy for the use of the revised papers ballots on the second ballot, without any authorization for such revision in the Faculty By-Laws, is a revote.

Request for Recount

For the reasons set forth above, a revote is requested and such a revote is the only proper remedy to cure the failure to comply with the Faculty By-Laws. Alternatively, and in the event a revote is not directed, and without waiver of the right to request such revote, the request is made for a recount of all of the paper ballots on both the first and second ballot conducted in the Election. As set forth above, the results of such a recount would be under a cloud regardless of the outcome because the paper ballots are believed not to have been properly secured following the Election. If a recount is directed, the paper ballots should be immediately impounded by the Department of Human Resources, the recount should be conducted by the Department of Human Resources and each of the candidates should be permitted to be present during such recount and should be permitted to inspect each of the paper ballots.

As we all know, the election of the chairperson of the Business Department is very important to the members of the Business Department and to the greater QCC community. All parties are entitled to be assured that proper procedures

were followed in accordance with the applicable Faculty By-Laws, that no confusion affected the voting in the election and that the votes cast in the election are correctly counted and reported.

I respectfully request the remedies requested herein be granted, as set forth above.

Respectfully Submitted,

Ted M. Rosen

Assistant Professor, Business Department

Administration Building, Room 405

QueensboroughCommunity College

222-05 56th Avenue

Bayside, New York 11364-1497

(718) 281-5488

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EXHIBIT J. Ed Volchok second email refusing to meet

From: Volchok, Edward
Sent: Friday, June 06, 2014 10:16 AM
To: Volchok, Edward; Pecorino, Philip; Ford, Wendy G.; Katz, Marilyn; Kolios, Anthony; Seiler, Mona E; Falik, Jonas; Villani, Kathleen; Rosen, Ted
Cc: Clingan, Edmund; Fletcher-Anthony, Wilma; Humphries, David; Lin, Maan; Sinclair, Alicia
Subject: RE: Complaints and communications re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

Dr. Pecorino,

Yesterday I agreed to be interviewed by the Faculty Executive Committee regarding Professor Rosen's concerns about the recent Business Department election. At that time I was not aware that under Dr. Call's direction, Dean Larios has started an investigation.

I believe that Dean Larios' review should proceed. I do not want to be perceived as interfering with her inquiry. I will, therefore, not be available to be interviewed at this time.

EV

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Edward Volchok, PhD
Business Department
Queensborough Community College/CUNY
Administration Building, Room 405
222-05 56th Avenue
Bayside, NY 11364
718-281-5532

From: Volchok, Edward
Sent: Thursday, June 05, 2014 10:28 AM
To: Pecorino, Philip; Ford, Wendy G.; Katz, Marilyn; Kolios, Anthony; Seiler, Mona E; Falik, Jonas; Villani, Kathleen; Rosen, Ted
Cc: Clingan, Edmund; Fletcher-Anthony, Wilma; Humphries, David; Lin, Maan; Sinclair, Alicia
Subject: RE: Complaints and communications re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

Phil,

I am on campus next week for the Faculty eLearning Institute. I'd like to do this on Monday at 3:15. Tuesday I have a commitment. I am chairing a search committee and Tuesday our semi-finalists are delivering teaching demonstrations. Wednesday afternoon I have other commitments.

Ed

--

Edward Volchok, PhD
Business Department
Queensborough Community College/CUNY
Administration Building, Room 405
222-05 56th Avenue
Bayside, NY 11364
718-281-5532

From: Pecorino, Philip

Sent: Thursday, June 05, 2014 10:14 AM

To: Ford, Wendy G.; Katz, Marilyn; Kolios, Anthony; Volchok, Edward; Seiler, Mona E; Falik, Jonas; Villani, Kathleen; Rosen, Ted

Cc: Clingan, Edmund; Fletcher-Anthony, Wilma; Humphries, David; Lin, Maan; Pecorino, Philip; Sinclair, Alicia

Subject: Complaints and communications re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

