

Hon. P. David Soares, District Attorney
Office of the Albany County District Attorney
Albany County Judicial Center
6 Lodge Street
Albany, New York 12207

August 4, 2022

Dear District Attorney Soares and Public Integrity Unit Bureau Chief Griggs:

As a concerned New Yorker who also serves as chair of the New York State Senate Election Committee, I have had the honor of championing important election reforms to help ensure New York maintains open, honest, and transparent elections. I am therefore compelled to bring the following information to your attention. As has been reported in several media outlets¹, one or more Republican candidates for statewide public office, acting in concert with each other and one or more Republican political operatives engaged by the Zeldin for Governor campaign, appear to have recently committed a fraud on the New York State Board of Elections (“the BOE”) and the people of the State of New York. Public records filed with the BOE indicate that, at a minimum, individuals acting at the behest of Lee Zeldin, the Republican nominee for New York State Governor, and Eric Amidon, Candidate Zeldin’s long-time chief of staff and current campaign manager to Zeldin for Governor, may have engaged in criminal activity to further Zeldin’s election and the election of four other individuals seeking statewide office, in violation of New York Penal Law, New York Election Law, and the overall public trust. I respectfully submit that it is imperative that your office investigate this wrongdoing.

In May 2022, a group of candidates who had already received the support of the Republican Party for statewide public offices determined that they would benefit from having an additional line on the November ballot and worked together to collect Independent Nominating Petition signatures under the name of the “Independence Party.” Mr. Amidon – an attorney who previously served on Mr. Zeldin’s congressional staff and has been paid hundreds of thousands of dollars by Zeldin for New York and the New York Republican State Committee² to further Zeldin’s gubernatorial campaign – appears to have worked with Candidate Zeldin, along with candidates Alison Esposito, Paul Rodriguez, Michael Henry, and Joe Pinion, to prepare and then file or cause to be filed, a 47 volume Independent Nominating Petition (“the Petition”). Emblazed on each cover sheet attached to all 47 volumes of the Petition is a statement that “The petition contains the number, or in excess of the number, of valid signatures required by the

¹ See, Albany Times Union: *BOE boots Zeldin of Independence Party line for invalid signatures; New York Libertarian Party contests signatures were duplicates and photocopies*, July 14, 2022, available at: <https://www.timesunion.com/state/article/BOE-Zeldin-off-of-Independence-Party-line-with-17305611.php> (“Zeldin’s petitions were challenged by officials with the New York Libertarian Party, who not only contested the signatures were invalid but also noted that about 11,000 of them were photocopied duplicates.”); see also, New York Times: *For First Time Since 1946, New Yorkers Have Just 2 Choices for Governor*, July 28, 2022, available at: <https://www.nytimes.com/2022/07/28/nyregion/third-parties-governor-ny.html> (“The way the pages were distributed throughout the petition, it seems to me that it’s an obvious attempt to put together enough signatures to qualify and to obfuscate the fraud,” said Henry Berger, an election law expert and former New York City councilman. “This one is not complicated. This is simple, blatant fraud.”).

² Available at <<https://publicreporting.elections.ny.gov/Expenditures/Expenditures>>.

Election Law,” along with the signature of Eric Amidon as an agent of the candidates, stating that he is the authorized “Contact Person to Correct Deficiencies.”

The Petition was filed with the BOE on May 31, 2022. Days later, several individuals filed general and specific objections against the Petition, stating that, notwithstanding the cover sheet attestation, the Petition lacked a sufficient amount of valid signatures. After only a cursory BOE staff review of the Petition and an administrative hearing, the BOE concluded that the Petition was invalid.

What is relevant to, and must be investigated by, the Albany County District Attorney, however, is not that the Petition was invalid, but rather *why* the Petition was invalid. Simply stated, the Petition contained a litany of fabricated sheets; and the individuals who caused the Petition to be filed with the BOE were clearly aware of or involved in that fabrication.

Acting on behalf of team Zeldin, agents of the candidate attempted to obtain valid signatures for the Petition, but the effort fell short of the statutorily mandated 45,000 signatures. Knowing this, the agents of the campaign – presumably under the watchful eye and at the direction of the Contact Person to Correct Deficiencies Eric Amidon, and potentially the candidates named in the Petition – began to assemble the petition sheets and bind them accordingly. The Election Law mandates that as part of the petition binding process, the individual(s) filing the petition number the sheets contained in each volume. A cursory review of the Petition shows that it contained many sheets with *valid* signatures. However, before those sheets were paginated consistent with the Election Law requirement, the sheets were photocopied, and then added to the total number of pages to be bound in the volumes of the Petition. The original sheets were paginated, and the photocopied sheets were separately paginated with different numbers and distributed throughout the volumes.³ Approximately 100 pages, containing thousands of signatures, were copied, paginated with different numbers, and used in multiple instances throughout the petition.

