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DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004-1609
(212) 487-5300
FAX (212) 487-5349
www.vote.nyc.ny.us

AGENDA COMMISSIONERS MEETING TUESDAY, AUGUST 18, 2009 AT 1:30 P.M.

1. Hearings
 - a) Prima Facie Defect on Specification of Objection Number NY137
2. Minutes
 - a) 07/14/09
 - b) 07/21/09
 - c) 07/28/09
 - d) 08/03/09
3. Marcus Cederqvist
 - a) HAVA Update
 - b) Possible Runoff Election on September 29, 2009
 - c) Special Election – 38th Assembly District
4. Steven H. Richman
 - a) 38th Assembly District – Queens
5. Rosanna Rahmouni
 - a) Exception Reports
6. John Ward
 - a) Vacancy Report

For Your Information

- Undervote Warning Message
- Comments on HAVA Amended State Implementation Plan
- NYS Board of Elections Weekly Status Report for the Week of August 7, 2009 through August 13, 2009
- Queens Election Proceeding Decision – Index No. 20446/2009
- Queens Election Proceeding Decision – Index No. 20287/09
- Farouk Samaroo, against, Governor David A. Paterson, The Board of Elections in the City of New York, Andrew Cuomo, The Attorney General of the State of New York
- Mireille P. Leroy vs. Board of Elections in the City of New York – Index No. 21141/09
- New York City Campaign Finance Board
- Department of Justice Pre-Clearance of Submissions Numbered 2009-NY-01 (as amended), 2009-BX-01, 2009-BX-02 and 2009 BX-04
- John P. Smyth as Objector and Dierdre A. Feerick as Aggrieved Candidate, against, David J. Rosasco and The Board of Elections of the City of New York
- Stephanie Zgaljic, against, The New York City Board of Elections – Index No. 21023/09
- Ruben Wills, against, Allan W. Jennings, Jr. and The Board of Elections of the City of New York – Index No. 20446/2009
- Marc C. Leavitt, against, Robert Schwartz and The Board of Elections in the City of New York – Index No. 20287/09
- Jimmy McMillian, against, New York City Board of Elections – 08-CV-3679 (CBA)
- Jimmy McMillian, against, New York City Board of Elections - 09-CV-3383 (CBA)
- Jumaane D. Williams, against, The Board of Elections in the City of New York and Erlene J. King
- Adrian M. Straker, against, The Board of Elections in the City New York, Bernard Holloway, Objector and Martin E. Connor, Objector's Contact Person – Index No. 700033/09
- Barbara N. Taylor, against, City of New York Board of Elections, State of New York Board of Elections, and Commissioners of Elections Constituting The Board of Elections, Hon. Velmannelte Montgomery, Candidate for the 18th State Senate – Index No. 700023-08
- Martin Connor, Jr., against, Salim Ejaz and The Board of Elections in the City of New York – Index No. 19992/09
- Salim Ejaz, against, Martin O'Connor, Jr. and Board of Elections in the City of New York – Index No. 20960/09
- Mirelle P. Leroy, against, Board of Elections in the City of New York – Index No. 21141/09
- James Wu, against, Yen S. Chou and The Board of Elections in the City of New York – Index No. 20007/09
- James Wu, against, The Board of Elections in the City of New York and Jesus B. Sosa, Chi Pu Ping, Steven Greene and Yichi Wang – Index No. 20008/09
- James Wu, against, Shao Zheng Zeng, Tichi Wang and Jesus B. Sosa and The Board of Elections in the City of New York – Index No. 20297/2009

- Jesus B. Sosa and Chi Pu Peng, against, The Board of Elections in the City of New York and James Wu – Index No. 19630/09
- Yen S. Chou, against, The Board of Elections in the City of New York, Steve Greene, Max Hong, Xinfang He and Howard Hicks – Index No. 19632/09
- Mirelle P. Leroy, against, Board of Elections in the City of New York – Index No. 21141/09
- Jose Adames, against, NYC Board of Elections – Index No. 111228/2009
- Letter to Steven H. Richman from Governor David A. Paterson
- Eugene Myrick, against, Caliph T. Mathis II, et. al. – Index No. 700027/09

New Items of Interest

- *The Daily News*: War vet battles gov in fight over Assembly seat
- *The Daily News*: Pol puts punch into Council campaign

Steven H. Richman

Comm M76

From: ROBERT BREHM [RBREHM@elections.state.ny.us]
Sent: Friday, August 14, 2009 4:27 PM
To: Steven H. Richman
Subject: AD38

Action
Item



38th AD Special
Election Procl...

here it is



STATE OF NEW YORK

DAVID A. PATERSON
GOVERNOR

PETER J. KIERNAN
COUNSEL TO THE GOVERNOR

August 14, 2009

Stanley L. Zalen, Co-Executive Director
Todd D. Valentine, Co-Executive Director
New York State Board of Elections
40 Steuben Street
Albany, New York 12207-2108

Dear Messrs. Zalen and Valentine:

Enclosed please find a copy of a Proclamation executed by Governor Paterson on this date declaring a Special Election on September 15, 2009. This special election is necessary to fill the vacancy in the 38th Assembly District in part of Queens County due to the resignation of the Honorable Anthony Seminerio.

Please take the appropriate action required by your office with regard to this Proclamation.

Thank you for your cooperation in this matter.

Very truly yours,

Peter J. Kiernan
Counsel to the Governor

Enclosure

RECEIVED
GENERAL COUNSEL
BO. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 AUG 14 PM 4:34

RECEIVED

AUG 14 2009

NYS Board of Elections



STATE OF NEW YORK

DAVID A. PATERSON
GOVERNOR

PETER J. KIERNAN
COUNSEL TO THE GOVERNOR

August 14, 2009

State of New York

AUG 14 2009

Lorraine Cortés-Vázquez
Secretary of State
Department of State
41 State Street
Albany, New York 12231

Department of State
Secretary of State

Dear Secretary Cortés-Vázquez:

Governor Paterson has directed that I transmit to you as, Secretary of State, the attached Proclamation executed by the Governor on this date calling Special Election for September 15, 2009, to fill the following vacancy in the 38th Assembly District in part of Queens County due to the resignation of the Honorable Anthony Seminero.

Please take the appropriate action required by your office with regard to this Proclamation and provide certified copies of the Proclamation to the State Board of Elections so that it may commence the administration of said election. I understand that you will return to this office duplicate copies of the proclamation indicating receipt and filing by your office.

Thank you for your cooperation in this matter.

Very truly yours,

Peter J. Kiernan
Counsel to the Governor

Enclosure

EXECUTIVE CHAMBER

STATE CAPITOL
www.ny.gov

ALBANY 12224

2009 AUG 14 PM 4:34
RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK



State of New York
AUG 14 2009
Department of State
Secretary of State

State of New York

Executive Chamber

PROCLAMATION

WHEREAS, a vacancy exists in the office of Member of Assembly from the thirty-eighth Assembly District, Queens County, caused by the resignation of Anthony Seminerio, Member of Assembly from the said District;

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, pursuant to Section 42 of the Public Officers Law, do hereby order and proclaim that an election for Member of Assembly in the place and for the unexpired term of the said Anthony Seminerio, be held in the thirty-eighth Assembly District on the fifteenth day of September, two thousand nine, such election to be conducted in the manner prescribed by law for election of New York State Members of Assembly.

GIVEN under my hand and the Privy Seal of the State this fourteenth of August in the year two thousand nine.



BY THE GOVERNOR
Lance Schwartz
Secretary to the Governor

David A. Paterson

RECEIVED
GENERAL COUNSEL
80 OF ELECTIONS
IN THE CITY OF NEW YORK
2009 AUG 14 PM 4: 3M

**CALENDAR FOR
 CERTIFICATE OF NOMINATION
 SEPTEMBER 15, 2009 SPECIAL ELECTION
 MEMBER OF ASSEMBLY
 38th ASSEMBLY DISTRICTS, QUEENS COUNTY**

Comm Mtg
ACTION
ITEM

Date of Proclamation.....August 14, 2009
 Last day to file Certificate of Nomination.....9:00 AM–Midnight, August 24, 2009

FOR CERTIFICATES FILED ON:

	<u>General Objections</u>
	<u>Must Be Received By:*</u>
Friday, August 14	Monday, August 17
Monday, August 17	Thursday, August 20
Tuesday, August 18	Friday, August 21
Wednesday, August 19	Monday, August 24
Thursday, August 20	Monday, August 24
Friday, August 21	Monday, August 24
Monday, August 24	Thursday, August 27

General Objections Filed On:

Specifications Must be Received By:*

Monday, August 17	Monday, August 24
Thursday, August 20	Wednesday, August 26
Friday, August 21	Thursday, August 27
Monday, August 24	Monday, August 31
Thursday, August 27	Wednesday, September 2

Last day to file Certificate of Acceptance or Declination of NominationAugust 26

Last day to authorize nomination..... August 28

Last day to fill vacancy caused by declination of nomination.....,..... August 28

Last day to authorize substitution..... September 1

Last day to institute court proceedings regarding Certificate of Nomination.....10 days after
 filing of Certificate

Last day to submit proof of service of Specifications.....The day after Specifications are filed

Board of Elections hearings on Certificate of Nominations at Executive Office, 42 Broadway,
 6th Floor Hearing Room–**TO BE DETERMINED AT THE COMMISSIONERS’ MEETING ON
 AUGUST 18, 2009.**

*Board of Elections is open for filing from 9 AM to 5 PM. The Board of Elections will remain open until Midnight only if a specified filing date for objection(s)/ specification(s)/certificate(s) is the last day to file said objection(s)/ specification(s)/certificate(s).

For information, call the Board of Elections at 212-487-5300.

Issued By: The Board of Elections in the City of New York on August 14, 2009

COMM ATG
Action
Items

CALENDAR FOR
INDEPENDENT NOMINATING PETITIONS
SEPTEMBER 15 2009 SPECIAL ELECTION
MEMBER OF ASSEMBLY
38th ASSEMBLY DISTRICT, QUEENS COUNTY

Date of Proclamation & First Day to circulate Petitions..... August 14, 2009
Last day to file petitions 9 a.m. – Midnight, August 26, 2009

FOR PETITIONS FILED ON:

General Objections Must Be Received By:*

Friday, August 14	Monday, August 17
Monday, August 17	Thursday, August 20
Tuesday, August 18	Friday, August 21
Wednesday, August 19	Monday, August 24
Thursday, August 20	Monday, August 24
Friday, August 21	Monday, August 24
Monday, August 24	Thursday, August 27
Tuesday, August 25.....	Friday, August 28
Wednesday, August 26	Monday, August 31

General Objections Filed On:

Specifications Must be Received By:*

Monday, August 17	Monday, August 24
Thursday, August 20	Wednesday, August 26
Friday, August 21	Thursday, August 27
Monday, August 24	Monday, August 31
Thursday, August 27	Wednesday, September 2
Friday, August 28	Thursday, September 3
Monday, August 31	Tuesday, September 8

Last day to file Certificate of Acceptance or Declination of Nomination August 28

Last day to fill vacancy caused by Declination of Nomination..... August 31

Last day to institute court proceedings with regard to independent nominating petitions.....
September 2, 2009 or (3) three business days after hearing where petition is invalidated.

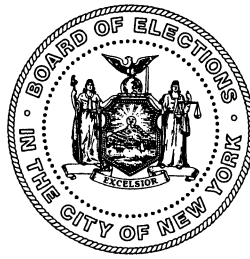
Last day to submit proof of service of Specifications.....The day after specifications are filed.

Board of Elections hearings on Independent Nominating Petitions at Executive Office,
42 Broadway, 6th Floor Hearing Room—TO BE DETERMINED AT THE COMMISSIONERS’
MEETING ON AUGUST 18, 2009.

*Board of Elections is open for filing from 9 AM to 5 PM. The Board of Elections will remain open until Midnight only if a specified filing date for objection(s)/ specification(s)/certificate(s) is the last day to file said objection(s)/ specification(s)/certificate(s).

For information, call the Board of Elections at 212-4814-5300.

NOTE: The Independent Nominating Petition Rules for 2009 (Adopted 5/12/09 & Precleared by the U.S. Attorney General on 14/8/09, per Section 5, Voting Rights Act) governs Independent Nominating Petitions filed for this Election.



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
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GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

JOHN J. WARD
FINANCE OFFICER

DATE August 18, 2009
TO: Commissioners

FROM: John Ward
Finance Officer.

RE: Vacancies

					Inc.	New.
1	Assistant General Counsel					\$75,000
2	Valerie Marshall	Adm. Asst.	N.Y.	Dem.	\$39,440	\$37,562
3	Robert Helenius	VMT	Bklyn	Rep.	\$27,818	\$26,493
4	Lisa Sattie	Adm. Asst.	S.I.	Dem.	\$39,440	\$37,562
5	Steve Morena	Clerk.	Qns	Rep.	\$27,111	\$25,820
6	Roselie DeDomenico	Clerk.	Qns	Dem.	\$27,111	\$25,820
7	Matthew FX Smith	Adm Assoc	Bklyn	Rep.	\$46,878	\$44,646

FYI

Marcus Cederqvist

From: NYS Election Operations [election_ops@elections.state.ny.us]
Sent: Monday, August 17, 2009 3:42 PM
Cc: ANNA SVIZZERO; JOSEPH BURNS
Subject: Undervote Warning Message

To All Commissioners

If you are planning on programming your own ballots for the upcoming Primary and General Elections, please note that regulation 6209.2 A (8) has been amended to accept undervoted ballots without a warning to the voter. Both vendors have been notified of this change and will be programming ballots accordingly.

For ES&S counties, the undervote warning is a configuration setting in Election Ware and this warning should not be set for the primary or general election. For Dominion counties, the undervote warning is a change in the DCF file which is used in generating election files (you will receive the updated file today), this new DCF file needs to be imported into your EMS system.

Thanks

Bob Warren

FYI

Marcus Cederqvist

From: Steve Carbo [scarbo@demos.org]
Sent: Thursday, August 13, 2009 6:10 PM
To: STAN ZALEN; tvalentine@elections.state.ny.us
Cc: Margaret Fung; Esmeralda Simmons; Kathleen O'Keefe; Marcus Cederqvist; Christopher Hilderbrant; Joan Silvestri; Ronald Hayduk; Thomas Ferrarese; Aimee Allaud; June O'Neill; David Previte; Neal Rosenstein; Brad Williams; Helen Kiggins; Senator Addabbo; Anita Katz; Sharon Shapiro; David Kogelman
Subject: Comments on HAVA Amended State Implementation Plan



Public Member Public Member
Comments on NYS ..Comments on NYS ..