Colleagues of the Business Department,

As you are aware there has been a complaint lodged with the College concerning the recent election of a Chairperson of your department. President Call has conferred with the Faculty Executive Committee regarding the complaint by Professor Ted Rosen of the Business Department. This complaint concerned irregularities in the departmental elections held on May 9 as they relate to the QCC faculty bylaws. As this concerns the faculty bylaws and deals with faculty rights, we elected leaders of the faculty are conducting an inquiry and we wish to meet with you to discuss the complaint. You are in the first group to be invited to be interviewed. We realize that this matter is urgent and are prepared to meet with you as early as next week:

June 9, Monday 12 to 6

June 10, Tuesday 8 to 6

June 11, Wednesday 12 to 6

This meeting should not take more than 30 minutes. We are aware that we are in the annual leave period and that you are not required to participate in college activities during this period. We do hope, however, that you will be favorably disposed to meeting with us as this is a timely matter.

Sincerely,

Philip Pecorino, Chair

Edmund Clingan, Parliamentarian

Faculty Executive Committee

From: Pecorino, Philip

Sent: Wednesday, June 04, 2014 4:03 PM

To: _Business Department Faculty

Cc: Clingan, Edmund; Fletcher-Anthony, Wilma; Humphries, David; Kolios, Anthony; Lin, Maan; Pecorino, Philip; Sinclair, Alicia

Subject: Complaints and communications re the conduct of the Election for Chairperson of the Department of Business on May 7, 2014

Colleagues of the Business Department:

Several members of your department have requested that we share this information below with the entire department. Some are already recipients as indicated in the distributions below and some have only heard of these communications. They declare that the department has a right to know what is going on. The FEC shares this concern and so indicated in our communication to the President (see below).

We share the essential communications with all of you now. Any questions about the FEC actions may be directed to any member of the FEC.

We expect to issue a report on this matter fairly soon. We shall be sharing it with the entire faculty of the College.

Philip A. Pecorino, Ph.D.

Faculty Executive Committee

Chairperson, 2014-2017

Queensborough Community College, CUNY

Office Phone: 718 281 5038

ppecorino@qcc.cuny.edu<mailto:ppecorino@qcc.cuny.edu>

website: <http://www.qcc.cuny.edu/socialsciences/ppecorino/default.htm>

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As that process is underway, it seems best to proceed. However, I appreciate the willingness of the FEC to assist with the inquiry, and will update the Committee on the general findings.

Thank you.

dc

Dr. Diane B. Call
President
Queensborough Community College/CUNY
Telephone 1.718.631.6222

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Queensborough Community College FACULTY EXECUTIVE COMMITTEE REPORT Complaint Regarding Business Department Election 40

in carrying out its Bylaw responsibilities. Any requests for clarifications of meaning and interpretations are to be directed to the Faculty Executive Committee who are the interpreters of its meaning at the College.

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President Call, if you continue the process now begun, we have these concerns:

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We also are concerned whether or not the remedy sought, which is primarily a revote and alternatively a recount, can be considered actions that can be imposed by any authority in the College.

If by some legitimate means and some legitimate authority it would be determined that the vote was in some manner improper in the process but not the result of the ballot, i.e., the total, then would not at best a recount be in order and

nothing more? But, we question whether there can even be a valid recount now as there is certainly reason for those involved to challenge a recount where there is no clear evidence that the ballots were kept secure by impartial parties. The chain of evidence is not at all secure.

We must raise the question of the faculty of the department having a right to know about the complaint and the investigation.

Do the faculty of the department have a right to complain themselves over the reasons being offered by Ted Rosen? Do the faculty of the department have a right to complain that their votes may be invalidated by some process that is not clearly provided for in governance or by some official who is not clearly authorized to do so? What if faculty in the department then wish to grieve any nullification of their vote due to lack of authority for doing so under the bylaws? We ask for your reconsideration of the fact finding activity and ask for you to call a halt to it to allow the FEC to handle this matter.

If Professor Rosen truly believes there was misconduct or mishandling, at the first department meeting of the year, he may move to recall the Chair. If he is truly supported by his colleagues, the Chair will be recalled and then he may run again.

