

BOARD OF ELECTIONS
IN THE CITY OF NEW YORK

COMMISSIONERS' COVER SHEET REVIEW MEETING

42 Broadway - 6th floor
Commissioners' Hearing Room
New York, NY 10004
August 14, 2020

August 14, 2020

PRESENT:

Commissioner Jose Araujo

Commissioner John Wm. Zaccone

Steven Richman, General Counsel

Rafael Savino, Deputy General Counsel

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2 (The meeting commenced.)

3 MR. STEVEN RICHMAN: Commissioners, It's
4 Steven Richman, can you hear me?

5 COMMISSIONER JOSE ARAUJO: Yes, we can
6 hear you.

7 COMMISSIONER JOHN WM. ZACCONE: We can
8 hear you.

9 MR. RICHMAN: It is Friday, August 14,
10 2020. This is a meeting of the commissioners'
11 petition and cover sheet review committee as
12 designated by the president and secretary in
13 accordance with the Board's independent
14 nominating petition rules. The committee today
15 consists of Democratic commissioner for Queens
16 County Jose Araujo, and Republican commissioner
17 for Richmond County, John Zaccone

18 Commissioners, we have four items to
19 present to you. We transmitted them by e-mail to
20 you. With your permission, we'll start calling
21 them.

22 COMMISSIONER ARAUJO: Go ahead.

23 MR. RICHMAN: The first is an amended
24 cover sheet filed by Dao Yin, candidate for

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2 Queens borough president in the Red Dragon
3 independent body. Commissioners, the defect was
4 the original cover sheets filed included the nine
5 volume ID numbers, but did not include the total
6 number of volumes. Notice of noncompliance went
7 out on July 30th and on August 3rd, the cure was
8 filed. It has the correct number of volumes
9 listed now and it has the required certification
10 required by Rule C3. The recommendation is that
11 you find this to be a valid cure.

12 COMMISSIONER ARAUJO: I approve it as a
13 valid cure.

14 COMMISSIONER ZACCONE: I second that.

15 COMMISSIONER ARAUJO: Now, Steve, just
16 as a formality, you're going to be marking our
17 initials on your sheet over there, right?

18 MR. RICHMAN: I am marking the
19 respective boroughs above the Democratic
20 commissioner and Republic commissioner so we know
21 who it is and it'll match up with the hearing
22 notice.

23 COMMISSIONER ARAUJO: Okay.

24 MR. RICHMAN: And today's date of August

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2 14th.

3 COMMISSIONER ARAUJO: Okay. So you don't
4 need me to sign anything here and send it back?

5 MR. RICHMAN: No, commissioner, I don't
6 know if you can see it, but we put the box in and
7 we put each of the respective boroughs
8 commissioners above your line, where it says
9 Democratic commissioner and Republican
10 commissioner. Okay.

11 MR. SAVINO: And we have the recording
12 to prove it.

13 MR. RICHMAN: Yes, and you're on
14 videotape, so it's for posterity. The second
15 relates to the amended cover sheet filed by, on
16 behalf of Everly D. Brown. The defect was that
17 the name of the independent body on the original
18 cover sheet did not match the name on the
19 petition. They filed an amended -- the notice
20 went out on July 31st, on August 4th, a timely
21 submission was made. They corrected that defect,
22 so that the name appears correctly. However, in
23 preparing the amended cover sheet that does have
24 the required certification to file the amended

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2 cover sheet, they misstated the candidate's zip
3 code. It should be on, according to the petition,
4 11422. They now listed it on the amended cover
5 sheet as 114122.

6 COMMISSIONER ARAUJO: Is that something
7 that can be cured?

8 MR. RICHMAN: No. This is their
9 opportunity to cure and it was supposed to be
10 corrected. They get one bite at the apple. So the
11 staff recommendation is that it's an invalid
12 cure.

13 COMMISSIONER ZACCONE: This one's a
14 little tough because --

15 COMMISSIONER ARAUJO: No, no, right.
16 It's not really an invalid cure, because it's a
17 valid cure, but what's wrong is there's the
18 additional information in there is now incorrect,
19 right. Because all they were curing at the
20 beginning was the fact that there was a space
21 between homeowners and rights.