Stan, Todd,

Margaret Fung, Esmeralda Simmons, Ronald Hayduk, Neal Rosenstein, Brad Williams, Sharon Shapiro, Aimee Allaud and I submit the attached comments to the New York State HAVA Implementation Plan published in the Federal Register on July 17, 2009. We thank you for welcoming our participation in the HAVA Task Force and adopting a number of the changes that we had recommended, and hope that you will consider the additional improvements suggested in our comments. I have also attached as an appendix our May 2009 comments to the draft Plan then under discussion.

Steven Carbo
Demos

-----Original Message-----

From: STAN ZALEN [mailto:SZALEN@elections.state.ny.us]
Sent: Thursday, June 04, 2009 10:35 AM
To: Margaret Fung; Esmeralda Simmons; Kathleen O'Keefe; Marcus Cederqvist; Christopher Hilderbrant; Joan Silvestri; Steve Carbo; Ronald Hayduk; Thomas Ferrarese; Aimee Allaud; June O'Neill; David Previte; Neal Rosenstein; Brad Williams; Helen Kiggins; Senator Addabbo; Anita Katz; Sharon Shapiro
Cc: STAN ZALEN; David Kogelman
Subject: HAVA Amended State Implementation Plan

Dear Task Force Members:

Thank you very much for your great help. Your organization, level of preparation, and interest was tremendously helpful and invigorating for myself and our staff. I understand that the final product will not completely satisfy all of you, but I hope that you can see and appreciate the many ideas and suggestions that were incorporated in the Plan, which is attached. The Plan was sent yesterday to the Election Assistance Commission.

Again, I thank all of you for your hard work and for many of you who took valuable time to make numerous trips to Albany.

Regards,

Stanley

Observations on New York State's Amended Help America Vote Act State Implementation Plan

These comments on New York State's Amended Help America Vote Act (HAVA) State Implementation Plan have been submitted by seven of the public members of the State's Implementation Task Force.

All our groups remain grateful for the opportunity to participate in the Task Force process. The broad inclusion of representatives from the disability, language access, academic and civic community demonstrated what we believe to be a genuine effort to solicit the input from a diverse cross-section of the public and advocacy community in New York State. We thank the State's Chief Election Officer and convener of the Task Force, Stanley Zalen, for our inclusion in this process, for his accessibility to Task Force Members and his willingness to consider our input.

We are gratified that our participation in the Task Force resulted in a number of substantive changes in the final Amended Plan. However, we feel compelled to address a number of outstanding shortcomings in the document's contents and focus. We will outline a number of specific concerns in this overview and have attached the full version of our suggested comments in the appendix.

Overall Impressions

Our hope was that the Amended State Implementation Plan would take the opportunity to fully address the challenges and promises of the Help America Vote Act. Such a comprehensive approach would have included:

- Encouraging consideration, and making appropriate suggestions for, amending State Election Law to achieve HAVA's goals;
- Embracing a far reaching goal of openness, public information and accountability by all Boards of Elections across the state;
- More aggressive and far-reaching efforts to ensure full access for all voters at the polls;
- Adoption of a pro-active effort by the State Board to ensure that HAVA's provisions not disfranchise voters; and
- A re-thinking of the reluctance to monitor local county Boards of Elections to ensure that election administration is being conducted in a uniform manner across the state.

Detailed Observations

It should be noted that a number of the shortcomings we have identified fall under more than one of the categories outlined above. In the interest of being as concise as possible, we have detailed each only once.

I. State Election Law Changes

Unfortunately, the New York State Board of Elections passed up the opportunity presented by the Help America Vote Act to fully realize HAVA's goals of increasing voter participation and improving the administration of elections by rejecting outright in its Amended Plan any consideration of state statutory changes necessary to accomplish those public purposes. Election authorities in other states have not shown that same reticence. For example, the Rhode Island Secretary of State appointed a ten-member Voters First Advisory Commission in 2007 to review and reform that state's election law. The Commission's extensive authority extended to the initiation of statutory, regulatory and rules changes that would make it easier for Rhode Islanders to vote and restore public confidence in the fairness of the electoral process. Its recommendations extended to early voting, uniform statewide polling hours, and expanded opportunities to register to vote. See 2008 revision of Rhode Island State Plan, Help America Vote Act, 73 Fed. Reg. 66,660 (Nov. 10, 2008) at 66,608, 66,621. The New York State Board of Elections could have exercised similar leadership through its HAVA Implementation Task Force.

For example, with the creation of a statewide database of voters, there is no legitimate reason for the definition of election jurisdiction to remain at the county level. This preservation of the powers of patronage boards across the state comes at the detriment of voters who move across county lines and unnecessarily find themselves unable to vote on Election Day.

Additional examples include the amending of state election law to mandate that Boards of Election utilize the information contained on an Affidavit/Provisional Ballot envelope to update voters' registration records. Such a change would greatly reduce the use of Affidavit Ballots. Many groups of voters, such as those who are less affluent and subject to more frequent changes of address and limited-English-proficient voters are more likely to be entered mistakenly into board databases would benefit from such a common-sense change. Other states, including New Jersey, Maryland, and Michigan, use the information collected on Affidavit/Provisional Ballot envelopes to register voters and correct errors.

II. Openness, Public Information and Accountability

We are gratified that a number of our suggestions for increased information and accountability were either included or adopted in partial form in the Amended Plan. For example, many of our groups' suggestions for requiring counties to provide more detailed information on the rejection of Affidavit/Provisional Ballots were incorporated. However, the failure to recommend that the full range of public information required by HAVA - or that the information necessary to judge its effectiveness even be collected - be freely made available to the public on the web is a profound disappointment.

For example, the Amended State Plan appropriately requires counties to survey all poll sites for access to voters with disabilities and prepare a written plan to provide temporary or permanent improvements, if necessary. However, the Plan rejected our suggestion to make those county performance and compliance plans available on the New York State Board of Elections website.

Additional examples include:

- Requiring the State Board to create a webpage on its website that accounts for the percentage of polling sites that are assessed as accessible through the surveying process - to be updated on a regular basis until full compliance is reached;
- Overseeing the post-election collection and analysis of data on county disposition of voter registration applications for which voter information could not be matched through the statewide database against DMV and/or SSA databases; and
- Requiring county Boards to break down poll worker recruitment and training information by the type of position, for example, Inspectors, Translators and/or Door Clerks.

III. More Aggressive and Far-Reaching Efforts to Ensure Full Access for Voters at the Polls

The Amended State Plan incorporates a number of suggestions from our organizations such as encouraging local boards to work with organizations that represent voters with disabilities and language minority voters with their poll worker training. However, more needs to be done to live up to the promise of HAVA.

For example, it is the strong opinion of our groups that separate and apart from the staffing by poll workers of the sign-in process at the polls or with the use of the vote tabulation system, any ballot marking device should have at least one dedicated poll worker to assist voters wishing to utilize the system. Poll workers should not have to be “borrowed” from another assignment to assist voters. This inherently relegates voters wishing to use a ballot marking device to a second-class status at the polls.

IV. Pro-Active Policies at the State Board to Reduce Disfranchisement at the Polls

Our organizations bemoan the failure of the Amended Plan to direct the State Board of Elections to minimize the potentially disfranchising aspects of HAVA. The goal of HAVA to further enfranchise the electorate has been undercut by the decision not to pro-actively prevent disfranchising policies and regulations that originate at the State Board.

For example, the Plan failed to incorporate our suggestions that the statewide database utilize common-sense protocols to minimize false reports of “unverified” registrations. Use of a shortened form of a surname, inclusion of hyphenated birth names, transposition of surname and family names, improperly submitted or improperly data-entered single digits of an applicant’s DMV numbers and/or similar minor mismatches should not result in a lack of verification when the overwhelming submission of the registrant’s information is otherwise verified.

The Plan also does not reflect our suggestion that the statewide database match voter information against felon records maintained by the Office of Corrections and the Office of Parole, and that felon records be updated on a weekly basis. By rejecting this

recommendation, the State Board of Elections risks the rejection of voter registration applications submitted by felons whose voting rights have been restored upon expiration of their parole.

The creation of the statewide database should not result in policies that make it easier to identify voters as unverified or to purge voters, than to verify and register them to vote. The statewide database should not favor looser standards for identifying duplicates than for verifying voters. Board regulations and protocols appear to indicate otherwise and the State Plan has failed to identify this problem and call for its elimination.

Another example is the baffling refusal of the State Board of Elections to promulgate a detailed list of the identification cards and documents that can be used to satisfy HAVA's identification requirement. While the State Board has made a modest effort at further defining acceptable IDs, it has stubbornly refused to provide a more exhaustive list to County Boards of Elections or require that poll workers be trained to adequately identify the variety of acceptable IDs at the polls. Our organizations' common sense list of acceptable IDs was rejected for inclusion.

On a related point, the State Board declined to call for reconsideration of New York's policy that extends the ID requirement to voter registration applications hand-delivered to local boards of elections. HAVA's ID provision only attaches to voters who submit their voter registration applications by mail. In addition to increasing costs and administrative burdens on local boards of elections, and causing longer lines and greater confusion at poll sites from additional ID checks, New York's policy increases the potentially disfranchising impact of the ID requirement.

V. Re-thinking the Undue Influence of Local County Boards of Elections to Ensure that Election Administration is Being Conducted in a Uniform Manner Across the State

New York's system of registration and administering elections delegates extraordinary authority to patronage-controlled local County Boards of Elections. While our organizations have differing opinions on the need for improvements to this system of election administration, it is clear that the State Board of Elections must do more to ensure uniform compliance with HAVA's provisions.

For example, while our organizations are encouraged that the Plan incorporates our suggestion to remind County Boards to follow the state's HAVA implementation statute by visually reviewing forms that come back as "unverified" from the statewide database, they have failed to meaningfully ensure compliance of local Boards that are publicly known to flaunt this law. By failing to include our suggestion to update the statewide database interface to include an affirmation for each County Board to affirm that it has conducted a visual check of each initially flagged form, for data entry or other errors before proceeding with the verification process, the Plan has failed to affirm the State Boards' oversight role to ensure compliance with HAVA across the state.

Additionally, the Plan failed to ensure that HAVA's statewide database does not facilitate purges of any voters within 90 days of a federal election as required by federal law. A simple modification to the statewide database could have ensured such compliance by County Boards but was rejected for inclusion in the Amended Plan.

Improper Characterization of the State's Implementation Efforts

While the final Amended Plan represents a significant improvement over the initial plan and its earlier drafts, our organizations take exception with several statements concerning the state's overall compliance with both HAVA and the National Voter Registration Act. The plan states "the State Board implemented a single, official, centralized, interactive computerized statewide voter registration list." We object to such language. As previously noted, New York State's delegation of registration decisions to local counties ensures non-uniformity and inherently discriminates against classes of voters more likely to have difficulty with the verification process. At a minimum, it is beyond the capacity of the Amended Plan to claim county compliance with the lack of standardization of registration procedures in place statewide.

The Amended plan also claims that the State is in compliance with the National Voter Registration Act (NVRA). There are many problems with agency compliance evident to our organizations that concern the distribution and transmittal of registration forms. As members of the Task Force we feel compelled to publicly make this point and disagree with the Amended Plan's characterization. Indeed, the U.S. Department of Justice has filed suit against New York for failure to comply with the NVRA. *United States v. State of New York* (N.D. N.Y. 2004) (alleging violation of the National Voter Registration Act by failure to offer voter registration opportunities at offices serving disabled students at the state's public universities and colleges).

Conclusion

While our organizations note there have been improvements in the Amended State Plan to earlier versions, our organizations feel that additional and more substantive changes in content and tone should have been included. This document summarizes some of the main points of disagreement our organizations have with the Amended State Plan. We have appended a copy of our full proposed amendments to the plan to this document. It will provide greater detail to many of the points above.

Our organizations are grateful for the opportunity to participate in this process and the respect and consideration given our organizations by the State's Chief Election Officer. We look forward to continuing our work towards the improvement of the state's system of administering elections.

Sincerely,

Aimee Allaud
League of Women Voters of New York State

Steven Carbó
Demos

Margaret Fung
Asian American Legal Defense and Education Fund

Ronald Hayduk
City University of New York

Neal Rosenstein
New York Public Interest Research Group

Sharon Shapiro
Jewish Disability Empowerment Center, Inc.

Esmeralda Simmons
Center for Law & Social Justice – Medgar Evers College

Brad Williams
New York State Independent Living Counsel

Appendix A: Public Members Suggested Edits for NYS Amended HAVA
Implementation Plan



State of New York
STATE BOARD OF ELECTIONS

James A. Walsh
Chair
Douglas A. Kellner
Chair
Gregory P. Peterson
Commissioner
Evelyn J. Aquila
Commissioner

40 STEUBEN STREET
ALBANY, N.Y. 12207
Phone: 518/474-6367 Fax: 518/486-4546
website: www.elections.state.ny.us

Todd D. Valentine
Executive Director
Stanley L. Zalen
Executive Director
Kimberly A. Galvin
Special Counsel
Paul M. Collins
Deputy Counsel

August 14, 2009

Honorable Gary L. Sharpe
United States District Court
for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, New York 12207

Re: *United States v. New York State Board of Elections, et al.*
Civil Action No. 06-CV-0263 (GLS)

Dear Judge Sharpe,

We enclose herewith Status Report of the Defendant New York State Board of Elections for the week ending August 13, 2009.

Respectfully submitted,

s/ _____
Kimberly A. Galvin (505011)
Special Counsel

s/ _____
Paul M. Collins (101384)
Deputy Special Counsel

HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 8/7/09 – 8/13/09

Following is a detailed report concerning the previous week's progress in implementing the terms of the Court's Orders.