And again there may be other processes provided through which his concerns can properly be addressed. Professor Rosen might have a grievance filed under contract provision Article 20.2(2) where there are violations of bylaws.

We are concerned as to what your investigation is doing to the department and then by extension to all the faculty of the College as they learn of this attempt, based on the reasons given by Professor Rosen, to overturn an election.

We know that you are quite concerned about the atmosphere of the College and want community building activities to create and maintain the highest order of mutual respect. We hold that the investigation now begun works against that aim which we share.

Please halt the inquiry and direct Professor Rosen to the FEC for what recourse he may have under our bylaws or pursuant to actual processes available we would offer the option to file a formal grievance. The FEC stands ready to assist Professor Rosen and you with the production of a report on this matter with its recommendations and to do so quite soon. It has already started a process of inquiry into the prevailing authorities that govern department meetings and elections. The FEC will proceed to conduct interviews and issue its report and recommendations before the end of the month of June.

Philip Pecorino,
Chairperson, Faculty Executive Committee

Edmund Clingan

Wilma Fletcher-Anthony

David Humphries

Anthony Kolios

Jenny Maan Lin

Alicia Sinclair

From: Larios, Liza J.<mailto:LLarios@qcc.cuny.edu>

Sent: Thursday, May 29, 2014 2:09 PM

To: Rosen, Ted<mailto:TRosen@qcc.cuny.edu>, Florman, Lois<mailto:LFlorman@qcc.cuny.edu>, Falik, Jonas<mailto:JFalik@qcc.cuny.edu>

Cc: Ford, Wendy G.<mailto:WFord@qcc.cuny.edu>, Katz, Marilyn<mailto:MaKatz@qcc.cuny.edu>, Kathleen Villani<mailto:KVillani@qcc.cuny.edu>, Florman, Lois<mailto:LFlorman@qcc.cuny.edu>

Professors Rosen, Falik, Villani, Ford and Katz ---

President Call has asked me to conduct a fact finding with regard to the concerns and issues expressed below. To that end, I will reach out to each of you and probably other members of the department during the next week and will, thereafter, report the findings to the President.

- Liza

From: Rosen, Ted

Sent: Monday, May 12, 2014 5:45 PM

To: Larios, Liza J.; Florman, Lois; Falik, Jonas

Cc: Ford, Wendy G.; Katz, Marilyn; Villani, Kathleen

Subject: Queensborough Community College Business Department Chairperson Election Conducted on May 7, 2014
Ladies and Gentleman:

As the candidate for Chairperson of the Business Department who was declared to have been the unsuccessful candidate following the May 7, 2014 Queensborough Community College ["QCC"] Business Department Chairperson Election ["the Election"], I write this email to respectfully request a determination: (1) setting aside the announced results of the Election; (2) directing a revote be conducted as soon as practicable under the supervision of the QCC Human Resources and Labor Relations Department ("Department of Human Resources") ; and (3) in the event that the foregoing requested remedies are not granted, and without waiver of my right to seek the foregoing, directing the immediate impounding of all of the paper ballots voted in the first and second ballots of the Election, the recounting of such paper ballots and providing both candidates the right to be present during such recount and the opportunity to inspect such paper ballots.

These requests are made because: (1) the Election was not conducted in accordance with the By-Laws of the Faculty of Queensborough Community College ["Faculty By-Laws"]; and (2) as a result of such non-compliance with the Faculty By-Laws, there remains a cloud over the reported results of the Election which may only be resolved through a properly conducted revote.

I state at the outset that the making of the requests set forth herein and all statements set forth in support of such requests are not, and should not be construed as, any claim, contention or allegation, whether express or implied, that anyone involved in the Election, including without limitation, my two colleagues who serve on the Business Department Election Committee and who conducted the Election, and my colleague who was my opponent in the Election, intentionally engaged in any impropriety or wrongful conduct of any nature whatsoever. I do not claim, contend or allege that anyone intentionally engaged in improper or wrongful conduct in the conduct of the Election.

