

BOARD OF ELECTIONS
IN THE CITY OF NEW YORK

COMMISSIONERS' MEETING

42 Broadway - 6th floor
Commissioners' Hearing Room

New York, NY 10004

June 29, 2021

1:36 p.m. - 1:55 p.m.

June 29, 2021

PRESENT:

President Frederic Umane

Secretary Miguelina Camilo

Commissioner Jose Araujo

Commissioner Michael Michel

Dawn Sandow, Deputy Executive Director

Hemalee Patel, General Counsel

Raphael Savino, Deputy General Counsel

Tom Sattie, CRU

ALSO PRESENT:

Bernard Alter, Esq.

John Champoli, Esq.

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2 (The meeting commenced at 1:36 p.m.)

3 MS. DAWN SANDOW: Commissioner Umame?

4 PRESIDENT FREDERIC UMANE: Hello, my
5 name is Fred Umame. I'm the president of the
6 Board of Elections for the calendar year 2021,
7 and the Republican Commissioner from New York
8 County. I call this hearing by the commissioners
9 of the Board of Elections of the city of New York
10 to order. Today's hearings concern the
11 specification of objection Queens number seven.
12 As you may recall, at the hearings on June 15,
13 2021, this matter was placed on second call for
14 today. The objection is related to the
15 independent nominating petitions filed for the
16 November 2, 2021 general election on behalf of
17 Vickie Paladino a candidate for City Council in
18 the 19th Council District and the review of three
19 attempted cover sheet cures following notices of
20 non-compliance will also be heard.

21 The hearing will be conducted in
22 accordance with all applicable rules, provisions
23 of law and the board's independent petition
24 rules. Please note that the emergency procedures

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2 for all hearings was posted on the board's
3 website as well, and referenced in many of the
4 notices send out by the board and communicated to
5 each candidate and objector. All those
6 participating by WebEx video were sent directions
7 on how to participate in this WebEx video
8 conference meeting. I will ask that all
9 participants put their microphones on silent
10 until called upon to speak and then turn off the
11 live stream of the hearing. This will help us all
12 hear what each person is saying and will avoid
13 any blowback on the tape and on the
14 [unintelligible] [00:08:12]. So I'm asking for a
15 roll call of the commissioners consisting of the
16 committee. Commissioner Araujo?

17 COMMISSIONER JOSE ARAUJO: Present, good
18 afternoon.

19 PRESIDENT UMANE: Commissioner Camilo?

20 SECRETARY MIGUELINA CAMILO: Present.

21 PRESIDENT UMANE: And Commissioner
22 Michel?

23 COMMISSIONER MICHAEL MICHEL: Present.

24 PRESIDENT UMANE: Okay. That constitutes

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2 the executive committee and the two Queens
3 commissioners. I want to remind everyone that
4 only one person should speak at a time so that
5 the audio/video system can accurately record the
6 proceedings. If you are not speaking, please
7 ensure that your microphone is on mute and turn
8 off the live stream.

9 I also want to advise all present that
10 the board is required by law how each
11 commissioner votes. In the event that the
12 commissioner subcommittee is not unanimous in
13 their determination, I will ask that our counsel
14 conduct a roll call vote for the record. I now
15 call upon deputy general counsel Raphael Savino
16 to call the calendar for today's hearings.

17 MR. RAPHAEL SAVINO: Good afternoon,
18 commissioners. As you heard, today's first matter
19 relates to the specification of objections QN-7
20 regarding independent nominating petitions filed
21 for the candidate for City Council in 19th
22 District, Vickie Paladino. Are there any
23 appearances?

24 MR. SATTIE: Commissioners, there are

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2 appearances for both the objector and the
3 candidate, and Mr. Alter and Mr. Champoli have
4 been let into the room.

5 MR. BERNARD ALTER: Okay.

6 PRESIDENT UMANE: Okay, could you
7 identify yourselves for the record, and the side
8 that you're representing? First, Mr. Champoli.

9 MR. JOHN CHAMPOLI: John Champoli,
10 Messina Perillo and Hill for the objector.

11 MR. ALTER: Bernard Alter for the
12 candidate, Vickie Paladino, Alter and Barbaro.

13 PRESIDENT UMANE: Okay.

14 MR. SAVINO: Is there anything the
15 representative for the candidate would like to
16 add to their prior arguments made on June 15,
17 2021?