22 MR. RICHMAN: No, and also that the
23 public office, I'm looking at the notice, was not
24 properly stated, because it was listed as member

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2 of the Assembly, 29th Assembly District in New
3 Tork, T-O-R-K, and they corrected it to New York.
4 So that, yes, the two noted defects were
5 corrected, commissioner. But they did not list
6 all the information correctly. It doesn't match
7 the petition.

8 COMMISSIONER ARAUJO: Right. So in
9 theory, it is a valid cure, it's just that
10 there's an additional -- now, there's a newfound
11 defect.

12 MR. RICHMAN: Correct. Yes, but there's
13 no opportunity to cure an amended cover sheet
14 filed after the last day to file petitions. It's
15 one bite at the apple.

16 COMMISSIONER ARAUJO: No, I understand
17 that, so the question is whether or not the
18 marking on the paper indicates it is a valid
19 cure, but there's a footnote that there's an
20 additional error which is now rendering this
21 thing is defective, as opposed to saying it's not
22 a valid cure when in fact it actually is. But
23 we're just identifying a new error in their paper
24 and their time to rectify the issue is expired.

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2 You see what I'm saying? I mean --

3 MR. SAVINO: I understand what you're
4 saying, it might be --

5 [CROSSTALK]

6 MR. RICHMAN: The solution may be in the
7 rule because I think the rule requires the
8 amended cover sheet to --

9 MR. SAVINO: to be identical.

10 MR. RICHMAN: -- all the requirements of
11 the --

12 MR. SAVINO: It has to have the
13 certification language and be marked as an
14 amended cover sheet.

15 MR. RICHMAN: -- and as well as all the
16 information required in Rule C2, which is the
17 name and complete address of the candidate,
18 including city, state and zip code on the cover
19 sheet.

20 MR. SAVINO: I think there's petition
21 issues too.

22 MR. RICHMAN: Yeah. You'll see this
23 candidate also appearing before you on Tuesday.

24 MR. SAVINO: Prima facie.

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2 COMMISSIONER ARAUJO: On this issue?

3 MR. RICHMAN: No.

4 COMMISSIONER ARAUJO: I mean not on this
5 issue --

6 MR. SAVINO: Not on this particular
7 issue.

8 COMMISSIONER ARAUJO: -- on this
9 petition?

10 MR. SAVINO: Another issue.

11 MR. RICHMAN: This petition though,
12 yeah. On petition for Assembly, yes.

13 COMMISSIONER ARAUJO: On these
14 petitions, on all six of these?

15 MR. RICHMAN: Yes.

16 COMMISSIONER ARAUJO: What, what's the
17 issue for Tuesday, if I may ask?

18 MR. RICHMAN: Staff has identified in
19 reviewing it that the petition consists of Xerox
20 copies of the same pages, and the same signatures
21 appearing in all the volumes, the same
22 signatures, same -- in all of the volumes. We
23 have a detailed report that the team did.
24 Initially, they missed, they couldn't find the

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2 page numbering because they put the petition ID
3 number on the wrong side of the volume, they put
4 it on the back. When they went through it to see
5 that the page numbering was sequential, they came
6 up not only with a page numbering defect, but
7 also the fact that the pages, copies of the pages
8 are inserted in the petition.

9 COMMISSIONER ARAUJO: Now, John, if I
10 may ask this, [unintelligible] [00:09:47] wanted
11 to ask a question. Wasn't, hasn't there been
12 recent case law with respect to the amended cover
13 sheets and whether or not there's a substantial
14 compliance? And does not -- doesn't this fall into
15 that category?

16 MR. RICHMAN: Commissioner, there's
17 certainly in Appellate Divisions. The First
18 Department in Feliciano held that the cover
19 sheet, the amended cover sheet requirements have
20 to be complied with strictly. The Second
21 Department in --

22 MR. SAVINO: Just last year, I think
23 Miranda last year?

24 MR. RICHMAN: -- and Magdalena before

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2 that, they --

3 MR. SAVINO: Right.

4 MR. RICHMAN: -- the Second Department
5 required the, a substantial compliance test.

6 COMMISSIONER ARAUJO: And this is a
7 Second Department --

8 MR. SAVINO: Well --

9 COMMISSIONER ARAUJO: -- petition I
10 guess?

11 MR. SAVINO: It could be either.

12 MR. RICHMAN: Depending on where they
13 commence the proceeding. They could commence it
14 in Supreme Court Manhattan or Supreme Court
15 Queens, based on the venue of either the
16 residence of the candidate or the main office of
17 the Board.