PLAN A

Overall Compliance Status Summary

Overall, activities and progress toward HAVA compliance are on schedule

Contracting with Voting System Vendors

Status of tasks in this category: on schedule

OSC rejected all of the ES&S adds due insufficient justification of the price increase. SBOE has had conversations with both ES&S and OGS and will continue to work to find a resolution of the issue.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: on schedule with revised time line

- Overall progress of testing :
 - Run for Record began on 8/10/09.
 - Representatives from SBOE and NYSTEC were present in Denver to witness the trusted Build and report that the build was being done very effectively.
 - "Rules" were established and finalized regarding vendor contact with the testing lab during the run for the record
 - Weekly conference calls with the vendors will no longer include SysTest. NYSTEC, SysTest and SBOE will have daily calls as we move forward.
 - Test deck training for the counties has started.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: on schedule

- Acceptance testing continues. Nassau County has not as yet released its machines to Dominion for the upgrades and, although Nassau County is not participating in the Pilot Program, this may have an adverse effect on the use of the Ballot Marking Devices this fall, and upon Nassau County's ability to transition to the new systems in the future. The Department of Justice has been advised of the situation.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

The public comment period on the proposed regulation addressing the issue in question closed on July 27, 2009. Comments are being reviewed. It is anticipated the Board will vote to adopt the regulation at the September board meeting.

Cem mh F42

Steven H. Richman

From: Barbara A. Conacchio
Sent: Monday, August 17, 2009 12:05 PM
To: *ExecutiveManagement; Steven H. Richman; Troy Johnson
Subject: FW: QUEENS ELECTION PROCEEDING DECISION



Untitled .pdf (827 KB)

-----Original Message-----

From: Vinny Pardon
Sent: Monday, August 17, 2009 11:55 AM
To: Barbara A. Conacchio; Katherine A. James; Regina Peters-Kiss; Robert Pataky
Subject: FW: QUEENS ELECTION PROCEEDING DECISION

-----Original Message-----

From: Digital Sender 10.135.68.131 [mailto:gmurphy1@courts.state.ny.us]
Sent: Monday, August 17, 2009 11:28 AM
To: MSATTINGER@NYCCFB.INFO; Vinny Pardon
Subject: QUEENS ELECTION PROCEEDING DECISION

Please open the attached document. This document was digitally sent to you using an HP Digital Sending device.

To view this document you need to use the Adobe Acrobat Reader.

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, Lee A. Mayersohn Election Part E
Justice

In the Matter of the Application of
Ruben Wills as Candidate Aggrieved,

Index No.: 20446/2009

Petitioner

-against-

Allan W. Jennings, Jr. And The Board
of Elections of the City of New York

:

Respondents

The Petitioner, Ruben Wills moved for an Order of this Court declaring invalid the designating petition of respondent, Allan W. Jennings, Jr., a candidate for the City Council, 28th Council District, Queens County.

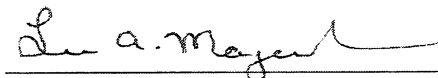
On Tuesday, August 11, 2009, the parties were forwarded to the respondent, New York City Board of Elections for the purposes of conducting forthwith a line by line review of petitioner's objections.

Such line by line review continued through Friday, August 14, 2009. Petitioner and respondent and/or their respective representatives were present throughout, together with a representative from the New York City Board of Elections. Pursuant to the order of this Court dated August 14, 2009, the matter was set down for a traverse hearing as well as a hearing on the validity or invalidity of the designating petition filed by Allan W. Jennings, Jr..

Thereafter, on Friday, August 14, 2009, petitioner's attorney, Bernard M. Alter, Esq. contacted chambers and advised the Court that the petition of Ruben Wills was withdrawn. Such withdrawal was confirmed in writing by fax transmission to chambers.

Accordingly, IT IS ORDERED AND ADJUDGED that the petition of Ruben Wills to declare invalid the designating petition of Allan W. Jennings, Jr., a candidate for the City Council, 28th Council District, Queens County is hereby withdrawn.

Dated: August 17, 2009

A handwritten signature in cursive script, appearing to read "Lee A. Mayersohn", written over a horizontal line.

LEE A. MAYERSOHN

J.S.C.

County
CL

Steven H. Richman

From: Barbara A. Conacchio
Sent: Monday, August 17, 2009 11:55 AM
To: *ExecutiveManagement; Steven H. Richman; Troy Johnson
Subject: FW: QUEENS ELECTION PROCEEDING DECISION



Untitled .pdf (2 MB)

-----Original Message-----

From: Vinny Pardon
Sent: Monday, August 17, 2009 9:14 AM
To: Barbara A. Conacchio; Katherine A. James; Regina Peters-Kiss; Robert Pataky
Subject: FW: QUEENS ELECTION PROCEEDING DECISION

-----Original Message-----

From: Digital Sender 10.135.68.131 [mailto:gmurphy1@courts.state.ny.us]
Sent: Monday, August 17, 2009 9:04 AM
To: MSATTINGER@NYCCFB.INFO; Vinny Pardon
Subject: QUEENS ELECTION PROCEEDING DECISION

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To view this document you need to use the Adobe Acrobat Reader.

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART G
Justice

JUDGMENT

In the Matter of the Application of

MARC C. LEAVITT

Index No: 20287/09

Petitioner-Candidate-
Aggrieved,

-against-

ROBERT SCHWARTZ,

Respondent-Candidate,

and THE BOARD OF ELECTIONS IN THE CITY OF
NEW YORK

Respondent,

For an order, pursuant to Article 16
of the Election Law to declare the
invalidity of a designating petition.

Petitioner-Candidate, Marc Leavitt, seeks to declare fraudulent and invalidate the designating petitions of the Respondent-Candidate, Robert Schwartz, a candidate for the office of Borough President of Queens County.

4,000 valid signatures are required to be filed for the position of Borough President. At the court's direction the Queens County Board of Elections has reviewed the candidate's petitions and reported that of the 8,772 signatures submitted 2,839 were invalid leaving a total of 5,933 valid signatures.

Of the 5,933 valid signatures the Board "noted" that the Petitioner has claimed 417 additional signatures are invalid as

being signatures of a similar handwriting (Exhibit 17). Although not ruled on by the Board the Petitioner has, through a documentary submission, requested that this Court find that these additional signatures are invalid.

Assuming all of these signatures were disallowed by the Court, the Respondent would still have filed 5,516 valid signatures, 1,516 more than needed to qualify.

On August 12th and 13th this Court took testimony from 17 persons whose names appear on petitions filed by the Respondent. Two witnesses indicated that they signed the petitions and 15 indicated that they did not. One witness testified that in addition to himself, he signed for four additional members of his family.

If this court were to invalidate all of the 14 petitions, (each containing 5 signatures) 70 additional signatures would be lost to the Respondent leaving a total of 5,446 valid signatures, 1,446 in excess of the number needed to qualify. It is therefore the Petitioner's claim, not that an insufficient number of signatures have been filed, but that the evidence adduced establishes that the designating petitions of the Respondent are permeated with fraud.

The Respondent's petition coordinator has testified. No evidence of any kind was presented that either this witness or the Respondent-Candidate himself committed any fraudulent act or participated in or encouraged anyone on their behalf to engage in any fraudulent activity.

It is the Petitioner's position that the testimony of the witnesses and the documentary evidence submitted establishes that a number of the subscribing witnesses submitted petitions containing either fraudulent or irregular signatures thereby engaging in fraud. This, the Petitioner claims, creates the inference and requires the conclusion that all of the petitions are permeated with fraud.

The petitioner must establish this claim by clear and convincing evidence and the threshold is high. Just how high can be seen from the altitude reached in the case of Matter of Pilat v Sachs, 59 AD2d 515, aff'd 42 NY2d 984.

In that case the respondent, Mario Cuomo, needed 2,551 valid signatures to secure the ballot line of the Liberal Party for the Office of Mayor of the City of New York. The respondent filed 5,373 signatures. 1,158 were declared invalid by the Board of

Elections leaving a balance of 4,215.

In a proceeding before the Supreme Court 410 signatures were found to be forged and another 1,138 invalidated for technical reasons leaving a balance of 2,667 valid signatures, 116 more than needed.

The petitioner made several arguments to invalidate the signatures. One argument was that the inference and conclusion necessarily suggested by 2,706 invalid signatures, slightly more than half of the total number submitted (containing 410 forgeries, almost 10% of the total) was that the petitions were invalid as they were "permeated with fraud."

The lower court rejected that argument. On appeal the Appellate Division unanimously affirmed, citing from Justice Cooke's dissent in Proskin v. May 40 NY2d 829 wherein he quoted from the Appellate Division's decision in Lefkowitz v. Cohen, 262 A.D. 452:

"...We think it was error in such case to hold void a petition which contained a sufficient number of valid signatures as specified in the Election Law. To reject this petition would result in depriving qualified signers of the benefit of having the name of their designee appear on the official ballot. They should not lose their right...simply because others over whom they have no control may have perpetrated a wrong...Persons who obtain signatures to designating petitions are not the agents of all of the signers so to make those who are honest chargeable with knowledge that some of the signatures are forged or fraudulent." Further, Abrahams, New York Election Law (1950) at pages 115-116: 'The presence of forged signatures, however abundant upon petition sheets, will not as a matter of law, invalidate any sheet or the entire petition.'


The Court of Appeals unanimously affirmed.

Although the testimony of the witnesses who appeared before this Court was uncontroverted, this Court can not conclude that the entire process was permeated with fraud or even that all of the 14 individual petitions contain totally untrustworthy

signatures. Similarly this Court's review of the documentary evidence submitted fails to establish by clear and convincing evidence that all of the 417 signatures questioned are fraudulent. The Petitioner has failed to meet his burden of proof.

It is therefore Ordered and Adjudged, that the petition to invalidate the designating petitions of the Respondent-Candidate Robert Schwartz is dismissed.

Dated: August 14, 2009
D# 39


.....
J.S.C.

County
Ry Z

FAROUK SAMAROO
104-20 Jamaica Avenue
Richmond Hill, NY 11418
Tel: (718) 915-2128
Fax: (718) 482-7097
Email: FaroukSamaroo@aol.com

August 17, 2009

HAND DELIVERED

David A. Paterson
Governor of the State of New York
633 3rd Avenue
New York, NY 10017

Mr. Steven Richman, Esq
General Counsel
The Board of Elections in the City of New York
32 Broadway
New York, NY 10004-5300

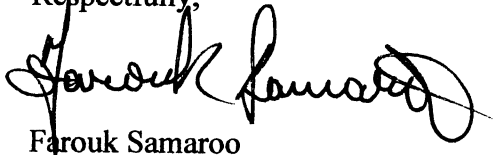
Hon. Andrew Cuomo
Attorney General of the State of New York
120 Broadway
New York, NY 10005

Gentlemen:

Please find attached an Order to Show Cause, Complaint, and Memorandum of Law in Support of the Motion, that I, as Plaintiff in this action, seek to have signed today August 17, 2009 in the United States District Court for the Eastern District of New York.

Plaintiff seeks injunctive and other relief. This communication constitutes Notice.

Respectfully,


Farouk Samaroo

RECEIVED
G.O. BD. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 AUG 17 P 12:38

-----X
FAROUK SAMAROO,

Plaintiff Pro Se,

-against-

GOVERNOR DAVID A. PATERSON, in his official capacity,

-and-

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK;

-and-

ANDREW CUOMO, THE ATTORNEY GENERAL OF THE STATE
OF NEW YORK, in his official capacity,

Defendants,
-----X

ORDER TO SHOW CAUSE

Docket No.

2009 AUG 17 P 12: 38

RECEIVED
G.O. BD. OF ELECTIONS
IN THE CITY OF NEW YORK

**ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION AND TEMPORARY
RESTRAINING ORDER SHOULD NOT BE ISSUED BY THIS COURT**

UPON the annexed Affidavit of Plaintiff FAROUK SAMAROO, sworn to on the 17th Day of August, 2009, and upon the copy of the Complaint hereto attached, it is ORDERED, that the above-named Defendants show before the Honorable _____, of this Court, at Room _____, United States District Court, Eastern District Courthouse, 225 Cadman Plaza, County of Kings, City and State of New York, on August _____, 2009 at _____ o'clock in the forenoon, thereof, or as soon thereafter as counsel may be heard, why an Order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure, pending an expedited trial of this action and a Preliminary Injunction and Temporary Restraining Order should not be made herein:

1. Declaring unconstitutional as applied New York State Election Law Section 6-114 and Section 42 of the New York State Public Officers Law; and
2. Declaring unconstitutional and illegal and therefore null, void, and of no legal effect a Proclamation signed by Governor David A. Paterson, dated August 14, 2009, calling for a Special Election to be held on September 15, 2009 to fill the vacancy in the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York; and
3. Commanding the Board of Elections in the City of New York to conduct a Democratic Party Primary Election to be held on September 15, 2009 and a subsequent General Election to be held on November 3, 2009 for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York; and
4. Enjoining and restraining the Board of Elections in the City of New York from canceling the Democratic Party Primary Election to be held on September 15, 2009 for the Public Office of

Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York; and

5. Upholding the unanimous ruling of the Commissioners of Elections declaring valid, proper and legally effective the Democratic Party Designating Petition filed with the Board of Elections in the City of New York on or about July 16, 2009, designating the above named Plaintiff, Farouk Samaroo, as a candidate for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York; and
6. Placing and protecting the Plaintiff's name on the Official Primary Ballot to be used in the Democratic Party Primary Election to be held on September 15, 2009 for said Public Office; and
7. Restraining the Defendant Board of Elections from removing from the Official Primary Ballot the names of the candidates, including the Plaintiff, ruled onto said ballot by the unanimous vote of the Commissioners on August 4, 2009 for said Public Office; and
8. Granting such other and further relief as to this Court may seem just and proper; and

IT IS FURTHER ORDERED, that the Board of Elections shall produce on the return of this Order to Show Cause and on any adjourned date the aforesaid Designating Petition, the cover sheet, the amended cover sheet, the official poll, enrollment and registration records of all qualified voters in the Democratic Party for each Election District in the 38th Assembly District, County of Queens, State of New York, and all other papers, records, reports, examinations and findings pertaining to said Designating Petition; and it is further

ORDERED, that leave is hereby granted to the Plaintiff to submit upon the return date or any adjourned date, at the hearing of this Application, such additional affidavits, exhibits, testimony and other proof as the Plaintiff may deem advisable; and it is further

ORDERED, that Defendants' response is due _____ August, 2009 by _____.

SUFFICIENT CAUSE APPEARING THEREFORE, LET SERVICE of a copy of this Order and the papers upon which it was granted be deemed due, and timely and sufficient if made as follows:

1. Upon the Defendant, Governor David A. Paterson, at 633 3rd Avenue, County of New York, City and State of New York, on or before ____ Day of August, 2009 by delivering a true copy of this Order and the annexed papers to, and leaving with a person authorized to receive the same at his office; and
2. Upon the Defendant, Board of Elections in the City of New York, at 32 Broadway, County of New York, City and State of New York, on or before ____ Day of August, 2009 by delivering a true copy of this Order and the annexed papers to, and leaving with, any clerk of said Board or any deputy clerk, or any other person authorized to receive the same at its office; and
3. Upon the Defendant, Andrew Cuomo, the Attorney-General of the State of New York, at 120

Broadway, County of New York, City and State of New York, on or before ____ August, 2009
by delivering a true copy of this Order and the annexed papers to, and leaving with a person
authorized to receive the same at his office.