18 MR. ALTER: No, except I did bring to
19 the attention of the board the part B, which is
20 the second argument, which is the signatures that
21 were discounted by the clerks' report because
22 they were taken by SW, they took signatures for
23 Paladino on the Republican line. The statute was
24 pretty clear as far as I'm concerned that she

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2 could take, she could take signatures on the
3 Republican line and the [unintelligible]
4 [00:10:49] independent line because it's the same
5 candidate. The statute says additional and
6 another candidate. That's the second part of the
7 argument. The other stuff is very -- I haven't
8 got anything further to add to my letter that I
9 submitted to the board back on I believe it was
10 what, the 30th, whatever date it was, what's the
11 date of the letter, hold on I'll tell you in a
12 second. Hold on, I've got it right in front of me
13 here. Hold on.

14 PRESIDENT UMANE: We have your letter
15 and we have the cases next to it.

16 MR. ALTER: Okay.

17 PRESIDENT UMANE: It was provided to us,
18 just so you know.

19 MR. ALTER: I've got nothing further to
20 add, Mr. Umane. That's it.

21 PRESIDENT UMANE: Okay, thank you.

22 MR. SAVINO: Thank you, Mr. Alter.

23 MR. ALTER: [unintelligible] [00:11:22]
24 to what?

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2 MR. SAVINO: I said thank you. Is there
3 anything the objector or the representative would
4 like to add to the prior arguments made on June
5 15, 2021?

6 MR. CHAMPOLI: Well, just very briefly
7 the cases that have been cited by Mr. Alter are
8 not applicable to the case here. In fact, the
9 fundamental argument is that you must have the
10 election referred to in the certificate so the
11 board knows what to apply the certificate to.
12 There is no first date in the statute for filing
13 a certificate of acceptance. So theoretically,
14 this certificate will jump back to life two years
15 from now because it doesn't specify what election
16 it applies to. You can accept that if it's a two-
17 year term, every two years, if it's a four-year
18 term, every four years, you can accept a line, an
19 independent line with the same name. And as we
20 know, most people use the same name for
21 independent lines kind of repeatedly.

22 With regard to the subscribing witness,
23 I don't think the board will reach that because
24 of the defect in the certificate, however, the

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2 chapter that is involved in the Fourth Department
3 case sought to codify a court of appeals case,
4 McGuire v. Gamache. In McGuire v. Gamache, the
5 question was the qualifications of the witness
6 but not living in the political subdivision. That
7 clearly, the court of appeals has spoken to, that
8 is permissible.

9 But your, if you look at the case Brock
10 v. Sams [phonetic], which was decided in federal
11 district court by Judge Block, this board was a
12 party to that action and in that case, the court
13 expounded that the right to sign a petition was
14 an extension of your right to vote. So therefore,
15 if you could sign for one candidate, you got to
16 sign witness. If you could sign for three
17 candidates if it was an election at large, you
18 could sign for any three.

19 This, the, the position posited by the
20 candidate here is, throws out that rule, that
21 your right to sign a petition is an extension of
22 your right to vote. And, if in fact the
23 legislature was codifying McGuire v. Gamache,
24 that position is dead wrong. And that's what the

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2 [unintelligible] [00:14:20] says.

3 MR. SAVINO: With that, commissioners, I
4 will present the findings of the legal department
5 in the Office of the Board of Elections. The
6 position of the legal department has not changed.
7 And we believe the candidate should be removed
8 from the ballot.

9 With respect to the cases cited by Mr.
10 Alter in that regard, they are distinguishable to
11 the matter at hand. One was mayor, which talked
12 about the term of office. It said that putting
13 extra information on the certification of
14 authorization would not make it invalid. It's not
15 required to put the term of office, but that's
16 what they did in that case, again, extra
17 information in that case wouldn't make it
18 invalid.

19 In the case of Finn v. Sherwood,
20 Sherwood filed a certificate of acceptance
21 containing his complete correct name, his
22 address, the correct political party and the
23 correct office, also duly acknowledged by a
24 notary. The certificate made a reference to the

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2 general election rather than the primary.