18 MR. SAVINO: And where the papers were
19 filed.

20 MR. RICHMAN: We found that out in past
21 years when at least one attorney relating to
22 Queens matters initially filed in Manhattan
23 Supreme.

24 MR. SAVINO: Right.

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2 COMMISSIONER ARAUJO: I remember that.

3 COMMISSIONER ZACCONE: What I was going
4 to say is I agree that this is, you know, a
5 correct cure, but now there's a new issue here
6 with the cover sheet and I'm not sure that the
7 amended cover sheet meets our requirement as
8 prepared because there's like an [unintelligible]
9 [00:11:19] problem with -- it's a minor error,
10 however [unintelligible] [00:11:28] as to how to
11 address it. What is staff's recommendation?

12 MR. RICHMAN: Well, commissioners do you
13 want to defer this until you hear the prima facie
14 matter as well and that may obviate the need for
15 a decision in this case.

16 MR. SAVINO: It could make this moot. It
17 might make this moot. If you want to go that way.

18 COMMISSIONER ARAUJO: Right. Here's
19 another question, it might be another issue this
20 probably needs to be kicked a little bit because
21 I'm not clear as to whether or not what's the
22 right zip code, right, because I see on the
23 amended cover sheet it says 114122, and then I
24 see on the cover sheet, it's 11422, and then on

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2 another cover sheet, although it's not his
3 address, it is an address in St. Albans, and I'm
4 not sure if it falls within the same category,
5 it's 11412 for the same --

6 MR. RICHMAN: Commissioners, I believe -
7 -

8 COMMISSIONER ARAUJO: -- homeowners.

9 MR. RICHMAN: Right. The last document
10 you had in that package should be a copy of the
11 independent nominating petition. The petition has
12 11422 on it. And the cover sheet is supposed to
13 match the petition. You should have page one of
14 volume 1078.

15 COMMISSIONER ARAUJO: I do, 11422, okay.

16 MR. RICHMAN: Oh, yes, the amended cover
17 sheet does not match the address set forth on the
18 petition, the zip code set forth on the petition.

19 COMMISSIONER ARAUJO: Hmm, there's
20 another problem.

21 MR. RICHMAN: That's the defect that we
22 --

23 COMMISSIONER ARAUJO: Okay. Right.
24 Right, but I'm saying I guess the original cover

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2 sheet would have --

3 MR. RICHMAN: Was correct.

4 COMMISSIONER ARAUJO: -- had the
5 contact, and I know it's the contact person, but
6 they appear to be living in the same area. And it
7 has an almost identical zip code. The only
8 difference is instead of an extra two there's a
9 one and a two where the cover sheet, the
10 candidate's is 422 --

11 MR. RICHMAN: Right.

12 COMMISSIONER ARAUJO: -- and then
13 everything else is, it changes from there.

14 MR. RICHMAN: Right. And, and on the
15 amended cover sheet, the contact person's zip
16 code is 11412 as well.

17 COMMISSIONER ARAUJO: Right.

18 MR. RICHMAN: But again, the, the
19 difference is that those, the contact person's
20 information is hand written, the information on
21 the, for the candidate is, it looks like it's
22 printed and as it is printed on the original
23 cover sheet and as it is printed on the petition
24 sheets itself.

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2 COMMISSIONER ARAUJO: So if this matter
3 is deferred to Tuesday, when we're hearing the
4 petitions, does that run afoul of the right to
5 have a review by the cover sheet within -- I
6 think it is within --

7 MR. SAVINO: 48 hours.

8 COMMISSIONER ARAUJO: -- three days of
9 [unintelligible] [00:14:03], right?

10 MR. RICHMAN: No, no, commissioner, they
11 have three days -- within the original filing of
12 the original cover sheet, they have then three
13 business days from the date of the notice to
14 file. We do not present it to the commissioners'
15 cover sheet review committee until that three
16 full day cure, business day cure period is done,
17 which in this case it happened, and now we're
18 presenting it to you now. There's no effect other
19 than the date on which he would actually be
20 removed from the ballot would then be the date of
21 next Tuesday as opposed to today.