The Reasons for the Requested Revote

The announced results of the Election should be set aside and a revote directed because the Election conducted failed to comply with the Faculty By-Laws.

1. Failure to Comply with Section 8.5d.1 of the Faculty By-Laws

The election of a QCC department chairperson is governed by Article IX, Section 9.1 (a) and (b) of the By-Laws of the Board of Trustees of the City University of New York [By-Laws of the Board of Trustees"], Article III, Section A of the Governance Plan of Queensborough Community College [" QCC Governance Plan"] and Section 8.5 of the Faculty By-Laws. Section 8.5d.1 of the Faculty By-Laws provides:

"8.5d.1 All ballots herein provided for shall be secret ballots, and shall be counted by at least two (2) tellers, and the results of the vote, including number of abstentions, shall be reported to the President." [Emphasis supplied.]

Clearly, this section requires that "all ballots" be "counted by at least two (2) tellers". The procedure followed in the Election did not comply with this mandate. The Election was conducted in Room 112 of the QCC Science Building. The two faculty members of the QCC Business Department who are on the Department's Election Committee presided over the Election. One member of the Election Committee was observed opening each of the ballots, looking at each of the ballots and then announcing aloud the name of one of the two candidates. While this was happening, the second member of the Election Committee was observed operating the podium-based computer in that room, recording the

vote announced by the other committee member on an Excel spreadsheet which was displayed on the large computer screen in that room. To my observation and recollection, the committee member who was posting on the computer the vote announced aloud by the other committee member did not visually inspect each of the ballots, and therefore did not "count" each of the ballots, but rather recorded the results as was announced by her colleague. This constituted a breach of the mandate of Section 8.5d.1 that all ballots be counted by at least two tellers.

Moreover, to my observation and recollection, and upon information and belief, at the end of each of the two ballots, there was no double-checking of the paper ballots by either or both of the Election Committee members. Within minutes following the announcement of the first ballot results, the second ballot was conducted. Following the results of the second ballot, a winner was announced based on the announced and posted votes. There was, to my knowledge, no double-checking of the paper ballots on either the first or second ballot before the results were stated. I do not have knowledge as to how the paper ballots cast on the first or second ballots were left after the Election, but to the best of my belief, the paper ballots were not sealed, impounded or otherwise securely stored and no provision was made for properly securing and documenting the chain of custody of such paper ballots.

Clearly, the reasoning behind the mandate of Section 8.5d.1 that all ballots shall be counted by at least two (2) tellers is that there should be two sets of eyes reviewing each of the ballots to detect and prevent not only possible fraud (of which no claim is made here), but also to avoid possible inadvertent, human error committed by one person in reviewing, discerning, announcing and/or recording the vote believed to be observed from each of the ballots. The possibility that any such inadvertent human error may have occurred in the Election cannot now be excluded because the mandated procedure was not followed.

Moreover, a recount at this time, does not cure the non-compliance with Section 8.5d.1 because, upon information and belief, the paper ballots were not properly sealed, impounded, or otherwise securely stored, and no provision was made for properly securing and documenting the chain of custody of such paper ballots following the Election. While again, no accusation is made herein of any intentional impropriety by anyone involved in the Election, the results of any recount undertaken at this time will be under a cloud regardless of the results because of what is believed to be the failure to have properly secured such paper ballots and safeguard and document the chain of custody of such paper ballots after the Election. The only remedy that will properly cure the non-compliance with 8.5d.1 is a revote conducted under the supervision of the QCC Department of Human Resources.

2. The Use of Paper Ballots on the Second Ballot Contained Names of the Candidates Listed in a Different Sequence than the Paper Ballots Used on the First Ballot Although There is No Provision in Section 8.5 for Changing Such Sequence of Names on the Paper Ballots Used on Successive Ballots

After the first ballot of the Election, the results reported were 14 votes for myself, 13 votes for my opponent and one abstention. Since neither candidate obtained the required 15 votes, a second ballot was immediately undertaken. The paper ballots used on the second ballot contained the names of all of the members of the Department eligible to serve as Department chair in a revised sequence from the way such names appeared on the first ballot. To the best of my recollection, no announcement was made by the Election Committee members that these ballots contained this revision of the sequence of names. The announced results of the second ballot were 16 votes for my opponent and 12 for myself, an apparent change of three votes from the votes reported on the first ballot, minutes earlier.