SO ORDERED:

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X		
FAROUK SAMAROO,	:	
	:	
	:	
Plaintiff Pro Se,	:	VERIFIED COMPLAINT
-against-	:	
	:	Docket No.
GOVERNOR DAVID A. PATERSON, in his official capacity,	:	
-and-	:	
THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK;	:	
-and-	:	
ANDREW CUOMO, THE ATTORNEY GENERAL OF THE STATE	:	
OF NEW YORK, in his official capacity,	:	
Defendants,	:	
-----X		

FAROUK SAMAROO, being duly sworn, deposes and says:

PRELIMINARY STATEMENT

1. This is an action requesting preliminary injunctive relief and a temporary restraining order against the Defendants arising from the Defendants’ unconstitutional deprivation of the candidate plaintiff’s right to vote and run for public office and the right to vote of 34,420 enrolled members of the Democratic Party by wrongfully and under the color of State law attempting to remove from the ballot by Gubernatorial Proclamation Democratic Party candidates Farouk Samaroo, Albert Baldeo, Nick Comaianni, and Michael G. Miller; and Republican Party Nominee Donna Marie Catalbiano; and Conservative Party Nominee Michael G. Miller.

2. The Plaintiff alleges that the Defendants seek to deprive him of his right to vote and run for public office wrongfully, intentionally, recklessly and negligently interpreting or misconstruing the literal and judicial interpretation of Section 42 of the New York State Public Officers Law in seeking to ex post facto invalidate the unanimous ruling of the Commissioners of the Board of Elections’ on August 4, 2009 placing the aforementioned candidates on the Primary Ballot and the General Election ballot.

3. The Plaintiff seeks preliminary and permanent injunctive relief pursuant to Rule 65(a) and (b) F.R.C.P.:

- a. Declaring unconstitutional as applied New York State Election Law Section 6-114 and Section 42 of the New York State Public Officers Law; and
- b. Declaring unconstitutional and therefore null, void, and of no legal effect a Proclamation signed by Governor David A. Paterson, dated August 14, 2009, calling for a Special Election to be held on September 15, 2009 to fill the vacancy in the Public Office of Member of Assembly, from

- the 38th Assembly District, County of Queens, City and State of New York; and
- c. Commanding the Board of Elections in the City of New York to conduct a Democratic Party Primary Election to be held on September 15, 2009 and a subsequent General Election to be held on November 3, 2009 for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York; and
 - d. Enjoining and restraining the Board of Elections in the City of New York from canceling the Democratic Party Primary Election to be held on September 15, 2009 for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York; and
 - e. Upholding the unanimous ruling of the Commissioners of Elections declaring valid, proper and legally effective the Democratic Party Designating Petition filed with the Board of Elections in the City of New York on or about July 16, 2009, designating the above named Plaintiff, Farouk Samaroo, as a candidate for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York; and
 - f. Placing and protecting the Plaintiff's name on the Official Primary Ballot to be used in the Democratic Party Primary Election to be held on September 15, 2009 for said Public Office; and
 - g. Restraining the Defendant Board of Elections from removing from the Official Primary Ballot the names of the candidates, including the Plaintiff, ruled onto said ballot by the unanimous vote of the Commissioners on August 4, 2009 for said Public Office; and
 - h. Granting such other and further relief as to this Court may seem just and proper.

JURISDICTION AND VENUE

4. Jurisdiction of this Court is predicated on the First, Fourteenth, and Fifteenth Amendments of the U.S. Constitution and the Supremacy Clause, 2 U.S.C. § 2; the Voting Rights Act; the Civil Rights Act; the pendent jurisdiction of this Court to adjudicate State law claims; and the New York State Constitution. This action concerns the election of a Member of the New York State Assembly from the 38th Assembly District, located wholly within Queens County, which is located within the United States District Court for the Eastern District of New York.

THE PARTIES

5. Plaintiff FAROUK SAMAROO is a citizen of the United States and of the State of New York, residing and qualified to vote at 104-20 Jamaica Avenue, County of Queens, City and State of New York and eligible to vote for and be a candidate for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York. He was designated by Democratic Party

Nominating Petition on July 16, 2009 by the signatures of 2,005 voters of the 38th Assembly District exercising their Right to Vote and ruled on the ballot unanimously without Objections by the Commissioners of Elections on August 4, 2009. Plaintiff is an Indian-American person, and as such is a member of a protected class of persons under the Voting Rights Act.

6. Defendant GOVERNOR DAVID A. PATERSON, in his official capacity as Governor of the State of New York, issued a Proclamation, pursuant to Section 42 of the New York State Public Officers Law, on August 14, 2009 attempting to remove from the Primary Election ballot all qualified candidates, including Plaintiff, and cancel the September 15, 2009 Primary Election already under way for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York.

7. Defendant BOARD OF ELECTIONS IN THE CITY OF NEW YORK is constituted pursuant to the New York State Election Law and has statutory powers, duties, and responsibilities as an Agency of the State of New York and a Municipal Agency of the City of New York concerning the conduct of elections within the City of New York and is further charged with the duty of receiving and filing nominating petitions for the designation of candidates for election to Party Positions, nominations for Public Office, in all the districts and political subdivisions situated in the City of New York, and with placing and removing candidates from the official Primary and General Election ballots.

8. Defendant ANDREW CUOMO, ATTORNEY-GENERAL OF THE STATE OF NEW YORK, is a necessary party to any action seeking to declare unconstitutional any law of the State of New York duly enacted by the Legislature and Governor thereof.

STATEMENT OF FACTS

9. On June 23, 2009, Assemblyman Anthony Seminerio, Democrat from the 38th Assembly District, resigned his seat in the New York State Assembly due to his guilty plea to honest services mail fraud.

10. On June 24, 2009, the New York State Board of Elections pursuant to Section 4-106(4) of the New York State Election Law, issued a Certification of Vacancy in the Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York.

11. On or about June 24, 2009, Democratic and Republican and Conservative candidates began to circulate nominating petitions so as to be placed on the ballot for the Primary Election to be held on September 15, 2009 for this office in accordance with the New York State Election Law and the Rules of the Board of Elections.

12. On July 13, 2009, Democratic candidate Albert Baldeo, filed his Democratic Party Nominating Petition with the defendant Board of Elections.

13. On July 13, 2009, Democratic candidate Michael G. Miller, filed his Democratic Party

Nominating Petition with the defendant Board of Elections.

14. On July 13, 2009, Republican candidate Donna Marie Catalbiano, filed her Democratic Party Nominating Petition with the defendant Board of Elections.

15. On July 15, 2009, Democratic candidate Michael G. Miller, as a cross-endorsed candidate, filed an additional Conservative Party Nominating Petition with the defendant Board of Elections

16. On July 16, 2009, Democratic candidate Nick Comaianni, filed his Democratic Party Nominating Petition with the defendant Board of Elections.

17. On July 16, 2009, Plaintiff and Democratic candidate Farouk Samaroo, filed his Democratic Party Nominating Petition with the defendant Board of Elections.

18. On August 4, 2009, the Commissioners of Elections, in a Stated Meeting held at the Commissioners' Hearing Room, on the 6th floor at 42 Broadway, County of New York, City and State of New York, unanimously ruled (10-0) Plaintiff Farouk Samaroo, Michael G. Miller, Nick Comaianni, and Albert Baldeo onto the Democratic Party Primary Ballot for the Primary Election to be held on September 15, 2009 for the public office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York. The Commissioners further ruled Donna Marie Catalbiano, of the Republican Party, and Michael G. Miller, of the Conservative Party, as the uncontested nominees of those respective parties for the General Election to be held on November 3, 2009 for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York.

19. On August 7, 2009, defendant Governor David A. Paterson, acting unlawfully and without legal authority, issued a Proclamation seeking to invalidate the Plaintiff's candidacy and that of the four other candidates properly validated by the Commissioners. Less than four hours later, he issued a second Proclamation reversing himself by rescinding the first Proclamation.

20. On August 14, 2009, Defendant Governor Paterson, re-reversing himself, and acting unlawfully and without legal authority, issued a third Proclamation seeking once again to invalidate and remove from the ballot the Plaintiff's name and that of the four other candidates.

21. Upon information and belief, the Governor and/or his Agents or Servants may seek to move the Commissioners of Elections in the City of New York at their next Stated Meeting, on Tuesday August 18, 2009 at 1:30 PM or sooner to remove Plaintiff's name and that of other lawful candidates from the official Primary Ballot and to further cancel the scheduled Primary Election and General Election for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York.

22. Political campaigns in Queens County, including the 2001, 2005, 2006, and 2008 campaigns for City Council, State Assembly, and State Senate have been marked by racial appeals as well as attempts to intimidate Indian-American voters and candidates.

FIRST CAUSE OF ACTION

22. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs “1 through 21” of this Complaint with the same force and effect as if fully set forth herein.

23. The Plaintiff’s Right to Vote, right to freely associate, right to participate in the political process including contesting for Public Office, as guaranteed by the First, Fourteenth and Fifteenth Amendments to the U.S. Constitution, and 42 U.S.C. § 1981 and § 1983 have been diluted, abridged, and denied by Governor Paterson’s Proclamation of August 14, 2009 purporting to act under Section 42 of the New York State Public Officers Law.

24. Defendant Governor Paterson, as Executive of the State of New York, seeks to invalidate by Proclamation the Plaintiff’s candidacy and the exercise of the Right to Vote/designate of the 2,005 signers of Plaintiff’s Democratic Party Nominating Petition. Governor Paterson misconstrued and misapplied Section 42 of the New York State Public Officers Law, and his interpretation resulted in a deprivation of the Plaintiff and his supporters’ federally protected Right to Vote and an egregious miscarriage of justice.

SECOND CAUSE OF ACTION

23. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs “1 through 22” of this Complaint with the same force and effect as if fully set forth herein.

24. The Plaintiff, as a Citizen of the United States and a Citizen of the State of New York, who is qualified to vote and enrolled in the Democratic Party in the political subdivision of the 38th Assembly District, has a federal right to be protected from State laws and governmental actions that dilute the weight or effectiveness of his vote and his candidacy for public office.

25. Defendants’ actions are so contrived so as to inevitably result in the deprivation of First Amendment rights to a meaningful vote in violation of 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

26. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs “1 through 25” of this Complaint with the same force and effect as if fully set forth herein.

27. According to the 2000 decennial census, and the New York State Legislative Task Force on Demographic Research and Reapportionment the population of the 38th Assembly District is approximately 123,857 persons with a racial/ethnic composition as follows: 38.36% Non-Hispanic White, 4.22% Non-Hispanic Black, 35.10% Hispanic, 0.49% Native American, 12.22 % Non-Hispanic Asian, 6.23 Non-Hispanic Multiracial, and 3.38% Non-Hispanic Other. This is a “majority-minority” Assembly District. A total of 61.62% of the entire population of the 38th Assembly District belong to recognized and federally protected racial minorities.

28. Section 42 of the New York State Public Officers Law acting in tandem with Section 6-114 of the New York State Election Law violates the U.S. Constitution and violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, because it takes the nominations of candidates for Public Office out of the hands of ordinary voters in a “majority minority” district and places it into the hands of Members of the County Executive Committees. The Executive Committee Members of both major parties, Republican and Democrat, who represent the 38th Assembly District are 100% European-American. Furthermore, in this perverse system of party selection, a convicted felon (former Assemblyman Anthony Seminerio) who is no longer qualified as a voter nor as an enrolled member of any political party under the New York State Election Law is allowed to cast 25% of the vote for the next Member of Assembly from the 38th District. And the other 75% will be cast by his de facto appointees on the Executive Committee of the Democratic Party of Queens County. These 4 votes outweigh the votes and choice of the other 30,416 enrolled Democrats in the 38th Assembly District.

29. Minority voters will not have a candidate of their choice and minority candidates will not be able to contest for their own party’s nominations freely or fairly in the election for a new Member of Assembly from the 38th Assembly District held pursuant to a Gubernatorial Proclamation under Section 42 of the New York State Public Officers Law with candidates selected by closed party vote under Section 6-114 of the New York State Election Law.

30. In over two hundred years of the Sessions of the New York State Assembly, there has yet to be elected a single Indian-American in this State’s history to that Chamber. This is because of the deliberate combination of standards, practices, and procedures of the Defendants’.

31. The Plaintiff is an Indian-American, a member of a protected class of persons, who seeks to be the first Indian-American elected to the New York State Assembly and the first minority person elected from the 38th Assembly District.

32. Unless enjoined by this Court, Defendants will continue to violate the U.S. Constitution and Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by enforcing standards, practices, and procedures that deny Indian-Americans and other minority voters the opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

33. The “totality of circumstances” of Defendants’ actions as described herein, has resulted in Indian-Americans and other minority voters having “less opportunity than other members of the electorate to participate in the political process and to elect the representatives of their choice.” 42 U.S.C. § 1973

FOURTH CAUSE OF ACTION

34. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs “1 through 33” of this Complaint with the same force and effect as if fully set forth herein.

35. Defendant Governor Paterson seeks to deprive by Proclamation the Plaintiff of his Right to Vote and contest for public office without Due Process and further denies him Equal Protection of the law in direct violation of the Fourteenth Amendment to the U.S Constitution and 42 U.S.C § 1983, the Civil Rights Act.

FIFTH CAUSE OF ACTION

36. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs “1 through 35” of this Complaint with the same force and effect as if fully set forth herein.

37. In contravention of the State Constitution and the Election Law of the State of New York, Governor Paterson claims the extraordinary and novel authority, not found anywhere in Statute or judicial precedent, to remove candidates from the ballot already placed on the ballot by order of the Commissioners of Elections and cancel a Primary Election already under progress by the correct and usual operation of State law by the mere issuance of an illegal Gubernatorial Proclamation. Such a claim of authority by a Governor of this State has not been made since the historical era of the royal Governors of the Colony of New York. Furthermore, reliance on such colonial era precedents is prohibited by Article I, Section 14 of the State Constitution.

