

HEARINGS ON DESIGNATING PETITION MATTERS FOR THE
SEPTEMBER 13, 2016 PRIMARY ELECTIONS, AND
HEARINGS ON INDEPENDENT NOMINATING PETITION MATTERS
FOR THE NOVEMBER 8, 2016 GENERAL ELECTION, AND
THE MEETING OF THE COMMISSIONERS
IN THE CITY OF NEW YORK
HELD ON TUESDAY, AUGUST 16, 2016
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR, COMMISSIONERS' HEARING ROOM
NEW YORK, NY 10004

PRESENT: President Maria R. Guastella
 Secretary Frederic M. Umame

Commissioners Jose Araujo, John Flateau, Lisa Grey, Michael Michel,
Michael Rendino, Alan Schulkin, Simon Shamoun, Rosanna Vargas

Michael J. Ryan, Executive Director
Dawn Sandow, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
Troy Johnson, Coordinator, Candidate Records Unit
Rayvon Weaver, Project Coordinator, Candidate Records Unit
John Naudus, Manager, Electronic Voting Systems
Thomas Sattie, Associate Staff Analyst, Ballot Coordinator
Kenneth Moltner, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Julia Acampora
 Scott Fenstermaker
 Chris Archer, for Green Party of New York County
 Katharine Loving, NYC Campaign Finance Bd.
 Monica Bartley, CIDNY
 Anna Maria Thomas
 Kate Doran, LWVNYC
 Amanda Melitto, CFB
 Roy Halleet
 Alan Flacks, Member of NY County Democratic Committee

President Guastella called the meeting to order at 1:35 P.M.

President Guastella announced that the Board will continue Hearings on Designating Petitions for State and Local Offices as well as Party Positions to be contested in the September 13, 2016 Primary Election, as well as matters relating to Independent Nominating Petitions for Federal Office for the November General Election.

President Guastella stated the procedures to be followed during the Hearings and called upon Mr. Richman to call the Calendar for the Hearings.

Mr. Richman called the Calendar for the continuation of Hearings on Designating Petition matters. The Calendar was posted for the public as required.

Mr. Richman called the Legal Prima Facie Report for Bronx County. There were no appearances. The Commissioners' determinations are reflected on the Prima Facie Report on file at the Board.

On behalf of Mr. Johnson, Mr. Richman presented the Candidate Records Unit's Prima Facie Issues memorandum. Copies of the memorandum were distributed. At the August 3, 2016 Commissioners' Hearings, various candidates of the Green Party State Committee for New York County and Kings County were inadvertently removed for an alleged over designation. This action was taken as a result of miscommunication between the City Board and State Board, and the transmission of an updated Party Call. Mr. Johnson recommended that these candidates be restored to the ballot. In addition, Erik Martin Dilan, a candidate for Member of the Assembly in the 54th A.D. on Independence Party was removed Prima Facie for failing to file a Certificate of Acceptance. He in fact did file a Certificate of Acceptance, and Mr. Johnson recommended restoring him to the ballot. Based on further review of the documents, President Guastella moved for the Commissioners to reconsider the prior Prima Facie determinations. Secretary Umame seconded the motion, which was unanimously adopted. President Guastella moved to restore these candidates back to the ballot. Secretary Umame seconded the motion, which was unanimously adopted.

Mr. Richman called an Independent Nominating Petition matter for Federal Office for the November 8, 2016 General Election. Copies of the

memorandum were distributed. On August 2, 2016, Independent Nominating Petitions nominating Scott Fenstermaker as a candidate for Member of Congress for the 13th Congressional District were filed with the Board. Said petitions set forth the name of the Independent Body as "Transparent Government." A Cover Sheet was also filed at that time. On August 5, 2016, following the Commissioners' Committee Meeting, it was determined that the independent body name selected exceeded the fifteen (15) characters limitation set forth in section 7-106 (11) of the New York State Election Law. The name contained twenty-one (21) characters, and notice was sent to the candidate informing him of that determination. The candidate had the opportunity to select another name for the independent body that complies with that statutory mandate and if he did not, the Board would select a name. In addition, a Notice of Non-Compliance with respect to that Cover Sheet was issued on August 5, 2016. An Amended Cover Sheet was filed on August 8, 2016 seeking to correct that defect. In accordance with the Board's Rules, that Amended Cover Sheet will be presented to a Commissioners' Cover Sheet Review Committee following today's meeting. By letter dated August 10, 2016 and filed with the Board on August 11, 2016, Mr. Fenstermaker declined to change the name of his independent body based on the U.S. Constitution's 1st and 14th Amendments and the

