

BOARD OF ELECTIONS
IN THE CITY OF NEW YORK

COMMISSIONERS' MEETING

42 Broadway - 6th floor
Commissioners' Hearing Room

New York, NY 10004

January 7, 2021

10:00 a.m. - 10:22 a.m.

January 7, 2021

PRESENT:

Commissioner Jose Araujo

Commissioner Michael Michel

Rafael Savino, Deputy General Counsel

Unidentified Male, CRU

Matthew Graves, CRU

ALSO PRESENT:

Mr. Mayo, Esquire

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2 (The meeting commenced at 10:11 a.m.)

3 MR. SAVINO: We are live commissioners.

4 COMMISSIONER JOSE ARAUJO: My name is
5 Jose Araujo and I'm the Democratic commissioner
6 from Queens County. I'm joined by Michael Michel,
7 Republican commissioner from Queen's County. I
8 call this hearing by the Commissioners of the
9 Board of Elections of the City of New York to
10 order. Once again, we do meet today under some of
11 the most extraordinary circumstances in our
12 memory. The COVID-19 virus has changed the way we
13 live and work in the city of New York. That is
14 why I and my colleagues appear today in
15 [unintelligible] [00:07:19] via video conference,
16 as will most of the candidates, objectors, or
17 their representatives.

18 The commissioners and the staff of the
19 Board of Elections are most mindful of our
20 responsibilities to ensure that a fair, honest
21 and open and lawful electoral process continues
22 in our city. Today's hearings will
23 [unintelligible] [00:07:40] matters and
24 specifications of objections related to the

1 January 7, 2021

2 February 22, 2021 special election for the public
3 office of council member in the 31st District of
4 the City of New York.

5 These hearings will be conducted in
6 accordance with the provisions of the New York
7 State Election Law, the Board's independent
8 nominating petition rules adopted on December 18,
9 2018, emergency procedures which modified the
10 rules adopted on April 14, 2020 and the executive
11 orders issued by the governor of the State of New
12 York which modified provisions of the Open
13 Meeting Law as well as the New York State
14 Election Law.

15 The most significant modification for
16 this hearing is the way it's being conducted,
17 largely [unintelligible] [00:08:22] by using
18 Webex. Each of the commissioners are
19 participating through that system, along with our
20 key staff members, the candidates, objectors, and
21 their representatives have also registered to
22 appear at the hearing.

23 A schedule of today's hearings was
24 posted on the Board's website and posted on the

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2 Board's offices. In addition, each of the
3 calendars listing the matters the commissioners
4 will consider were posted on the Board's hearing
5 room. Under the Board's emergency procedures, the
6 candidate, objector or the designated
7 representative had to file a notice of appearance
8 for these hearings by 3:00 p.m. on Wednesday,
9 January 6, 2021. That information was used to
10 send directions on how to participate in this
11 Webex video conference meeting.

12 In addition, persons who wish to appear
13 in person for this hearing at the Board's
14 executive office were required to communicate
15 that request to the Board no later than 3:00 p.m.
16 on Wednesday, January 6, 2020. Please note that
17 these emergency procedures were prominently
18 posted on the Board's website and referenced in
19 many of the notices sent out by the Board in
20 communicating with each candidate and objector. I
21 will ask the Board's counsel, deputy counsel to
22 coordinate the activities today that uses this
23 technology. This will ensure that our hearings
24 are in conducted in that fashion. And I turn it

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2 over to Rafael Savino.

3 MR. RAFAEL SAVINO: Thank you,
4 Commissioner Araujo. I will ask that all
5 participants in this proceeding put their phones
6 on silent and their microphones on silent until
7 called upon to speak. This will help us all hear
8 what each person is saying. I will be conducting,
9 well, it's actually unnecessary in terms of a
10 roll of the commissioners, but as you stated, we
11 have Commissioner Michel and Commissioner Araujo
12 participating in this hearing.