38. Article I, Section 1 of the New York State Constitution (the “Bill of Rights”) states “No member of this State shall be disenfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his or her peers, except that the Legislature may provide that there shall be no Primary Election held to nominate candidates for public office or to elect persons to party positions for any political party or parties in any unit of representation of the State from which such candidates or persons are nominated or elected whenever there is no contest or contests for such nominations or election as may be prescribed by general law.”

39. Article I, Section 11 of the New York State Constitution (the “Bill of Rights”) states “No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the State or any agency or subdivision of the State.”

40. The Governor’s ability to call a Special Election to fill a vacancy in the Office of Member of Assembly under Section 42 of the New York State Public Officers Law was designed by the Legislature to allow the greatest possible participation of voters in the affected political subdivision when such vacancy occurs outside of the period for circulating designating/nominating petitions. In the instant case, the Governor is using his narrow and limited authority under Section 42 of the New York State Public Officers Law to perversely and unlawfully deny the voters of the 38th Assembly District the right to participate in the

election of their new Member of Assembly by attempting to give effect to Section 6-114 of the New York State Election Law which does not apply to the subject vacancy.

41. The subject vacancy occurred on June 23, 2009, a full 23 days prior to the last day to circulate designating/nominating petitions. The State Constitution and the Election Law operating in tandem provides for the filling of the subject vacancy pursuant to Section 6-110 of the Election Law which mandates that “nominations for offices to be filled at a general election, except as provided herein, shall be made at the primary election” and Section 6-118 which further mandates that “the designation of a candidate for party nomination at a primary election and the nomination of a candidate for election to a party position to be elected at a primary election shall be by designating petition.”

42. The Plaintiff and four other candidates and several thousand voters of the 38th Assembly District exercised their franchise in accordance with the State Constitution, the Election Law, and the Rules of the Defendant Board of Elections. The Defendant Board of Elections received four legally valid designating petitions for the Democratic Party Nomination for the subject vacancy and correctly ordered by unanimous vote on August 4, 2009 a Primary Election to be conducted on September 15, 2009 and for the winner to be the lawful Democratic Party Nominee at the General Election to be held on November 3, 2009.

43. The Democratic, Republican, and Conservative Party candidates and several thousand voters of the 38th Assembly District followed the letter and spirit of the New York State Constitution and the Election Law. Their Governor chose to knowingly and wantonly show absolute contempt for the will of voters in this District and to further engage in an unseemly attempt at engineering the selection of a favored and pliant Member of the Assembly, a House of the Legislative Branch of Government that is theoretically a separate and co-equal branch of the State Government.

44. Defendant Governor Paterson’s Proclamation of August 14, 2009 violates Article I, Section 1 of the New York State Constitution in that he seeks to disenfranchise the Plaintiff and the voters of the 38th Assembly District and further violates Article I, Section 11 of said Constitution in that he seeks to deny equal protection of the laws of this State to the Plaintiff and the voters of the 38th Assembly District. Defendant Governor Paterson further seeks to violate and co-opt the Commissioners of Elections in violating Section 6-110 and Section 6-118 of the New York State Election Law.

PRAYER FOR RELIEF

45. There is a real and actual controversy between the Parties. Plaintiff has no adequate remedy at law other than this action for preliminary and permanent injunctive relief. The Plaintiff will suffer irreparable injury as a result of the unlawful Acts of Defendants complained of herein and that injury will continue unless enjoined by this Court.

46. The Acts of Defendants and others described are mentioned under color of law of the State of

New York.

47. No previous application has been made for the Order or Judgment asked for herein or for a similar Order or Judgment.

48. WHEREFORE, the Plaintiff respectfully prays that:

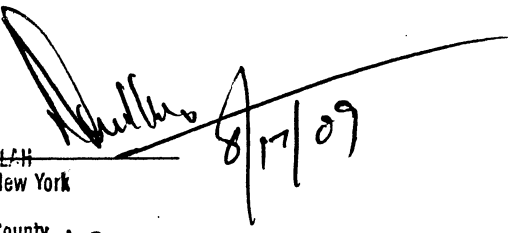
- a. This Court take jurisdiction of the cause of action; and
- b. Declare unconstitutional as applied New York State Election Law Section 6-114 and Section 42 of the New York State Public Officers Law; and
- c. Declare unconstitutional and therefore null, void, and of no legal effect a Proclamation signed by Governor David A. Paterson, dated August 14, 2009, calling for a Special Election to be held on September 15, 2009 to fill the vacancy in the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York; and
- d. Command the Defendant Board of Elections in the City of New York to conduct a Democratic Party Primary Election to be held on September 15, 2009 and a subsequent General Election to be held on November 3, 2009 for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York; and
- e. Enjoin and restrain the Defendant Board of Elections in the City of New York from canceling the Democratic Party Primary Election to be held on September 15, 2009 for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York; and
- f. Uphold the unanimous ruling of the Commissioners of Elections declaring valid, proper and legally effective the Democratic Party Designating Petition filed with the Board of Elections in the City of New York on or about July 16, 2009, designating the above named Plaintiff, Farouk Samaroo, as a candidate for the Public Office of Member of Assembly, from the 38th Assembly District, County of Queens, City and State of New York; and
- g. Place and protect the Plaintiff's name on the Official Primary Ballot to be used in the Democratic Party Primary Election to be held on September 15, 2009 for said Public Office; and
- h. Restrain the Defendant Board of Elections from removing from the Official Primary Ballot the names of the candidates, including the Plaintiff, ruled onto said ballot by the unanimous vote of the Commissioners on August 4, 2009 for said Public Office; and
- i. Award the Plaintiff the costs and disbursements associated with the filing and maintenance of this action; and

j. Grant such other and further relief as to this Court may seem just and proper.

Dated: Queens, New York
August 17, 2009


FAROUK SAMAROO
Plaintiff Pro Se

Sworn to before me this,
17th Day of **August, 2009**.



CHAUDHRY ATTAULLAH
Notary Public State Of New York
#01AT6006936
Qualified In Queens County
Commission Expires May 11, 2010

VERIFICATION

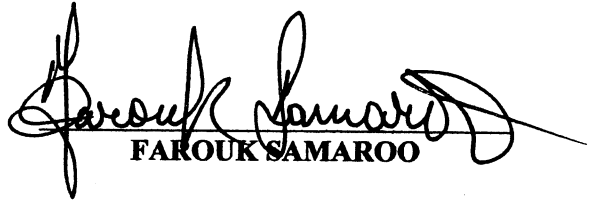
STATE OF NEW YORK)

)ss.

COUNTY OF QUEENS)

FAROUK SAMAROO, being duly sworn deposes and says that:

I am the Plaintiff named herein and that I have read the foregoing Complaint and know the contents thereof. The same is true to my own knowledge except as to those matters alleged to be upon information and belief, and as to those matters, I believe it to be true.


FAROUK SAMAROO

Sworn to before me this,
17th Day of August, 2009.

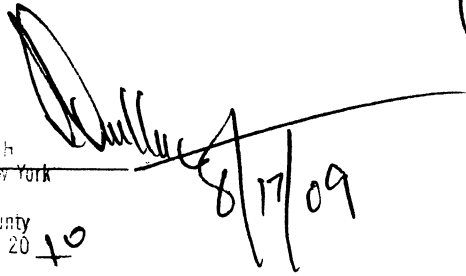

CHAUDHRY ATTARU H
Notary Public State Of New York
#0147036036
Qualified In Queens County
Commission Expires May 11, 2010
8/17/09

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ARGUMENT I. CLAIM UNDER 42 U.S.C. § 1983.

“It is well established that in order to state a claim under § 1983, a plaintiff must allege (1) that the challenged conduct was attributable at least in part to a person acting under color of state law, and (2) that such conduct deprived the plaintiff of a right, privilege or immunity secured by the Constitution or laws of the United States.”

Eagleston v. Guido, 41 F.3d 865, 875-76 (2d Cir. 1994) (quoting *Dwares v. City of New York*, 985 F.2d 94, 98 (2d Cir. 1993)). Generally, § 1983 “allows plaintiffs with federal or constitutional claims to sue in federal court without first exhausting state judicial or administrative remedies.” *Hellenic Am. Neighborhood Action Comm. v. City of New York*, 101 F.3d 877, 881 (2d Cir. 1996).

Governor Paterson in issuing the Proclamation dated August 14, 2009 “pursuant to Section 42 of the New York State Public Officers Law” deprived the Plaintiff and his supporters of their fundamental rights under the First, Fourteenth, and Fifteenth Amendments.

ARGUMENT II. THE FIRST AMENDMENT

Limitations on the core First Amendment right of political expression are subject to “exacting scrutiny.” *Buckley v. Valeo*, 424 U.S. 1, 44-45; 96 S. Ct. 612; 46 L. Ed. 2d 659 (1976). Petition circulation constitutes “core political speech,” because it involves “interactive communication concerning political change.” *Meyer v. Grant*, 486 U.S. 414, 422 (1988); accord *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182 (1999) (“*Buckley*”). In addition, governmental action that falls short of a direct limitation on speech may give rise to a constitutional violation if it deters or “chills” speech. See *Laird v. Tatum*, 408 U.S. 1, 12; 92 S. Ct. 2318; 33 L. Ed. 2d 154 (1972); *Husain v. Springer*, 494 F.3d 108, 128 (2d Cir. 2007).

In order to show a cognizable constitutional injury pertaining to the chilling of speech, a plaintiff must allege government action that has “an actual, non-speculative chilling effect,” showing that speech is actually affected. *Colombo v. O’Connell*, 310 F.3d 115, 117 (2d Cir. 2002).

In the instant case, the Governor seeks to invalidate by Proclamation no less than six separate designating petitions circulated by five candidates, including the Plaintiff, together containing in excess of several thousand signatures inscribed by qualified and enrolled voters of the 38th Assembly District. These six separate petitions were all ruled valid by the Commissioners of Elections on August 4, 2009.

The Plaintiff represents a minority group who has never elected a member of their group to the State Assembly. They followed the New York State Election Law and yet the Governor, acting under the color of state law, invalidated the candidacy of the Plaintiff by Proclamation. Indian-Americans are now less likely to seek representation in the New York State Legislature as when they do successfully place a candidate of their choice on the ballot, the State apparatus still seeks to prevent his or her election through every conceivable device including marshaling the powers of the Executive authority of the State.

The Governor has effectively nullified and voided the petition process. He has not only “chilled” speech but has successfully gagged the entire electorate of the 38th Assembly District.

ARGUMENT III. THE FOURTEENTH AMENDMENT

The Right to Vote is a protected right and equal protection of the law applies to the manner of its exercise under the Fourteenth Amendment to the U.S. Constitution.

Bush v. Gore, 531 S. Ct. 525

In *Molinari v. Powers*, 82 F. Supp 2d, 57 (U.S. Feb 4, 2000), the Court in evaluating whether New York State's statutory scheme placed an undue burden on the people's right to vote found that "a number of facially valid provisions of election laws may operate in tandem to produce impermissible barriers to constitutional rights." *Storer v. Brown*, 415 U.S. 724, 94 S. Ct. 1274.

Defendant Governor Paterson seeks to shield his abridgement of the Right to Vote and equal protection of the law of the Plaintiff and the voters of the 38th Assembly District by issuing a Proclamation pursuant to Section 42 of the New York State Public Officers Law which acting in tandem with Section 6-114 of the New York State Election Law violates the U.S. Constitution and violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, because it takes the nominations of candidates for Public Office out of the hands of ordinary voters in a "majority minority" district and places it into the hands of Members of the County Executive Committees. The Executive Committee Members of both major parties, Republican and Democrat, who represent the 38th Assembly District are 100% European-American. Furthermore, in this perverse system of party selection, a convicted felon (former Assemblyman Anthony Seminerio) who is no longer qualified as a voter nor as an enrolled member of any political party under the New York State Election Law is allowed to cast 25% of the vote for the next Member of Assembly from the 38th District. And the other 75% will be cast by his de facto appointees on the Executive Committee of the Democratic Party of Queens County. These 4 votes outweigh the votes and choice of the other 30,416 enrolled Democrats in the 38th Assembly District.

Minority voters will not have a candidate of their choice and minority candidates will not be able to contest for their own party's nominations freely or fairly in the election for a new Member of Assembly from the 38th Assembly District held pursuant to a Gubernatorial Proclamation under Section 42 of the New York State Public Officers Law with candidates selected by closed party vote under Section 6-114 of the New York State

Election Law.

In over two hundred years of the Sessions of the New York State Assembly, there has yet to be elected a single Indian-American in this State's history to that Chamber. This is because of the deliberate combination of standards, practices, and procedures of the Defendants'.

The Plaintiff is an Indian-American, a member of a protected class of persons, who seeks to be the first Indian-American elected to the New York State Assembly and the first minority person elected from the 38th Assembly District.

Unless enjoined by this Court, Defendants will continue to violate the U.S. Constitution and Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by enforcing standards, practices, and procedures that deny Indian-Americans and other minority voters the opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

The "totality of circumstances" of Defendants' actions as described herein, has resulted in Indian-Americans and other minority voters having "less opportunity than other members of the electorate to participate in the political process and to elect the representatives of their choice." 42 U.S.C. § 1973

ARGUMENT IV. THE NEW YORK STATE CONSTITUTION

Article I, Section 1 of the New York State Constitution (the “Bill of Rights”) states “No member of this State shall be disenfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his or her peers, except that the Legislature may provide that there shall be no Primary Election held to nominate candidates for public office or to elect persons to party positions for any political party or parties in any unit of representation of the State from which such candidates or persons are nominated or elected whenever there is no contest or contests for such nominations or election as may be prescribed by general law.”

Article I, Section 11 of the New York State Constitution (the “Bill of Rights”) states “No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the State or any agency or subdivision of the State.”

In contravention of the State Constitution and the Election Law of the State of New York, Governor Paterson claims the extraordinary and novel authority, not found anywhere in Statute or judicial precedent, to remove candidates from the ballot already placed on the ballot by order of the Commissioners of Elections and cancel a Primary Election already under progress by the correct and usual operation of State law by the mere issuance of an illegal Gubernatorial Proclamation. Such a claim of authority by a Governor of this State has not been made since the historical era of the royal Governors of the Colony of New York. Furthermore, reliance on such colonial era precedents is prohibited by Article I, Section 14 of the State Constitution.