Whether or not revising the sequence of names on the paper ballots used on the second ballot as compared to the paper ballots used on the first ballot effectively mitigates position bias in an election conducted over two successive ballots (as distinguished from randomizing the name sequence in all of the ballots in an election conducted in one ballot) is subject to debate. However, what is critical here is that the use of a paper ballot containing a revised sequence of names on the second ballot is not expressly authorized under the pertinent section of the Faculty By-Laws, Section 8.5c:

"8.5c Election. Voting takes place immediately following nomination. Voting members of the department shall, by secret ballot, cast their votes for one of the candidates chosen under 8.5b above . . . After the second election ballot,

if a decision is not reached, the two (2) persons receiving the largest number of votes shall be the only candidates considered."

Moreover, there is no express authorization for the use of such paper ballots containing a modification of the sequence of names over successive ballots contained in any sub-section of Section 8.5. The possibility that the use of paper ballots on the second ballot containing a revised sequence of names may have improperly impacted the Election cannot now be excluded. When I first received my paper ballot on the second ballot, I experienced confusion after not initially locating my name in the same position it had been on the paper ballot used in the first ballot. Similar experiences were reported to me by two other people who voted in the Election. The apparent lack of announcement of the use of the paper ballots containing the revised sequence may have contributed to the confusion. The possibility that such confusion may have improperly impacted the Election cannot now be excluded, particularly, given the puzzling change in two votes from the first ballot to the second ballot (excluding the vote of the individual who abstained on the first ballot), even though the second ballot followed just minutes after the first, without any intervening activity. Whether these vote changes were the result of choice or confusion cannot now be determined. However, the confusion experienced by at least some of the voters resulting from the revised sequence of names on the paper ballots used on the second ballot cannot be disputed and such confusion leaves a cloud over the results announced. The only effective remedy for the use of the revised papers ballots on the second ballot, without any authorization for such revision in the Faculty By-Laws, is a revote.

Request for Recount

For the reasons set forth above, a revote is requested and such a revote is the only proper remedy to cure the failure to comply with the Faculty By-Laws. Alternatively, and in the event a revote is not directed, and without waiver of the right to request such revote, the request is made for a recount of all of the paper ballots on both the first and second ballot conducted in the Election. As set forth above, the results of such a recount would be under a cloud regardless of the outcome because the paper ballots are believed not to have been properly secured following the Election. If a recount is directed, the paper ballots should be immediately impounded by the Department of Human Resources, the recount should be conducted by the Department of Human Resources and each of the candidates should be permitted to be present during such recount and should be permitted to inspect each of the paper ballots.

As we all know, the election of the chairperson of the Business Department is very important to the members of the Business Department and to the greater QCC community. All parties are entitled to be assured that proper procedures were followed in accordance with the applicable Faculty By-Laws, that no confusion affected the voting in the election and that the votes cast in the election are correctly counted and reported.

I respectfully request the remedies requested herein be granted, as set forth above.