This is not conjecture -- BOE staff easily concluded that the Petition relied on pages that were used as both originals and copies, summarily noting in the BOE staff report that select pages were to be disregarded as being a “Photo Copy.” Accordingly, the BOE rightfully ruled that the Petition was invalid. The BOE and its Commissioners did their jobs. They did not, however, have an opportunity to reach a determination as to whether the Petition and the statements therein were accurate, honest, and truthful. These questions of fraud are left to the courts and, perhaps more importantly, the County District Attorney. It is incumbent on your office to investigate and evaluate claims of fraud and misrepresentation in the petitioning process and prosecute accordingly.

It is clear the Zeldin campaign perpetrated a fraud. Pages of valid signatures were photocopied. Thereafter, the original sheets were paginated, as were the photocopied pages. These sheets were assigned different page numbers in order to create the appearance that the pages contained separate, valid signatures. All of this was in an attempt to create the appearance

³ See e.g., Vol. 1, p. 53 (an original sheet) and compare it to Vol. 38, p. 77 (a photocopied sheet). A thorough list of what is believed to be originals that were then copied and numbered as an additional sheet number is detailed at: <https://zeldincopies.com>

that the Petition contained at least the minimum of 45,000 valid signatures. These actions are clear and convincing.

What is unknown, and must be investigated by your office, is who committed these criminal acts. Who in the Zeldin campaign -- whether the candidate, his agent Mr. Amidon, or others -- entered into this activity to submit a facially fraudulent document to the State Board of Elections? There were five candidates listed on the Petition. Did each of the candidates and their campaigns act in concert to commit this fraud? These questions need answering, and we believe your office is best equipped to investigate how the Republican candidates for statewide office and their agents committed a series of felonies and other criminal violations by falsely causing the trumped-up Petition to be filed with the BOE, including, but not limited to:

1. Penal Law § 170.10 “**Forgery in the second degree.** A person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed: . . . A public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or . . . A written instrument officially issued or created by a public office, public servant or governmental instrumentality. . . Forgery in the second degree is a class D felony.”
2. Penal Law § 170.25: “**Criminal possession of a forged instrument in the second degree.** A person is guilty of criminal possession of a forged instrument in the second degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in section 170.10. Criminal possession of a forged instrument in the second degree is a class D felony.”
3. Penal Law § 170.35: “**Criminal possession of a forged instrument; no defense.** In any prosecution for criminal possession of a forged instrument, it is no defense that the defendant forged or participated in the forgery of the instrument in issue; provided that a person may not be convicted of both criminal possession of a forged instrument and forgery with respect to the same instrument.”
4. Penal Law § 170.45: “**Criminal simulation.** A person is guilty of criminal simulation when: 1. With intent to defraud, he makes or alters any object in such manner that it appears to have an . . . authorship which it does not in fact possess; or 2. With knowledge of its true character and with intent to defraud, he utters or possesses an object so simulated. Criminal simulation is a class A misdemeanor.”
5. Penal Law § 175.20: “**Tampering with public records in the second degree.** A person is guilty of tampering with public records in the second degree when, knowing that he does not have the authority of anyone entitled to grant it, he knowingly removes, mutilates,

destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant. Tampering with public records in the second degree is a Class A misdemeanor.”

6. Penal Law § 175.25: “***Tampering with public records in the first degree.*** A person is guilty of tampering with public records in the first degree when, knowing that he does not have the authority of anyone entitled to grant it, and with intent to defraud, he knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant. Tampering with public records in the first degree is a class D felony.”
7. Penal Law § 175.30: “***Offering a false instrument for filing in the second degree.*** A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant. Offering a false instrument for filing in the second degree is a class A misdemeanor.”
8. Penal Law § 175.35: “***Offering a false instrument for filing in the first degree.*** A person is guilty of offering a false instrument for filing in the first degree when . . . knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he or she offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation. . . . Offering a false instrument for filing in the first degree is a class E felony.
9. Election Law § 17-122: “***Misconduct in relation to petitions.*** Any person who: . . . Being a signer of a petition, provided for in the election law, for the designation or nomination of a candidate, or a petition for opportunity to ballot at a primary election, thereby makes a false statement or makes a false affidavit thereon, or a false statement to the witness who authenticates the petition; or . . . Being a notary public, commissioner of deeds or a subscribing witness to a petition, provided for in this chapter, for the designation or nomination of a candidate, or a petition for opportunity to ballot at a primary election, thereby makes a false statement or makes a false affidavit thereon; or . . . Alters a petition, provided for in the election law, for the designation or nomination of a candidate, or a petition for opportunity to ballot at a primary election, by inserting, adding or changing therein the name of a candidate, or the title or designation of an office or position by any means whatsoever, after such petition has been signed by one or more persons, is guilty of a misdemeanor.”

New Yorkers must have confidence that our elections are fair, honest and transparent. In my role as Chair of the Senate Elections Committee, I have not hesitated to defend our system of elections from spurious allegations of fraud. However, when *actual* election fraud appears to have occurred, as it does in this case, it is essential for the public trust that potential violations are investigated fully and swiftly. For that reason, I urge you to use your powers to investigate these apparent violations of public integrity.

Respectfully submitted,

Zellnor Y. Myrie