The Governor’s ability to call a Special Election to a fill a vacancy in the Office of Member of Assembly under Section 42 of the New York State Public Officers Law was designed by the Legislature to allow the greatest possible participation of voters in the affected political subdivision when such vacancy occurs outside of the period for circulating designating/nominating petitions. In the instant case, the Governor is using his narrow and limited authority under Section 42 of the New York State Public Officers Law to perversely and unlawfully deny the voters of the 38th Assembly District the right

to participate in the election of their new Member of Assembly by attempting to give effect to Section 6-114 of the New York State Election Law which does not apply to the subject vacancy.

The subject vacancy occurred on June 23, 2009, a full 23 days prior to the last day to circulate designating/nominating petitions. The State Constitution and the Election Law operating in tandem provides for the filling of the subject vacancy pursuant to Section 6-110 of the Election Law which mandates that “nominations for offices to be filled at a general election, except as provided herein, shall be made at the primary election” and Section 6-118 which further mandates that “the designation of a candidate for party nomination at a primary election and the nomination of a candidate for election to a party position to be elected at a primary election shall be by designating petition.”

The Plaintiff and four other candidates and several thousand voters of the 38th Assembly District exercised their franchise in accordance with the State Constitution, the Election Law, and the Rules of the Defendant Board of Elections. The Defendant Board of Elections received four legally valid designating petitions for the Democratic Party Nomination for the subject vacancy and correctly ordered by unanimous vote on August 4, 2009 a Primary Election to be conducted on September 15, 2009 and for the winner to be the lawful Democratic Party Nominee at the General Election to be held on November 3, 2009.

The Democratic, Republican, and Conservative Party candidates and several thousand voters of the 38th Assembly District followed the letter and spirit of the New York State Constitution and the Election Law.

Defendant Governor Paterson’s Proclamation of August 14, 2009 violates Article I, Section 1 of the New York State Constitution in that he seeks to disenfranchise the Plaintiff and the voters of the 38th Assembly District and further violates Article I, Section 11 of said Constitution in that he seeks to deny equal protection of the laws of this State to the Plaintiff and the voters of the 38th Assembly District. Defendant Governor Paterson further seeks to violate and co-opt the Commissioners of Elections into violating Section 6-110 and Section 6-118 of the New York State Election Law.

RELIEF REQUESTED

The Plaintiff seeks injunctive relief herein. Where a moving party seeks preliminary injunction to stay a government action taken in the public interest pursuant to statutory or regulatory scheme, that party must show irreparable harm in the absence of an injunction and a likelihood of success on the merits. *Latino Officers Association, New York, Inc. v. New York City*, 196 F3d 458 (2d Cir. 1999). *Bery v. New York City*, 97 F 3d. 689 (2d Cir., 1996). Plaintiff by moving this Court to issue an injunction seeks to maintain the status quo.

The Plaintiff and the voters of the 38th Assembly District will suffer irreparable harm if the injunction requested herein is not granted. The Plaintiff has been unduly wronged by Defendant Governor Paterson's breach of his fundamental rights guaranteed under the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution. The Governor is in further violation of the Plaintiff's rights guaranteed under the Voting Rights Act and the Civil Rights Act. Because the Governor's Proclamation seeks to remove the Plaintiff from the Official Ballot and to further cancel the September 15, 2009 Primary Election for the Public Office of Member of Assembly from the 38th Assembly District, thousands of voters who exercised their Right to Vote in designating five candidates for election will be disenfranchised. The supporters of the candidates would not have the opportunity to vote for the candidate of their choice. The candidates themselves will lose the opportunity to serve their community as a Member of the Assembly.

The Plaintiff has a likelihood of success on the merits. The Governor has disregarded the U.S. Constitution and the New York State Constitution and several other federal and state statutes in attempting to interfere with and nullify the democratic process and the lawful conduct of a Primary Election in the 38th Assembly District, as ordered unanimously by the Commissioners of Elections in and for the City of New York.

CONCLUSION

Elections are important acts in the life of a community and in the polity of the State and our Nation. It is how we express our collective will and express our consent to being governed. We also choose those who will govern us for finite terms. It's about choice. What Governor Paterson has done here is to trample on that basic and fundamental right that we as Americans cherish and for over two centuries have fought and bled for. The right to vote and to choose our elected representatives.

In the instant case, the Plaintiff is a Combat Veteran, who served on foreign soil as recently as June 2009 and then returned to his home, the 38th Assembly District of Queens County, and was designated as a candidate for the public office of Member of Assembly by 2,005 voters of his community. The Governor issued a Proclamation which nullified that. This is the United States of America. Not the USSR. The people are empowered to choose their elected representatives, not to have them selected in dark corners.

The Framers of the State Constitution knew all too well what an all powerful Governor would do, so they wisely restrained his opportunities to trample on the rights of the people in Article I.

Likewise, the Framers of our Federal Constitution in 1787 and the Reconstruction-era Congresses knew all too well the propensity of the States to seek to deny and abridge the fundamental civil rights of its minority citizens under color of State law, so they provided for the jurisdiction of the Federal Judiciary in striking down these unlawful and un-American barriers.

Indian-Americans, such as the Plaintiff, are trusted enough to serve in the Armed Forces of the United States. It follows that they can be trusted to serve in the New York State Assembly. That decision should rests with the voters, not Governor Paterson.

For the foregoing reasons, the Plaintiff, on behalf of himself and of the voters of the 38th Assembly District, respectfully requests that this Honorable Court grant the Order to Show Cause for preliminary and permanent injunctive relief in the above-entitled- action.

EXHIBIT I

(Relevant News Media Articles)

Dave's double cross: Gov. Paterson flip-flops again on Assembly primary

Sunday, August 16th 2009, 4:00 AM

Gov. Paterson has reversed a reversal and ended up betraying the voters of a Queens Assembly District. In a sneaky move late Friday afternoon, he canceled the September primary for the open 38th District seat - all but handing victory to the Queens Democratic machine. Get ready for a handpicked assemblyman, voters.

Dave, this is the second time you've canceled the primary. The first order you thankfully rescinded. We doubt you'll flop back, but we live in hope.

Gov. David Paterson was right to cancel sham special election in Queens

Tuesday, August 11th 2009, 4:00 AM

Embarrassing as it was for Gov. Paterson to call a special election in Queens' 38th Assembly District - then, hours later, cancel it - he ended up right. Voters should choose a representative through a full-fledged, open primary election, not a party-rigged sham. Especially after what they've been through.

Residents of the 38th - covering Ridgewood, Glendale, Woodhaven and Ozone Park - were long represented by Tony Seminerio. In classic Albany form, he pleaded guilty to federal corruption charges in June and left office. The primary to replace him was set for Sept. 15, and several Democratic candidates had already submitted papers to run.

Then, out of nowhere last Friday, Paterson called a special election, on the cockamamie theory that the district couldn't wait until January to have a new Assembly member sworn in. That move would have nixed the primary and instead let Democratic Party bosses install a successor to Seminerio, i.e., handpick a tool.

Paterson realized his error. A few hours after authorizing the special election, aides said their boss hadn't made up his mind yet after all.

Stick with your second instinct, governor. Let the voters choose.

Governor David Paterson's vacation blunder: Announces, then cancels, Queens special election

BY KENNETH LOVETT
DAILY NEWS ALBANY BUREAU CHIEF

Saturday, August 8th 2009, 4:00 AM

ALBANY - Even on vacation, Gov. Paterson can't avoid political embarrassment.

Paterson, who has spent the last few days in the Hamptons, on Friday amazingly canceled a special election for a Queens Assembly seat just hours after announcing it.

"The guy just can't get out of his own way," one prominent Democrat said.

The special election to fill the seat vacated in late June by disgraced former Assemblyman Anthony Seminerio, who pleaded guilty to a federal felony corruption charge, was scheduled for Sept. 15.

"This special election will ensure that the residents in part of Queens County will have the representation they need in the New York State Legislature," Paterson said in a statement.

Less than four hours later, Paterson press secretary Marissa Shorenstein issued a highly unusual press release saying the previous release had been recalled.

"No final decision has been made at this time with respect to a special election in the 38th District," she said.

Shorenstein said there will probably be a primary election instead.

Party leaders pick the candidates in a special election; voters elect them in a primary.

Paterson's counsel, Peter Kiernan, signed the proclamation setting the special election date for the governor in error, Shorenstein said.

The governor's counsel is authorized to sign the governor's signature using an automark pen. Paterson's secretary to the governor, Larry Schwartz, also signed the proclamation.

Shorenstein insisted the governor did not approve the measure and asked that it be rescinded once he learned of it.

"This was an announcement that should not have been made," she said.

Paterson's office several weeks ago alerted the city Board of Elections that he planned to call a special election for Seminerio's former seat.

Since then, a number of would-be candidates and good government groups urged the governor to let voters pick the candidates in a primary.

Al Baldeo, who filed petitions to get onto the Democratic primary ballot, said he thinks Paterson rightfully buckled.

"I imagine there's a lot of mounting pressure on the governor," Baldeo said.

It was the second embarrassment for Paterson in two days.

Yesterday, it was revealed he recently hired a longtime friend he was recently photographed partying with at a city club to a state job - despite a hiring freeze he had imposed.

klovett@nydailynews.com

DAILY NEWS

Army soldier's next big battle is for Seminerio seat

BY JOHN LAUNGER
DAILY NEWS STAFF WRITER

QUEENS NATIVE Farouk Samaroo enlisted in the U.S. Army in 2007 because he wanted to fight in Afghanistan.

Born in Guyana and raised in Richmond Hill, Samaroo, 26, has spent the last year in combat serving in a unit that sought to strengthen the legal process in four Afghan provinces.

Now back at Fort Hood, Tex., Samaroo is transitioning out of active duty and preparing for a much different type of campaign.

He is running for the Assembly seat vacated by Anthony Seminerio, who pleaded guilty to

influence-peddling charges last week.

A successor for Seminerio, who represented the 38th District for 30 years, will be chosen in the November general election.

Samaroo charged that Seminerio advocated too strongly for conservative issues, even though Democrats outnumber Republicans by more than 3 to 1 in the district, which has undergone a demographic shift with an influx of new immigrants.

"This is a very diverse district that needs an Assembly member who represents everyone," Samaroo said. "I am that person."

He said his focus would be to ad-

dress the "neglected best of government services and infrastructure" in the district.

Samaroo won't return to the district for another two weeks, but he said he has a devoted group of followers circulating petitions in his absence.

He is likely to face a Democratic primary against Community Board 9 member Nick Comolanti of Woodhaven.

Samaroo, who will accept an offer's commission in either the Army Reserve or the National Guard, worked on state Sen. Shirley Hundley's campaign in 2006.

But that wasn't his first foray in Queens politics. In 2003, he worked as a community liaison for

then Assemblyman Brian McLaughlin, who was sentenced in May to 10 years in prison for stealing \$3.1 million from Little League's lawyers and his own union.

McLaughlin canned Samaroo two days after giving him a raise to make room on the payroll for a no-show job, Samaroo said.

In a strange twist, Samaroo's Assembly run was made possible because McLaughlin ratted out Seminerio to get a lesser sentence.

"I had no idea what was going on at the time," Samaroo said of McLaughlin's swindle.

"I was one of the people who believed in Assemblyman McLaughlin and was hurt by his schemes."

launger@nydailynews.com



38th Assembly District candidate Farouk Samaroo

EXHIBIT 2

(Letter to Governor from Good Government Groups)

CITIZENS UNION OF THE CITY OF NEW YORK
299 Broadway, Suite 700 ■ New York, New York 10007 ■ 212-227-0342
COMMON CAUSE/NY
155 Avenue of the Americas, 4th Floor ■ New York, New York 10013 ■ 212-691-6421
LEAGUE OF WOMEN VOTERS/N.Y.S.
62 Grand Street ■ Albany, New York 12207 ■ 518-465-4162
NEW YORK PUBLIC INTEREST RESEARCH GROUP (NYPIRG)
107 Washington Avenue, 2nd Floor ■ Albany, New York 12210 ■ 518-436-0876

July 31, 2009

The Honorable David Paterson
Governor
Executive Chamber
State Capitol
Albany, New York 12224

**Re: Recommendation to Call a Special Election on the General Election Day
for Assembly District 38**

Dear Governor Paterson:

We write to urge you not call a special election to fill the open seat in Assembly District 38 (AD 38), which was formerly held by Anthony Seminerio.

Our request is response to a recent report¹ that your office has notified the Board of Elections in the City of New York (Board) that you intend to call a special election to fill the seat. According to the report, the Board's general counsel, is quoted as stating, "I have just been informed by the Governor's office that Governor Paterson intends to issue a Proclamation (at the appropriate time - between Aug 11 - 16) calling a Special Election to fill the vacancy in the New York State Assembly- 38th Assembly District-Queens County to be held on Primary Day September 15, 2009."

It has also been reported in the Daily News that seven candidates have been circulating petitions in order to be placed on the ballot for the Assembly seat². According to the published accounts, however, the local Democratic Party leadership prefers holding a special election on Primary Day, because a special election would possibly "circumvent the petition process and empower party leaders to pick a candidate."³ The Daily News has reported that a spokesperson for the Queens Democratic Party stated that it would prefer that Paterson call a special election because

¹ Benjamin, Elizabeth. "Paterson Will Call a Special Election in the 38th AD." The Daily Politics. New York Daily News. July 21, 2009. Available at: <http://www.nydailynews.com/blogs/dailypolitics/2009/07/paterson-will-call-a-special-e.html>

² Benjamin, Elizabeth. "Baldeo Makes a de Blasio Argument." The Daily Politics. New York Daily News. July 27, 2009. Available at: <http://www.nydailynews.com/blogs/dailypolitics/2009/07/baldeo-invokes-de-blasio-in-qu.html>

³ Benjamin, Elizabeth. "Paterson Will Call a Special Election in the 38th AD." The Daily Politics. New York Daily News. July 21, 2009. Available at: <http://www.nydailynews.com/blogs/dailypolitics/2009/07/paterson-will-call-a-special-e.html>

**Citizens Union/Common Cause/League of Women Voters/NYPIRG
Special Election for AD 38, Page 2**

that route is "always easier for a political organization to have a handle on."⁴ We believe that under this scenario the Democratic Party will likely control the outcome of the election by choosing the candidate on the ballot and limiting the options available to voters.

We also oppose holding the special election during this fall's primary, as voter turnout in primary elections is a fraction of the turnout in general elections. In the last New York City Mayoral Election in 2005, more than twice as many voters turned out on General Election Day than on Primary Election Day – which represented over 1.3 million voters on Election Day and only 479,000 voters on Primary Day. Moreover, holding a special election on Primary Day may confuse the electorate – independent voters living in AD 38 may not even know that they can go to the polls.