13 A reminder, I want to remind all
14 persons, everybody appearing at this hearing that
15 they must have filed a notice of appearance by
16 yesterday, Wednesday, January 6, 2021, in
17 accordance with the adopted emergency procedures.
18 I want to remind all that the commissioners,
19 board staff, attorneys, candidates and objectors,
20 that only one person should speak at any time, so
21 the audio visual system can accurately record the
22 proceedings. In addition, if you are not
23 speaking, please ensure that your microphone is
24 on mute.

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2 I also want to advise all present that
3 the Board is required by law to record how each
4 commissioner votes on each matter. In the event
5 that the commissioners are not unanimous in their
6 decision on a given a matter, a roll call vote
7 will be performed.

8 At this time, I will call the calendar.
9 Today's hearings relate to the CRU prima facie
10 matters and specifications of objections
11 regarding the 31st Council District for the
12 February 23, 2021 special election for member of
13 the City Council. Are there any appearances
14 today? No, well, there's no personal appearance.

15 UNIDENTIFIED MALE: Well, there is a
16 personal appearance, but it is for the
17 specifications.

18 MR. SAVINO: Okay. Alright. So at this
19 point, I will turn it over to CRU with respect to
20 the prima facie matters on their calendar.

21 UNIDENTIFIED MALE: Good morning,
22 commissioners. We have three items on our prima
23 facie calendar. Each of them are dealing with
24 insufficient signatures. I will read the names of

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2 the candidates and their independent body.
3 Monique Charlton, for the Democratic Party,
4 Bradley Jared Berfas for the Brad's Vision and
5 Kevin M. Carter for Which Way is Up. As I said
6 before, each of these has an insufficient
7 signature defect and with the exception, the
8 first one, for Monique Charlton, has an
9 additional defect, when she has stated a
10 designating party on her petition.

11 MR. SAVINO: And Mayo is here for this
12 purpose.

13 UNIDENTIFIED MALE: Is here for the
14 first one?

15 MR. SAVINO: The second one.

16 UNIDENTIFIED MALE: Okay, got it. I'm
17 sorry, commissioner, I didn't hear that.

18 COMMISSIONER ARAUJO: Are there any
19 appearances by anyone of these candidates or
20 their objectors?

21 MR. SAVINO: My understanding is Brad's
22 Vision, Mr. Mayo, I assume is in the waiting room
23 and I believe wants to be heard on that matter.

24 COMMISSIONER ARAUJO: Okay. So let's --

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2 I [unintelligible] [00:13:09] the report as it
3 relates to Monique Charton and Kevin M. Carter.
4 Is there a second?

5 COMMISSIONER MICHEL: Second.

6 COMMISSIONER ARAUJO: Alright. The
7 motion carries. Those two individuals are
8 [unintelligible] [00:13:22]. Now we can deal with
9 Berfas's.

10 MR. SAVINO: And those two candidates
11 will be off the ballot. Alright. Now, we're just
12 waiting for Mr. Mayo.

13 UNIDENTIFIED MALE 2: Mr. Mayo has
14 entered the room.

15 MR. SAVINO: Alright. Mr. Mayo, we were
16 just looking at CRU's prima facie calendar for
17 the independent body, Brad's Vision.

18 MR. MAYO: Yes.

19 MR. SAVINO: What would you like to say?

20 MR. MAYO: Yes, I'd like to say
21 basically the prima facie ruling on Brad Jared
22 Berfas, the prima facie is invalid due to two
23 reasons. One, I believe for all prima facie
24 matters need to be obviously approved by the

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2 commissioners and also videotaped so the public
3 would know. No such action has happened. That's
4 one. Two, according to prima facie matter E-1, it
5 states that the rulings all made should be sent
6 out to the candidates and given time for them to
7 hear at the commencement of the Board's hearings.
8 The letter that was received by Mr. Berfas, dated
9 December 28th said the time is supposed to start
10 at 1:30, so thus the letter wasn't served.
11 Therefore the ruling of prima facie should be
12 invalid in this case.

13 MR. SAVINO: I believe CRU has a copy of
14 the letter which you referenced. Also, that is
15 the purpose of this hearing with respect to your
16 other point, for the commissioners to adopt or
17 not adopt the prima facie findings and later the
18 clerks' reports. And I think CRU again is taking
19 a look at the letter.