3 However, it does matter if you write the primary
4 or general first of all, and also the certificate
5 of authorization in that case must have had the
6 date on it, because the decision is completely
7 silent in that regard. Moreover, one can easily
8 discern the type of election it's for when you
9 look and you see it's a designating petition for
10 an opportunity to ballot petition, we all know
11 that's for a primary. An independent nominating
12 petitions are for a general election.

13 Monaco, another case that was cited by
14 Mr. Alter, discussed that the certificate of
15 authorization, the title of the office did not
16 match the petition identically. One way it was
17 written Suffolk County legislator in the 5th
18 District and the other way it was written county
19 legislator, 5th Legislative District. Again, that
20 has nothing to do with whether or not the date of
21 the election is on the certificate of acceptance.

22 There's a couple other cases cited by
23 Mr. Alter, but they talk about substantial
24 compliance with respect to cover sheets and

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2 petitions, and have no relevance here.

3 I will note that there is a case of
4 Konklin. It's 36 years old, which does talk about
5 the date of the primary election, which was not
6 cited by Mr. Alter. But again, that case is 36
7 years old. And no doubt, predates the sample form
8 prescribed by the New York State Board of
9 Elections, as well as the sample form provided in
10 the rules by the New York City Board of
11 Elections. Both samples specifically call for the
12 date of the election to be entered.

13 A lot of things have changed in 36
14 years, as I might have said. As you're all aware,
15 for example, early voting, cures to absentee
16 ballots, ranked-choice voting. More importantly
17 however, I would note, as I believe pointed out
18 by one of the commissioners, and again by,
19 actually it was at the last hearing, two weeks
20 ago, that someone could file an authorization and
21 acceptance well before a particular election.

22 Again, in spite of the Konklin case, the
23 date of the election should nonetheless be
24 considered an essential part of the certificate

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2 of acceptance and a lack thereof should
3 invalidate the candidacy. Again, as we are all
4 aware, the board recently had to conduct
5 elections, I think it was five or six elections
6 in about seven months or less than seven months,
7 the general, December 22nd, February 2, February
8 23rd, and two more in the Bronx in March. You
9 know, under those circumstances, clearly
10 something missing the date would certainly cause
11 confusion.

12 In addition, last year, we had an
13 election scheduled for borough president in
14 Queens. That election was for the remaining term
15 of office. We then had a primary and that was
16 canceled because of COVID, we acknowledge that.
17 But this is not an uncommon situation. We then
18 had a primary for the exact same office shortly
19 thereafter scheduled, with, you know, some of the
20 same candidates, again, the same public office. I
21 can't imagine how a certificate of acceptance in
22 those situations wouldn't be confusing if it
23 didn't have the date.

24 In the instant case, it's worth noting

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2 that the primary is only for the remaining two
3 years, kind of similar to that other situation. I
4 mean I remember a case, or I should say a time
5 when a certificate, an authorization or a
6 certificate of acceptance was filed about eight
7 months before an election, maybe even further
8 back, and certainly caused confusion when I
9 received it.

10 Also the Reform Party one year did that
11 as well. Well in advance of election, they filed
12 an authorization and a certificate of acceptance,
13 I think trying to make it harder for objectors to
14 address that. So there certainly is no date by
15 which something like that must be filed.

16 And therefore, and in light of the
17 above, we find that the certificate of acceptance
18 in this case, which does not contain the date of
19 the election, to be invalid and that the
20 candidate should be removed from the ballot.

21 MR. ALTER: I've got only one comment if
22 I may be heard on that, Mr. Umane.

23 PRESIDENT UMANE: Go ahead, Mr. Alter,
24 go ahead.

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2 MR. ALTER: There is only one general
3 election. That is it. And there's no confusion as
4 to what the paper says. It says general election
5 without the date of the general election. There
6 is only one general election. Therefore, I think
7 counsel's argument about confusion is totally
8 without merit.