We are sympathetic to the argument that AD 38 has been unrepresented since the resignation of Assemblyman Seminerio. It is our belief, however, that it is best for the special election to be held on the fall General Election date, when there will likely be a larger turnout and less voter confusion.

For all of the foregoing reasons, we urge you to call for a special election for AD 38 on the General Election Day.

Sincerely,

Dick Dadey
Citizens Union

Susan Lerner
Common Cause/NY

Barbara Bartoletti
League of Women Voters/N.Y.S.

Blair Horner
NYPIRG

⁴ Benjamin, Elizabeth. "Baldeo Makes a de Blasio Argument." The Daily Politics. New York Daily News. July 27, 2009. Available at: <http://www.nydailynews.com/blogs/dailypolitics/2009/07/baldeo-invokes-de-blasio-in-qu.html>

EXHIBIT 3

(Certification of Vacancy in 38th AD)



James A. Walsh
Co-Chair

Gregory P. Peterson
Commissioner

Todd D. Valentine
Co-Executive Director

STATE BOARD OF ELECTIONS

40 STEUBEN STREET
ALBANY, N.Y. 12207-2108
Phone: 518/474-6336 Fax: 518/474-1008
URL: <http://www.elections.state.ny.us>

Douglas A. Kellner
Co-Chair

Evelyn J. Aquila
Commissioner

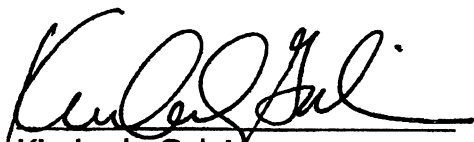
Stanley L. Zelen
Co-Executive Director

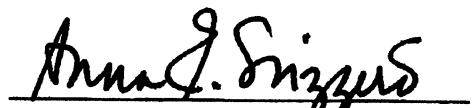
CERTIFICATION OF VACANCY

To the Board of Elections: New York City (Queens County)

We certify, under Section 4-106(4) of the Election Law, that a vacancy in the office of Member of Assembly from the 38th Assembly District occurred on June 23, 2009, due to the resignation of Assemblyman Anthony S. Seminerio.

GIVEN under our hands and official seal of office of the State Board of Elections at the City of Albany, this 24th day of June, Two thousand nine.


Kimberly Galvin
Special Counsel


Anna E. Svizzero
Director of Election Operations

KG/AES/lis

EXHIBIT 4

(Governor Paterson's August 14, 2009 Proclamation)



State of New York

AUG 14 2009

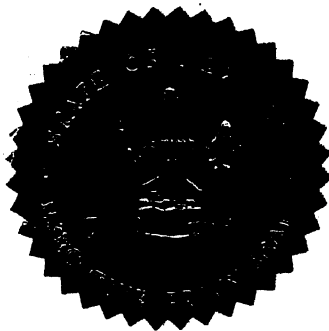
Department of State
Secretary of State



PROCLAMATION

WHEREAS, a vacancy exists in the office of Member of Assembly from the thirty-eighth Assembly District, Queens County, caused by the resignation of Anthony Seminerio, Member of Assembly from the said District;

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, pursuant to Section 42 of the Public Officers Law, do hereby order and proclaim that an election for Member of Assembly in the place and for the unexpired term of the said Anthony Seminerio, be held in the thirty-eighth Assembly District on the fifteenth day of September, two thousand nine, such election to be conducted in the manner prescribed by law for election of New York State Members of Assembly.



GIVEN under my hand and the Privy Seal of the State this fourteenth of August in the year two thousand nine.

BY THE GOVERNOR

Secretary to the Governor



STATE OF NEW YORK

DAVID A. PATERSON
GOVERNOR

PETER J. KIERNAN
COUNSEL TO THE GOVERNOR

August 14, 2009

State of New York

AUG 14 2009

Department of State
Secretary of State

Lorraine Cortés-Vázquez
Secretary of State
Department of State
41 State Street
Albany, New York 12231

Dear Secretary Cortés-Vázquez:

Governor Paterson has directed that I transmit to you as, Secretary of State, the attached Proclamation executed by the Governor on this date calling Special Election for September 15, 2009, to fill the following vacancy in the 38th Assembly District in part of Queens County due to the resignation of the Honorable Anthony Seminerio.

Please take the appropriate action required by your office with regard to this Proclamation and provide certified copies of the Proclamation to the State Board of Elections so that it may commence the administration of said election. I understand that you will return to this office duplicate copies of the proclamation indicating receipt and filing by your office.

Thank you for your cooperation in this matter.

Very truly yours,

Peter J. Kiernan
Counsel to the Governor

Enclosure



STATE OF NEW YORK

DAVID A. PATERSON
GOVERNOR

PETER J. KIERNAN
COUNSEL TO THE GOVERNOR

August 14, 2009

Stanley L. Zalen, Co-Executive Director
Todd D. Valentine, Co-Executive Director
New York State Board of Elections
40 Steuben Street
Albany, New York 12207-2108

Dear Messrs. Zalen and Valentine:

Enclosed please find a copy of a Proclamation executed by Governor Paterson on this date declaring a Special Election on September 15, 2009. This special election is necessary to fill the vacancy in the 38th Assembly District in part of Queens County due to the resignation of the Honorable Anthony Seminerio.

Please take the appropriate action required by your office with regard to this Proclamation.

Thank you for your cooperation in this matter.

Very truly yours,

Peter J. Kiernan
Counsel to the Governor

Enclosure

RECEIVED

AUG 14 2009

NYS Board of Elections

EXHIBIT 5

(NYS Enrollment by Assembly District, Party Affiliation)

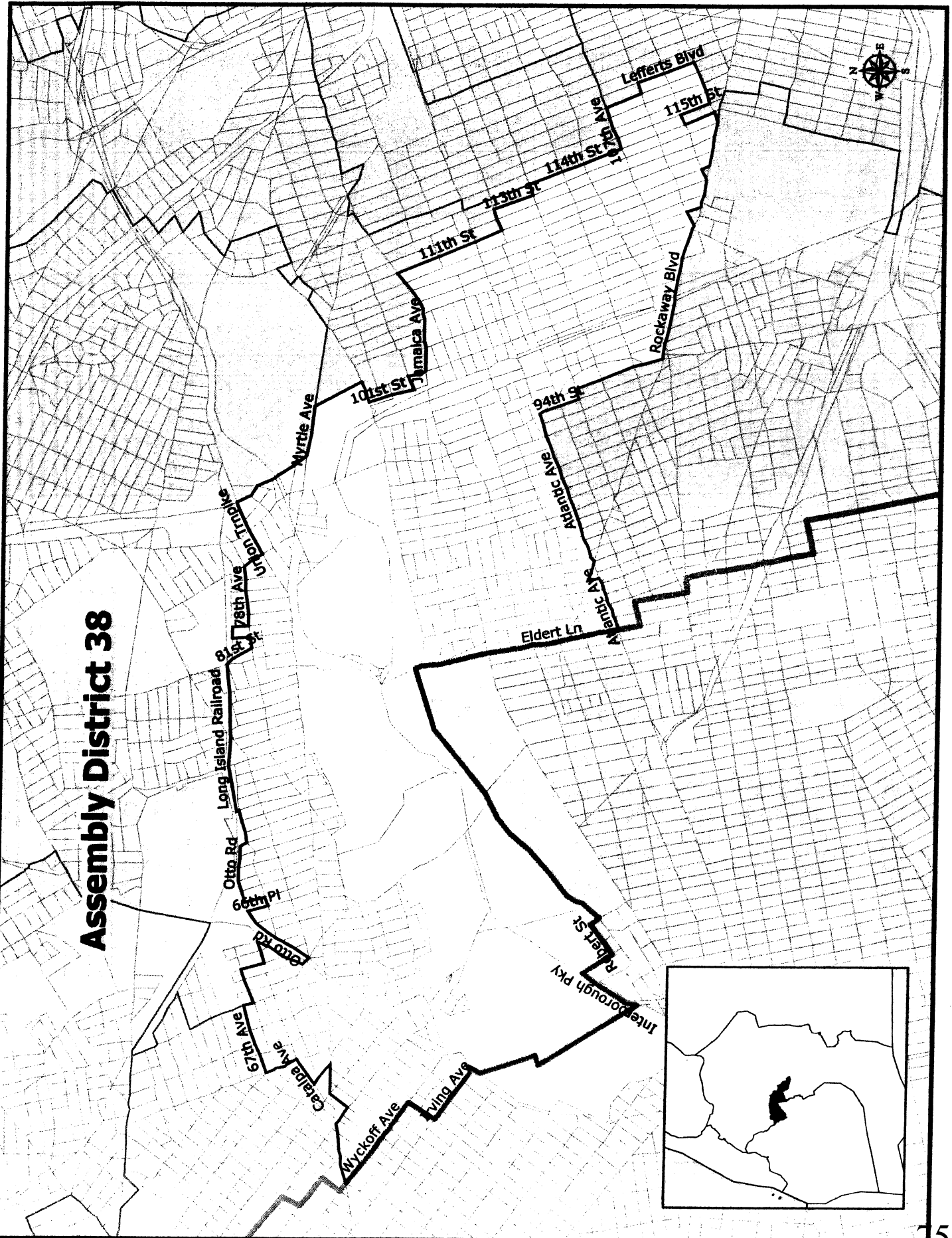
**NYSVoter Enrollment by Assembly District, Party Affiliation and Status
Voters Registered as of April 1, 2009**

DISTRICT	COUNTY	STATUS	DEM	REP	IND	CON	WOR	GRE	LBT	RTH	SWP	BLANK	TOTAL
37	District Total	Inactive	2,254	544	109	28	14	18	0	0	0	882	3,849
37	District Total	Total	36,967	6,662	1,452	275	209	120	3	0	0	11,324	56,712
38	Queens	Active	30,420	8,668	1,213	544	207	50	1	0	0	10,615	51,718
38	Queens	Inactive	1,862	660	91	45	8	2	0	0	0	765	3,433
38	Queens	Total	32,282	9,328	1,304	589	215	52	1	0	0	11,380	55,151
38	District Total	Active	30,420	8,668	1,213	544	207	50	1	0	0	10,615	51,718
38	District Total	Inactive	1,862	660	91	45	8	2	0	0	0	765	3,433
38	District Total	Total	32,282	9,328	1,304	589	215	52	1	0	0	11,380	55,151
39	Queens	Active	24,391	3,928	668	106	95	39	1	0	0	7,114	36,342
39	Queens	Inactive	1,432	289	43	6	4	2	0	0	0	503	2,279
39	Queens	Total	25,823	4,217	711	112	99	41	1	0	0	7,617	38,621
39	District Total	Active	24,391	3,928	668	106	95	39	1	0	0	7,114	36,342
39	District Total	Inactive	1,432	289	43	6	4	2	0	0	0	503	2,279
39	District Total	Total	25,823	4,217	711	112	99	41	1	0	0	7,617	38,621
40	Kings	Active	56,751	3,088	1,139	140	324	13	0	0	0	8,001	69,456
40	Kings	Inactive	5,824	423	168	13	35	3	0	0	0	1,134	7,600
40	Kings	Total	62,575	3,511	1,307	153	359	16	0	0	0	9,135	77,056
40	District Total	Active	56,751	3,088	1,139	140	324	13	0	0	0	8,001	69,456
40	District Total	Inactive	5,824	423	168	13	35	3	0	0	0	1,134	7,600
40	District Total	Total	62,575	3,511	1,307	153	359	16	0	0	0	9,135	77,056
41	Kings	Active	45,062	7,108	1,136	237	105	35	1	0	0	10,295	63,979
41	Kings	Inactive	3,541	625	85	27	11	5	0	0	0	953	5,247
41	Kings	Total	48,603	7,733	1,221	264	116	40	1	0	0	11,248	69,226
41	District Total	Active	45,062	7,108	1,136	237	105	35	1	0	0	10,295	63,979
41	District Total	Inactive	3,541	625	85	27	11	5	0	0	0	953	5,247

EXHIBIT 6

(NYS LATFOR Map & Racial/Ethnic Demographics for 38th AD)

Assembly District 38



Assembly District 38

Total Population : 123,857
Deviation : -2,652
Dev. Percentage : -2.10

	NE White	NE Black	Hispanic	NE Amer Ind	NE Asian	NE Multi	NE Other
Total	47,506	5,228	43,478	602	15,136	7,717	4,190
Total %	38.36	4.22	35.10	0.49	12.22	6.23	3.38
Total18+	39,117	3,529	28,912	363	11,329	5,669	3,000
Total18%	42.56	3.84	31.45	0.39	12.32	6.17	3.26

EXHIBIT 7

(Official Paper Ballot of the 38th AD Primary Election Gov Paterson
Ordered Canceled)

**OFFICIAL BALLOT
FOR THE
DEMOCRATIC
PRIMARY ELECTION**



City of New York,
County of Queens
September 15, 2009

**MARKING
INSTRUCTIONS:
INSTRUCCIONES
DE MARCADO:**
Correct Mark:
Marca Correcta:

PRIMARY ELECTION INSTRUCTIONS

1. Mark in blue or black pen or pencil.
2. To vote for a candidate whose name is printed on the ballot, completely fill in the voting oval under the name of the candidate.
3. To vote for a candidate whose name is not printed on the ballot, write or stamp the name and fill in the oval in the blank space following the candidate for each public office.
4. Any other mark or writing, or any erasure made on the ballot outside the voting ovals, will void this entire ballot.
5. Do not overvote. If you select a greater number of candidates than there are vacancies to be filled, your ballot will be void for that public office or party position.
6. If you tear, or deface, or wrongly mark this ballot, call the Board of Elections at (718) 730-6730 for instructions on how to obtain a new ballot. Do not attempt to correct mistakes on the ballot by making erasures or cross outs. Erasures or cross outs may invalidate all or part of your ballot. Prior to submitting your ballot, if you make a mistake in completing the ballot or wish to change your ballot choices, you may obtain and complete a new ballot. You have a right to a replacement ballot upon return of the original ballot.