Respectfully Submitted,

Ted M. Rosen

Assistant Professor, Business Department

Administration Building, Room 405

QueensboroughCommunity College

222-05 56th Avenue

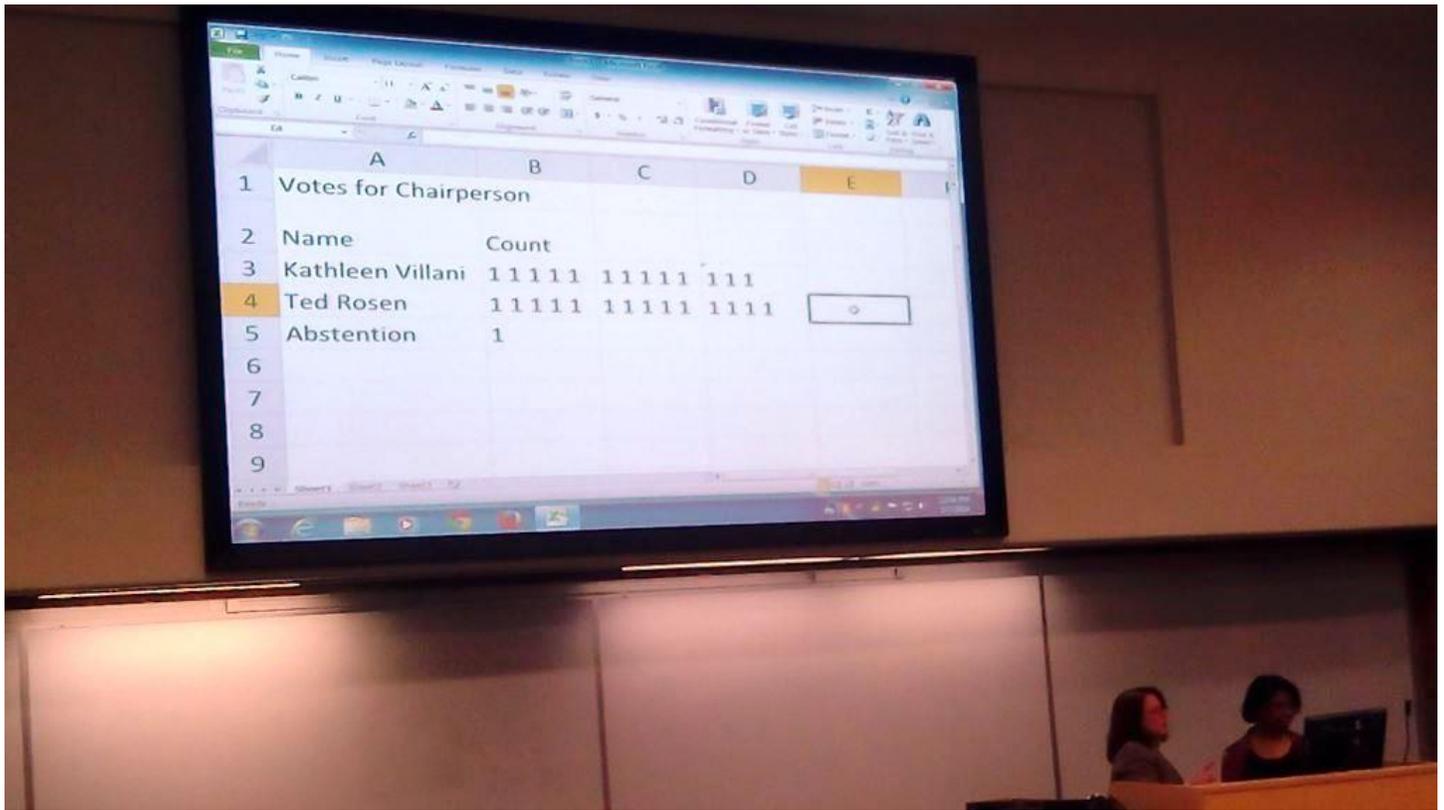
Bayside, New York 11364-1497

(718) 281-5488

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EXHIBIT K. Photographs of Tellers at the Podium during the election