9 PRESIDENT UMANE: Okay, thank you, sir.
10 Does anybody want to make a motion?

11 COMMISSIONER MICHEL: I make a motion to
12 accept the legal department.

13 COMMISSIONER ARAUJO: Second.

14 PRESIDENT UMANE: Okay. All in favor?

15 MULTIPLE: Aye.

16 PRESIDENT UMANE: All opposed? Okay.
17 It's unanimous. I guess the candidate is off the
18 ballot.

19 MR. ALTER: Okay. That's it?

20 PRESIDENT UMANE: Mr. Savino -- yeah,
21 thank you, Mr. Alter and Mr. Champoli.

22 MR. CHAMPOLI: Thank you, commissioners.

23 MR. SAVINO: Commissioners, I will now
24 present the three cover sheets that were

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2 submitted to the board in response to a notice of
3 non-compliance. The first is by Matthew Morgan, a
4 Libertarian Candidate for City Council, District
5 39. As you may recall, the cover sheet was not
6 signed. And that was deemed to be a defect
7 consistently by the commissioners. The cure, as
8 you can very well see, is in fact signed at the
9 bottom. So our recommendation on this -- well,
10 actually, I'll do them all three together.

11 The second is David B. Casavis, and he's
12 running for Libertarian candidate for City
13 Council, District 4. And then there's also a
14 cover sheet, amended cover sheet, for Stacey
15 Prussman, Libertarian candidate for mayor and
16 David Balkind, Libertarian candidate for public
17 advocate. All of them had the same issue, and all
18 of them in our opinion properly cured. And as you
19 can see, on all three cover sheets, at the
20 bottom, there is in fact, a signature. So it's
21 our recommendation that they would be deemed a
22 valid cure.

23 PRESIDENT UMANE: Is there a motion to
24 accept it? I'll move that we accept them all

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2 three as valid cures as they've now been properly

3 --

4 COMMISSIONER ARAUJO: Second.

5 PRESIDENT UMANE: All in favor?

6 MULTIPLE: Aye.

7 PRESIDENT UMANE: All opposed? All
8 abstentions? So that's also unanimous. All three
9 I guess are now candidates.

10 MR. SAVINO: And will appear on the
11 ballot.

12 COMMISSIONER ARAUJO: I apologize. For
13 the record, that's four, it's four candidates.

14 PRESIDENT UMANE: Four.

15 MR. SAVINO: I'm sorry, four candidates,
16 three cover sheets. I apologize.

17 PRESIDENT UMANE: Right.

18 COMMISSIONER ARAUJO: Do you need a
19 motion to authorize to use our initials at the
20 general office or --

21 MR. SAVINO: I can certainly do that
22 instead of sending them back and forth, scanned
23 copies and trying to, you know, get everybody's
24 initials, so I'd be happy to do that,

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2 commissioner. Thank you, provided I have
3 authorization from all commissioners.

4 COMMISSIONER MICHEL: Yes.

5 PRESIDENT UMANE: So, I think you have
6 that authorization from all of us.

7 MR. SAVINO: Thank you.

8 PRESIDENT UMANE: Okay. There are no
9 other matters to come before us at this time, so
10 I move that we adjourn the hearing. Is there a
11 second?

12 COMMISSIONER ARAUJO: Second.

13 COMMISSIONER MICHEL: Second.

14 PRESIDENT UMANE: Okay. All in favor?

15 MULTIPLE: Aye.

16 PRESIDENT UMANE: All opposed? All
17 abstentions? I believe our next regular meeting
18 will be next Tuesday, but there may be lots of
19 commissioners on vacation. So those in the
20 public, we're tentatively scheduling the meeting
21 for next Tuesday at 1:30 in the same way as we
22 always do, but please keep an eye out on our
23 website in the event that we decide to adjourn or
24 postpone that meeting.

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MR. SAVINO: Again, commissioners, thank you for your time, and with there being no further business and there's also been a motion to adjourn, we will see you at the next public meeting.

PRESIDENT UMANE: Okay. Thank you. Have a good week everybody. Happy 4th of July.

SECRETARY CAMILO: Happy 4th.

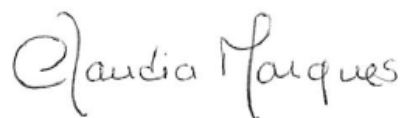
COMMISSIONER ARAUJO: And to you as well.

(The meeting concluded at 1:55 p.m.)

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of the Board of Elections in The City of New York on June 29, 2021 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: December 17, 2021

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