20 MR. MATTHEW GRAVES: CRU has a letter
21 that clearly states January 7, 2021, Thursday at
22 10:00 a.m., dated December 29th.

23 MR. MAYO: Oh, December 29th. In that
24 case, I wasn't aware of that letter. I was only

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2 aware of the December 28th letter.

3 MR. SAVINO: Is there a motion with
4 respect to Mr. Mayo's matter?

5 COMMISSIONER ARAUJO: This is
6 Commissioner Araujo. I would move that we accept
7 the prima facie report as recommended. Is there a
8 second?

9 COMMISSIONER MICHEL: Second.

10 COMMISSIONER ARAUJO: The motion
11 carries.

12 MR. SAVINO: The cand- --

13 COMMISSIONER ARAUJO: [unintelligible]
14 [00:15:56] just [unintelligible] [00:15:58] can
15 we just have, when [unintelligible] [00:15:59]
16 else is present identify themselves. I know Mr.
17 Graves was just providing some information, but I
18 don't think he identified himself for the record.

19 MR. GRAVES: Oh, I'm sorry. I'm Matthew
20 Graves, from the Candidate Records Unit.

21 COMMISSIONER ARAUJO: And I also think
22 the factor that [unintelligible] [00:16:14]
23 adopted as a result of [unintelligible]
24 [00:16:18] signatures [unintelligible] [00:16:19]

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2 the borough committee county to conduct
3 [unintelligible] [00:16:23] some confusion, these
4 hearings, just for the record.

5 MR. SAVINO: That is correct. That was
6 discussed at the last public meeting. That
7 concludes the hearing on the prima facie reports
8 from CRU:

9 UNIDENTIFIED MALE: Yeah, that is
10 correct, yeah.

11 MR. SAVINO: Thank you, gentlemen. I
12 will now read the clerks' reports. In the matter
13 of the objections by Vanessa Simon to the
14 petition of Bradley Jared Berfas, again, member
15 of City Council, 31st District the number of
16 signatures submitted for the candidate was 307,
17 the total number of signatures required is 450.
18 Appearances?

19 UNIDENTIFIED MALE 2: Mayo appears, but
20 he's already off the prima facie.

21 MR. SAVINO: Right, okay. This
22 candidate, I'm reminded is already off on prima
23 facie. You said Mr. Mayo was?

24 UNIDENTIFIED MALE 2: He's here.

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2 MR. SAVINO: Oh, he's still in the --

3 UNIDENTIFIED MALE: It looked like he
4 hung up, but there he is.

5 MR. SAVINO: Hello, Mr. Mayo. And who
6 are you -- yeah, you're appearing for the
7 candidate?

8 MR. MAYO: Yes, I'm appearing for the
9 candidate.

10 MR. SAVINO: Okay.

11 COMMISSIONER ARAUJO: Mr. Mayo, now the,
12 I think it reads that he submitted an
13 insufficient number of signatures, at present
14 you're off on the prima facie report. Is there
15 anymore to add?

16 MR. MAYO: Yes, I do. I wish to add
17 according to rule H12, proof of service, the
18 candidate is supposed to include the borough and
19 general objection specification number on the
20 proof of service. She did not. Therefore, this
21 specification of objections was filed improperly
22 and should be not considered.

23 MR. GRAVES: Berfas.

24 COMMISSIONER ARAUJO: Do you have the

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2 proof of service on the specs?

3 MR. SAVINO: Yes, they are being looked
4 at, at this point. The objection number is
5 actually on the back of the proof of service. And
6 that is proper, that's acceptable.

7 COMMISSIONER ARAUJO: So
8 [unintelligible] [00:18:32] with respect to your
9 argument, this evidence that the [unintelligible]
10 [00:18:37] on it, [unintelligible] [00:18:39]
11 should be dismissed this clerks' report as moot,
12 that it was dealt with in prima facie.