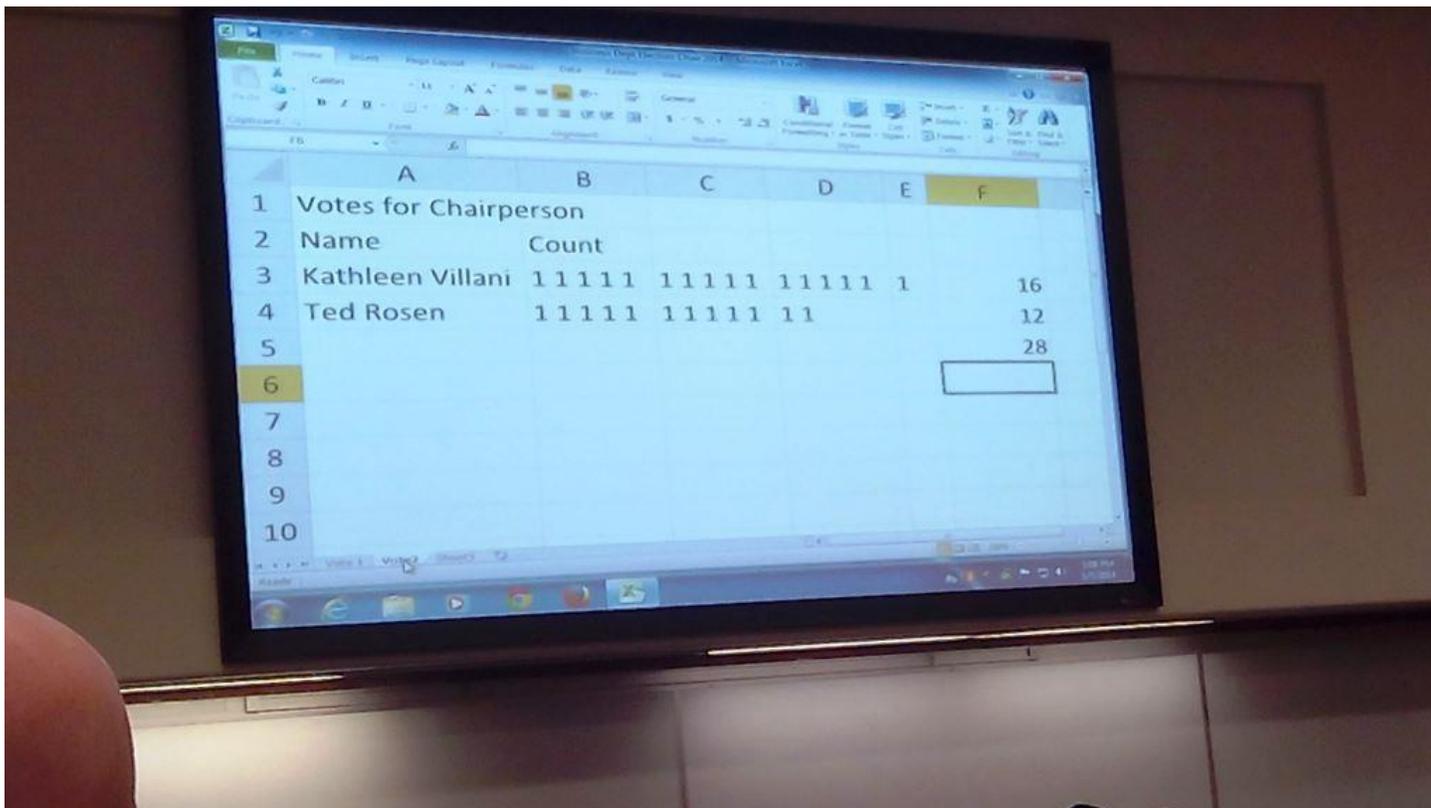


EXHIBIT L. email Layne Bonaparte

From: Bonaparte, Layne

Sent: Sunday, June 08, 2014 10:06 AM

To: Rosen, Ted

Cc: _Business Department Faculty; Pecorino, Philip; Larios, Liza J.; Call, Diane B.

Subject: Business Department Chairperson Election

This is the epilog for me; my final statement on this matter.

I consider myself to be an excellent judge of character and this is not reflective of the Ted Rosen I know.

It is indeed sad to see your wonderful character tarnished by the coercive manipulations of others.

We all make mistakes and it is the strong and upright who can admit when they have done so and when they are wrong.

On behalf of all who are disconcerted by the action you have taken and the rippling effects it is creating for the climate of our department, I implore you to bring an end to all of this by retracting your claim and apologizing to the election committee. Recapture your integrity and your honor. Let the true, honorable and respected Ted Rosen shine again.