New York State's Constitution's freedom of speech and association rights of the party's members and himself. Mr. Richman noted that the NYS Election Law provisions are clear and this Board has recognized the limited space available on the ballots and the need to enhance the readability of the ballot. Section 7-106 (11) of the Election Law provides, "If no such indication is received from the candidate within the time specified in the request, the officer or board shall make the necessary determination." Mr. Richman recommended that the Commissioners utilize the powers vested in them by NYS Election Law 7-106 (11) and modify the name of this candidate's Independent Body to conform to the statutory requirements of not exceeding fifteen (15) characters. There was an appearance by Scott L. Fenstermaker, candidate for Member of Congress in the 13th Congressional District.

President Umame opened the floor for comments from Scott L. Fenstermaker. Mr. Fenstermaker requested for the Commissioners to keep the name "Transparent Government" as is for the Independent Body. After discussion, Secretary Umame asked Mr. Fenstermaker if there was an alternative fifteen (15) character name that he would prefer. Secretary Umame suggested "Transparent Govt". Secretary Umame reiterated that the Board is constrained to the statute,

and moved to adopt Mr. Richman's recommendation that the Commissioners utilize the powers vested in them by NYS Election Law 7-106 (11), and modify the name of this candidate's Independent Body to conform to the statutory requirements of not exceeding fifteen (15) characters as "Transparent Govt". President Guastella seconded the motion, which was unanimously adopted.

Commissioner Grey moved that in the event that any of the actions taken today by this Board are challenged under Article 16 of the NYS Election Law, then the NYC Law Department is requested to defend the Board and its actions in any such proceedings. Commissioner Vargas seconded the motion, which was unanimously adopted.

President Guastella moved to adjourn the Hearings and to convene the weekly stated meeting of the Commissioners. Secretary Umane seconded the motion, which was unanimously adopted.

Commissioner Grey moved to adopt the minutes for the August 3, 2016 meeting. Commissioner Araujo seconded the motion, with President Guastella abstaining. The motion was adopted.

Based on the representation of the Commissioners' Committee for the full Board, Commissioner Araujo moved to adopt the minutes for the August 5, 2016 meeting. Commissioner Michel seconded the motion, which was unanimously adopted.

Commissioner Araujo moved to adopt the minutes for the August 9, 2016 meeting. Commissioner Vargas seconded the motion, which was unanimously adopted.

Mr. Richman requested for a Cover Sheet Review Committee to meet immediately after the meeting to review four (4) items. Secretary Umane and Commissioner Schulkin were designated as the Cover Sheet Review Committee.

On behalf of Mr. Johnson, Mr. Richman presented the draft Notice to All Candidates. It was reported that the Office of the General Counsel has reviewed the draft Notice and it meets all requirements. Secretary Umane moved to adopt the Notice to All Candidates. President Guastella seconded the motion, which was unanimously adopted.

President Guastella recognized Julia Acampora, a member of the public, who raised concerns about receiving Board mail for voters Flora Rue, Cristina Fernandez, and David Fernandez who do not live at her address. Ms. Acampora reported that she has lived at her address for 26 years and based on conversation with the previous owners of her house, these three (3) voters have never lived there. Ms. Acampora submitted the Board mail she receives at her home for these voters. It was reported that Ms. Acampora previously called the Board with her concerns and after a preliminary review, staff found that these people are Federal voters who live temporarily abroad in Spain and checked on the application that they intend to return. These voters list Ms. Acampora's address as their last known address in the U.S. A review of their 2016 Federal Voter Applications showed that they were not correctly filled out by the respective applicants who failed to indicate from where in NYC they claimed was prior residency. After discussion, Commissioner Grey expressed concerns over the lack of U.S. residency validation process on the Federal Voter Application. There was consensus among the Commissioners for the Brooklyn Office staff to investigate this matter further and to mail a letter to these Federal voters at their address in Madrid, Spain. Mr. Ryan advised Ms. Acampora that she has the right to challenge the registration of a voter and explained the challenge process.