13 COMMISSIONER MICHEL: Second.

14 COMMISSIONER ARAUJO: Hearing a second,
15 the motion carries.

16 MR. SAVINO: Thank you, commissioners,
17 the candidate will still not appear on the
18 ballot.

19 MR. MAYO: Thank you.

20 MR. SAVINO: Second clerks' report is in
21 the matter of objections by Ann C. Bornstein to
22 the petition of Joseph F. Casper, member of the
23 City Council, 31st District. I believe he was off
24 -- in any event. In any event, the number of

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2 signatures submitted for the candidate was 637,
3 total invalid signatures was 437, so the total
4 valid signatures is 200, 450 were required.

5 COMMISSIONER ARAUJO: Are there any
6 appearances?

7 MR. SAVINO: Appearances?

8 MR. MAYO: Yes.

9 MR. SAVINO: Oh, Mr. Mayo is appearing
10 on this as well?

11 MR. MAYO: Yes.

12 MR. SAVINO: Okay.

13 MR. MAYO: So, I move the clerks'
14 report, but a general question. In a case of
15 substitution, which is what happened here, I also
16 filed a copy of specification against the
17 substituted candidate, Vanessa Simon. I assume
18 that was a, this is not necessary? Or is it
19 necessary?

20 MR. SAVINO: Is this a proof of service
21 issue?

22 COMMISSIONER MICHEL: No, substitution.

23 COMMISSIONER ARAUJO: Mr. Mayo can you
24 repeat the question for Mr. Savino.

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2 MR. MAYO: No, no, no. My question is
3 simply on procedure, since Vanessa Simon is the
4 substituted candidate, I filed two sets of
5 specifications, one against the candidate that
6 declined, Joseph Casper, and the other one
7 against a substituted candidate, Vanessa Simon. I
8 was just wondering the Board's ruling and
9 procedures in the case of declination of
10 substitutes, must a specification to be filed
11 against the declined candidate and the
12 substituted candidate, or just one specification
13 should be sufficient?

14 MR. SAVINO: The petition itself does
15 not have a sufficient amount of signatures, and
16 therefore, the petition is invalid and you cannot
17 substitute a different candidate on an invalid
18 petition, assuming that is the way the
19 commissioners rule on the clerks' report.

20 MR. MAYO: Thank you very much, Rafael,
21 for the clarification.

22 MR. SAVINO: You're very welcome.

23 COMMISSIONER ARAUJO: [unintelligible]
24 [00:21:10] report.

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2 COMMISSIONER MICHEL: Second.

3 COMMISSIONER ARAUJO: A motion and a
4 second [unintelligible] [00:21:15] court, so the
5 motion carries.

6 MR. MAYO: Thank you very much,
7 commissioners.

8 MR. SAVINO: The candidate will not
9 appear on the ballot.

10 MR. MAYO: Okay. Thank you very much for
11 your time. I think I'm done for the day.

12 MR. SAVINO: That's all, everything we
13 have, right? Yeah.

14 UNIDENTIFIED MALE: That's it.

15 MR. SAVINO: That appears to be all that
16 we have to present to you commissioners.

17 COMMISSIONER ARAUJO: With no other
18 matters before us at this time, I move we
19 [unintelligible] [00:21:37]. Second?

20 COMMISSIONER MICHEL: Second.

21 COMMISSIONER ARAUJO: The motion
22 [unintelligible] [00:21:39] by Commissioner
23 Michel, the motion has been adopted, and this
24 meeting is adjourned. I want to thank the staff

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in this county by having once again
[unintelligible] [00:21:49] and provided to us
with more the [unintelligible] [00:21:52]
materials and work that's needed through this
pandemic, they are appreciated and I want to
thank you on behalf of myself and the
commissioners. Thank you.

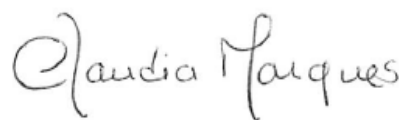
MR. SAVINO: Thank you, commissioners.

(The meeting concluded at 10:22 a.m.)

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of the Board of Elections in The City of New York on January 7, 2021 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: June 14, 2021

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