22 MR. SAVINO: I think Commissioner Araujo
23 might have been referring to the rule that it has
24 to be referred in 48 hours when it first comes

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2 in.

3 MR. RICHMAN: Two business days, yes.

4 MR. SAVINO: But that doesn't apply at
5 this stage.

6 MR. RICHMAN: The original filing is the
7 two business day rule.

8 COMMISSIONER ARAUJO: Okay.

9 MR. RICHMAN: So, again, commissioners,
10 if that's, again, you have a whole issue relating
11 to the petition itself with the candidate given
12 notice on Tuesday, you may want to address the
13 amended cover sheet with him as well. We'll add
14 that to the -- when we bring, when we present the
15 original prima facie matter.

16 MR. SAVINO: Or if it's moot, they might
17 not have to rule on it.

18 MR. RICHMAN: And saying that you were
19 deferring it. And I think Mr. Savino is right,
20 you may want to hear the petition matter first.
21 That may moot it out. If the petition itself is
22 declared invalid, then the cover sheet is
23 meaningless.

24 COMMISSIONER ARAUJO: Right. And if it's

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2 not, then it gives the full board an opportunity
3 to hear --

4 MR. RICHMAN: The argument.

5 MR. SAVINO: Right.

6 COMMISSIONER ARAUJO: -- on this
7 particular issue, especially since there's a
8 split in the Appellate Division.

9 MR. SAVINO: Sure.

10 COMMISSIONER ARAUJO: Commissioner
11 Zaccone, you okay with that?

12 COMMISSIONER ZACCONE: Yeah, I was
13 saying I think that's the most prudent approach.

14 COMMISSIONER ARAUJO: Okay.

15 MR. RICHMAN: So we're going to just
16 note that this is deferred, referred to the full
17 board for August 18th.

18 COMMISSIONER ZACCONE: Thank you.

19 MR. RICHMAN: Okay. Thank you,
20 commissioners. Commissioners, the next is the
21 certificate regarding the change of name, in this
22 case, the providing of an emblem for candidate
23 Marietta A. Canning, candidate for the New York
24 State Assembly in the 64th District. In her

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2 original petition, in the place for the emblem,
3 she just wrote baby in womb. That's not exactly -
4 - that doesn't meet an emblem's definition in the
5 statute. She was given the appropriate notice.
6 She filed the certificate and she now provided an
7 emblem, which is set forth on the certificate.
8 It's our recommendation that this be accepted as
9 a proper, a proper symbol to be included in
10 accordance with the election law.

11 COMMISSIONER ARAUJO: I agree.

12 COMMISSIONER ZACCONE: I agree.

13 MR. RICHMAN: Okay. So that's accepted.

14 And commissioners, the last item to present to
15 you was a change, a name of the independent body
16 for candidate for Brandon P. Stratford for member
17 of the Assembly, uh, for State Senate in the 23rd
18 Senate District. His initial name of the
19 independent body Hope is on the Ballot exceeded
20 the 15 character limitation in 7-116 of the
21 Election Law. We gave notice to the candidate and
22 they timely filed a certificate to change the
23 name to Brandon 2020 exclamation point, which is
24 less than the 15 characters and does not create a

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2 conflict with any other independent body or name
3 of any of the eight parties with ballot status.
4 So we recommend that you accept the certificate
5 as a valid correction.

6 COMMISSIONER ARAUJO: Alright. I accept
7 it. I accept the recommendation.

8 COMMISSIONER ZACCONE: I accept the
9 [unintelligible] [00:17:49].

10 MR. RICHMAN: Commissioners, that
11 completes the agenda for the cover sheet review
12 committee for today, and for this season.
13 Everything else will now be at the full set of
14 hearings on Tuesday.

15 COMMISSIONER ARAUJO: Alright. Thank you
16 very much.

17 COMMISSIONER ZACCONE: Thank you,
18 gentlemen.

19 MR. RICHMAN: We'd recommend a motion to
20 adjourn.

21 COMMISSIONER ARAUJO: Move to adjourn.
22 All in favor.

23 COMMISSIONER ZACCONE: Alright.

24 COMMISSIONER ARAUJO: The motion

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carries.

MR. RICHMAN: Hearing no objections,
have a good weekend everyone.

(The meeting concluded.)

CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of the Board of Elections in The City of New York on August 14, 2020 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: March 26, 2021

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