Mr. Richman noted that he will provide the challenge affidavit to Ms. Acampora.

Secretary Umane moved to convene Executive Session for purposes of personnel. President Guastella seconded the motion, which was unanimously adopted.

Following Executive Session, the regular stated meeting resumed.

Secretary Umane recognized Julia Acampora who presented signed “Challenge to a Voter’s Registration” affidavits to the Commissioners. Ms. Acampora swore before the Commissioners, pursuant to the provisions of Section 5-220(1) of the NYS Election Law, challenging the voter registrations of Flora Rue, Cristina Fernandez, and David Fernandez. Ms. Acampora believed the registrations should be cancelled because these voters are registered at her home address and they do not live there. Ms. Acampora swore before the Commissioners, pursuant to the provisions of Section 5-220(1) of the NYS Election Law, challenging the voter registrations. Board staff will conduct the required investigation into this challenge pursuant to the provisions of Article 5 of the NYS Election Law.

In President Guastella's absence, Mr. Ryan reported the following actions that were taken in Executive Session:

- I. William Allen, the Deputy Chief Clerk of the Manhattan Office, will receive a written stipulation, for a suspension of five (5) days, to be served with a forfeiture of 35 hours of vacation time. This action was unanimously agreed to by the Borough Committee and the full Board;
- II. Subsequent to a Disciplinary Hearing on August 9, 2016 with the Borough Committee and the recommendation of the full Board, Andrew Giordano, a permanent clerk in the Bronx Office, is terminated, effectively immediately. This action was unanimously agreed to by the Borough Committee and the full Board.

Mr. Ryan requested to add an item to the Agenda concerning the September 13, 2016 Primary Election ballots. Commissioner Flateau moved to add the item to the agenda. Commissioner Shamoun seconded the motion, which was unanimously adopted.

Mr. Sattie and Mr. Naudus presented sample ballots for the five (5) boroughs. The ballot length and font size follows per borough:

- Manhattan – 17” ballot, 10 pt. font
- Bronx – 14” ballot, 12 pt. font
- Brooklyn – 19” ballot, 10 pt. font
- Queens – 14” ballot, 12 pt. font
- Staten Island – 14” ballot, 12 pt. font

It was noted that all contests will be wholly contained within each borough. Due to various Primary Election contests, the font size will vary for each borough. Commissioner Shamoun inquired if the font size could be increased for the Brooklyn ballot. Mr. Sattie reported that Brooklyn is the “busiest” ballot with contests that go to the very end of the ballot so the font cannot be increased. Commissioner Shamoun inquired about .5 point increments. Mr. Naudus reported that the ES&S ballot building software “Election Ware” does not support .5 point increments. Any modification to the software would have to get certified by the vendor with the State Board which could take approximately nine (9) months. Per Commissioner Vargas’ request, Mr. Naudus will email the Commissioners their borough’s ballots (1 per A.D.) for review before they are sent to print. It was noted that the ballots will be ready to be posted on the Board’s website next week. Commissioner Michel recommended for staff to track the amount of ballot jams citywide based on the different sizes of the ballots used on Primary Day. Commissioner Flateau requested for staff to be mindful of

the timing when printing Brooklyn's ballots as it is the largest borough with many contests. Mr. Ryan reported that the Board will be utilizing three (3) print vendors for the ballots to ensure timeliness. Ms. Sandow noted that there is one (1) print vendor for the Poll List Books as it is difficult to find print vendors that can insert the alpha tabs because it is a manual process. Commissioner Flateau moved to accept the ballot recommendations presented for the September 13, 2016 Primary Election. President Guastella seconded the motion, which was unanimously adopted. Mr. Sattie noted that the number of ballots to order for the September 13, 2016 Primary Election will be on next week's agenda.

Secretary Umane moved to adjourn the meeting. The motion was seconded, and unanimously adopted.

The next stated meeting of the Commissioners will be held on Tuesday, August 23, 2016 at 1:30 P.M.