I have always admired you and I have explicitly told you so. I am one hundred percent confident that this course of action is not true to who you are.

In your election campaign, you told me that you are a fair person who can look at both sides of an argument and make the most prudent, sensible decision. I truly hope you exercise that judgment in your response to this request.

EXHIBIT M. Statement of Marilyn Katz to Liza Larios , June 10, 2014

Election Matters for Consideration

1. I have been a member of the Business Department Election Committee with Wendy Ford for four elections. Two general elections, in May 2011 and May 2014, to elect a new chairperson and Personnel & Budget Committee, as well as two special elections in February 2011 and March 2013, to replace certain members of the P&B (Anthony Kolios and Brenda Hirsch, 2011) and (Glenn Burdi, 2013)
2. In all the elections noted above, the procedure followed was the same:
 - a. Wendy Ford and I prepared ballots, based on eligibility information from Liza Larios, which was forwarded to us by Jonas Falik.
 - b. The ballots were created listing the names of the candidates. Two variations of the ballots were created – variation one listed the names of the candidates in alphabetical order; variation two listed the names of the candidates in reverse alphabetical order. The ballots were prepared in this manner as to avoid any voting bias regarding the position of the candidates’ names on the ballot.
 - c. The ballots were handed out to the eligible voters in the department randomly with regard to the order of the candidates’ names.
 - d. At no time during any of the elections noted above, was there any issue raised regarding the order of the candidates’ names on the ballots.
 - e. Wendy and I collected the ballots by walking around the room where the voting took place and each voter placed their ballot in the ballot box.
 - f. In no particular order, Wendy or I would share the following duties:
 - i. One of us would remove each individual ballot from the ballot box, unfold the ballot, and place it on the table/desk/podium for both of us to see.
 - ii. After we both viewed the ballot, one of us would announce the name of the candidate circled on the ballot, and the other would record the result (either on the whiteboard or on an Excel spreadsheet projected on a screen), so that the audience of voters could clearly view the results for each ballot counted.
 - iii. After the final ballot was recorded, we would count the final total and announce the winner.
 - iv. If there was no candidate receiving a majority vote, we would repeat the above procedure.
3. I have observed the process noted above in our department elections for the past 13 years since I have been a member of the department. I have been told that this process has been used for many years prior to my joining the department.
4. Not one member present at the May 2014 election (whether or not they have participated in previous elections) raised any issue with compliance regarding the validity of the election procedure, which was no different than prior elections.
5. In the May 2014 election, I was the person who removed each ballot from the ballot box, placed it on the podium, and announced the candidate circled for the election for chairperson. I saw every individual ballot. I showed Wendy each one and she confirmed it with me before I read each name out loud and before she added the name to the list projected on the board.
6. In the May 2014 election, the same two variations of the ballot (alphabetical and reverse alphabetical order) were used in both vote 1 and vote 2. In vote 1, the total was 14 votes for Ted Rosen, 13 votes for Kathy Villani, and one abstention. Since no one candidate received a majority (15 votes out of 28 votes in total), a second vote was taken. Ballots were again distributed randomly with regards to the order of the listing of the candidates’ names, and vote 2 resulted in a total of 16 votes for Kathy Villani and 12 votes for Ted Rosen.

7. At this point, Jonas Falik, came to the podium, congratulated the winners, and the paper ballots were collected by Wendy Ford, who brought the ballot box, which contained all the ballots used, to Jonas Falik's office. (I went directly to my next class.)
8. Just to mention an additional election-related point of interest, I was later complimented by another faculty member on "running an excellent meeting" in regards to the earlier election.
9. I believe that the May 2014 election was valid and I see no reason whatsoever why the process followed in this election is in question. All procedures were followed according to the faculty bylaws and past election procedures. The results of the election were fair and should stand as previously decided.

Please share my statement with the appropriate people. Thank you for your time.

Marilyn Katz

CIS Lecturer, Business Department