INSTRUCCIONES PARA ELECCIONES PRIMARIA

1. Marque con lápiz o bolígrafo de tinta azul o negra.
2. Para votar por un candidato cuyo nombre está escrito en la papeleta electoral, llene completamente el óvalo de votar que está abajo del nombre del candidato.
3. Para votar por una candidato cuyo nombre no está escrito en la papeleta electoral, escriba o imprima el nombre del candidato y llene el óvalo en el espacio que sigue al candidato para cada una de las oficinas publicas.
4. Cualquier otra marca o escritura, o cualquier borradura echa en la papeleta electoral, fuera de los óvalos para votar invalidaran la papeleta electoral por completo.
5. No vote más de lo necesario. Si usted selecciona un número de candidatos mayor que el de las vacantes que deben ser llenadas, su papeleta será nula con respecto a ese cargo público o posición: partidaria.
6. Si usted raya o daña o marca incorrectamente esta papeleta, llame a la Junta Electoral al (718) 730-6730 para recibir instrucciones sobre como obtener una papeleta nueva. No trate de corregir los errores en la papeleta haciendo borrones o tachaduras. Los borrones o las tachaduras podrían invalidar toda o parte de su papeleta. Antes de remitir su papeleta, si comete un error al llenar la papeleta o desea cambiar las opciones que ha seleccionado en su papeleta, podrá obtener y llenar una nueva papeleta. Usted tiene el derecho de obtener una papeleta de reemplazo al devolver la papeleta original.

DO NOT MARK IN THIS AREA

2009 Primary Election, Queens COL 1 Democratic	2009 Primary Election, Queens COL 2 Democratic
MAYOR ALCALDE	BOROUGH PRESIDENT PRESIDENTE DEL DISTRITO MUNICIPAL
Vote for ONE - Vote por UNO	Vote for ONE - Vote por UNO
William C. Thompson, Jr. <input type="radio"/>	Robert Schwartz <input type="radio"/>
Tony Avella <input type="radio"/>	Marc C. Leavitt <input type="radio"/>
Roland Rogers <input type="radio"/>	Helen M. Marshall <input type="radio"/>
Write-In Candidato designado por el votante <input type="radio"/>	Write-In Candidato designado por el votante <input type="radio"/>
PUBLIC ADVOCATE DEFENSOR PUBLICO	MEMBER OF ASSEMBLY MIEMBRO DE LA ASAMBLEA
Vote for ONE - Vote por UNO	Vote for ONE - Vote por UNO
Mark Green <input type="radio"/>	Albert Baldeo <input type="radio"/>
Norman Siegel <input type="radio"/>	Nick Comaianni <input type="radio"/>
Imtiaz S. Syed <input type="radio"/>	Michael G. Miller <input type="radio"/>
Bill de Blasio <input type="radio"/>	Farouk Samaroo <input type="radio"/>
Eric N. Gioia <input type="radio"/>	Write-In Candidato designado por el votante <input type="radio"/>
Write-In Candidato designado por el votante <input type="radio"/>	
COMPTROLLER CONTRALOR	
Vote for ONE - Vote por UNO	
John C. Liu <input type="radio"/>	
David I. Weprin <input type="radio"/>	
David Yassky <input type="radio"/>	
Melinda Katz <input type="radio"/>	
Write-In Candidato designado por el votante <input type="radio"/>	

*Commissioners
of Elections*

ABS
LOT 13

ALL VOTERS INSTRUCTIONS

This ballot must be received by the Board of Elections NOT LATER THAN 9 P.M. ON SEPTEMBER 15, 2009 except that ballots contained in envelopes showing a cancellation mark of the U.S. Postal Service or a foreign country's postal service, or showing a dated endorsement of receipt by another agency of the U.S. government, not later than the day before election, will be counted if received not later than seven days following the day of election.

INSTRUCCIONES PARA TODOS LOS VOTANTES

Esta papeleta tiene que ser recibida por la Junta de Elecciones A MÁSTARDAR EL 15 DE SEPTIEMBRE DE 2009 a las 9:00 p.m., excepto que aquellas papeletas que se reciben en sobres con el matasellos de la Oficina de Correos de Los E.E.U.U. o de cualquier servicio postal extranjero o que muestre fecha de recibo endosado por cualquier otra agencia gubernamental de los Estados Unidos el día anterior a las elecciones, serán consideradas válidas si se reciben dentro de siete días después de celebradas las elecciones.

**OFFICIAL BALLOT
FOR ABSENTEE, MILITARY,
OR SPECIAL VOTERS**

**FOR THE
DEMOCRATIC
PRIMARY ELECTION
SEPTEMBER 15, 2009**

**CITY OF NEW YORK
COUNTY OF QUEENS
12 ELECTION DISTRICT
38 ASSEMBLY DISTRICT**

Lot 13
38th AD
E.D.(S): 12, 29, 37 to 51, 54

Docket No. _____

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

In the Matter of the Application of

FAROUK SAMAROO,

Plaintiff Pro Se,

-against-

GOVERNOR DAVID A. PATERSON, in his official capacity,

-and-

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

-and-

ANDREW CUOMO, THE ATTORNEY GENERAL OF THE STATE
OF NEW YORK, in his official capacity,

Defendants,

for an order pursuant to the U.S. Constitution,
the Civil Rights Act and the Voting Rights Act

**ORDER TO SHOW CAUSE
VERIFIED COMPLAINT
MEMORANDUM OF LAW**

FAROUK SAMAROO
Plaintiff Pro Se
104-20 Jamaica Avenue
Richmond Hill, NY 11418
Tel: (718) 915-2128
Fax: (718) 482-7097
Email: FaroukSamaroo@aol.com

RECEIVED
GO. BOARD OF ELECTIONS
IN THE CITY OF NEW YORK
2009 AUG 17 PM 12:41

Comm

PYI

Supreme Court of the State of New York
County of Queens

Mireille P. Leroy

NOTICE OF APPEAL

Index No.:

21141/09

Board of Elections in the City of NY

PLEASE TAKE NOTICE that (insert your name)

hereby appeals to the Appellate Division of the Supreme Court of the State of New York, Second
Judicial Department, from a (insert judgment, order, decree, etc.) Order of the
Supreme Court, Queens County, dated
8/11/09

Dated: ~~8/11/09~~ Queens, New York
August 12, 2009

Yours, etc.,

Signature

(Print Name) Vernita Charles Esq.
(Address) 44 Court St. Ste 904
(Telephone Number) 718.802-9749

To: (Insert below the name and address of the clerk of the trial court and the names and addresses of all opponents)

Clerk, Supreme Court Queens
80-11 Sutphin Blvd, NY

Board of Elections
32 Broadway
New York NY, 10004

RECEIVED
CLERK OF THE SUPREME COURT
IN THE COUNTY OF QUEENS
2009 AUG 14 PM 2:54

QUEENS COUNTY
CLERK'S OFFICE
RECEIVED
 Supreme Court of the State of New York
 Appellate Division: Second Judicial Department

Form A - Request for Appellate Division Intervention - Civil
 See § 670.3 of the rules of this court for directions on the use of this form (22 NYCRR 670.3).

2009 AUG 12 P 4:41

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

Mireille P. Leroy

- vs

Board of Elections

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	Filing Type	<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR 5704 Review
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration		<input type="checkbox"/> Appeal <input type="checkbox"/> Original Proceeding	

Nature of Suit: Check up to five of the following categories which best reflect the nature of the case.

<p>Individual Rights</p> <input type="checkbox"/> 1 Freedom of Information Law <input type="checkbox"/> 2 Human Rights <input type="checkbox"/> 3 Licenses <input type="checkbox"/> 4 Public Employment <input type="checkbox"/> 5 Social Services <input type="checkbox"/> 6 Other	<p>Domestic Relations</p> <input type="checkbox"/> 1 Adoption <input type="checkbox"/> 2 Attorney's Fees <input type="checkbox"/> 3 Children - Support <input type="checkbox"/> 4 Children - Custody/Visitation <input type="checkbox"/> 5 Children - Terminate Parental Rights <input type="checkbox"/> 6 Children - Abuse/Neglect <input type="checkbox"/> 7 Children - JD/PINS <input type="checkbox"/> 8 Equitable Distribution <input type="checkbox"/> 9 Exclusive Occupancy of Residence <input type="checkbox"/> 10 Expert's Fees <input type="checkbox"/> 11 Maintenance/Alimony <input type="checkbox"/> 12 Marital Status <input type="checkbox"/> 13 Paternity <input type="checkbox"/> 14 Spousal Support <input type="checkbox"/> 15 Other	<p>Real Property</p> <input type="checkbox"/> 1 Discipline <input type="checkbox"/> 2 Jail Time Calculation <input type="checkbox"/> 3 Parole <input type="checkbox"/> 4 Other <input type="checkbox"/> 1 Condemnation <input type="checkbox"/> 2 Determine Title <input type="checkbox"/> 3 Easements <input type="checkbox"/> 4 Environmental <input type="checkbox"/> 5 Liens <input type="checkbox"/> 6 Mortgages <input type="checkbox"/> 7 Partition <input type="checkbox"/> 8 Rent <input type="checkbox"/> 9 Taxation <input type="checkbox"/> 10 Zoning <input type="checkbox"/> 11 Other	<p>Other</p> <input type="checkbox"/> 1 Assault, Battery, False Imprisonment <input type="checkbox"/> 2 Conversion <input type="checkbox"/> 3 Defamation <input type="checkbox"/> 4 Fraud <input type="checkbox"/> 5 Intentional Infliction of Emotional Distress <input type="checkbox"/> 6 Interference with Contract <input type="checkbox"/> 7 Malicious Prosecution/Abuse of Process <input type="checkbox"/> 8 Malpractice <input type="checkbox"/> 9 Negligence <input type="checkbox"/> 10 Nuisance <input type="checkbox"/> 11 Products Liability <input type="checkbox"/> 12 Strict Liability <input type="checkbox"/> 13 Trespass and/or Waste <input type="checkbox"/> 14 Other
<p>Business & Other Obligations</p> <input type="checkbox"/> 1 Partnership/Joint Venture <input type="checkbox"/> 2 Business <input type="checkbox"/> 3 Religious <input type="checkbox"/> 4 Not-for-Profit <input type="checkbox"/> 5 Other	<p>Miscellaneous</p> <input type="checkbox"/> 1 Constructive Trust <input type="checkbox"/> 2 Debtor & Creditor <input type="checkbox"/> 3 Declaratory Judgment <input checked="" type="checkbox"/> 4 Election Law <input type="checkbox"/> 5 Notice of Claim <input type="checkbox"/> 6 Other	<p>Government</p> <input type="checkbox"/> 1 City of Mount Vernon Charter §§ 120, 127-f, or 129 <input type="checkbox"/> 2 Eminent Domain Procedure Law § 207 <input type="checkbox"/> 3 General Municipal Law § 712 <input type="checkbox"/> 4 Labor Law § 220 <input type="checkbox"/> 5 Public Service Law §§ 128 or 170 <input type="checkbox"/> 6 Other	<p>Wills & Estates</p> <input type="checkbox"/> 1 Accounting <input type="checkbox"/> 2 Discovery <input type="checkbox"/> 3 Probate/Administration <input type="checkbox"/> 4 Trusts <input type="checkbox"/> 5 Other

Appeal

Paper Appealed From (check one only):

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> Amended Decree | <input type="checkbox"/> Determination | <input type="checkbox"/> Order | <input type="checkbox"/> Resettled Order |
| <input type="checkbox"/> Amended Judgment | <input type="checkbox"/> Finding | <input type="checkbox"/> Order & Judgment | <input type="checkbox"/> Ruling |
| <input type="checkbox"/> Amended Order | <input type="checkbox"/> Interlocutory Decree | <input type="checkbox"/> Partial Decree | <input type="checkbox"/> Other (specify): |
| <input checked="" type="checkbox"/> Decision | <input type="checkbox"/> Interlocutory Judgment | <input type="checkbox"/> Resettled Decree | |
| <input type="checkbox"/> Decree | <input type="checkbox"/> Judgment | <input type="checkbox"/> Resettled Judgment | |

Court: Supreme Court of State of NY

County: Queens

Dated: 7/11/09

Entered:

Judge (name in full): Kerrigan J

Index No.: 21141/09

Stage: Interlocutory Final Post-Final

Trial: Yes No If Yes: Jury Non-Jury

Prior Unperfected Appeals Information

Are any unperfected appeals pending in this case? Yes No. If yes, do you intend to perfect the appeal or appeals covered by the annexed notice of appeal with the prior appeals? Yes No. Set forth the Appellate Division Cause Number(s) of any prior, pending, unperfected appeals:

Original Proceeding

Commenced by: Order to Show Cause Notice of Petition Writ of Habeas Corpus

Date Filed: Aug 7, 2009

Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court:

County:

Judge (name in full):

Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order

Court:

County:

Judge (name in full):

Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of the proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Appeal from an order to show cause requesting the validation of a petition from an aggrieved candidate. The motion was denied for both a procedural and substantive reasons. Procedurally, the lower court found the motion to be untimely, and substantively, it found the misidentification of petition numbers ~~to be~~ on the cover sheet to be grave enough, that the candidate did not comply with Board of Elections regulations.

Amount: If an appeal is from a money judgment, specify the amount awarded.

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review.

Procedurally - According to the booklet issued by the Board of Elections to all citizens wishing to be involved in the electoral process, a party has until July 30, 2009 to commence judicial proceedings OR (3) business days with regard to designating petition after Board of Elections hearing where petition was invalidated. What is the legal effect of the Board of Elections hearing the candidate on Aug 4, 2009, refusing to place the candidate on the ballot - at the scheduled hearings? The three days should apply after the hearing... (See Original order to show cause - which delineates the facts in detail)

Issues Continued:

Substantively

- Was the ~~mis~~misidentification, on the original cover sheet of one identification number, justify the removal of the candidate from the ballot?
- Although the judge ruled that the OSC was untimely filed. He also ruled on the merits of the case - going to whether the misidentification ~~was~~ ~~sub~~ of one ID, substantially failed to meet the Board of Election requirements ~~in~~ for candidates

05 Form for Additional Appellate Information

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, defendant third-party plaintiff, third-party defendant, and intervenor. Examples of a party's Appellate Division status include: appellant, respondent, appellant-respondent, respondent-appellant, petitioner, and intervenor.

No.	Party Name	Original Status	Appellate Division Status
1	Mireille P. Leroy	Petitioner	appellant
2	Board of Elections, City of NY	Respondent	appellee Resp
3			
4			
5			
6			
7			
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11			
12			
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14			
15			
16			
17			
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms of attorneys for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided.

In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Vernita Charles
 Address: 44 Court St. Ste 904
 City: Brooklyn State: NY Zip: 11201 Telephone No.: 718-802-9749
 Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice
 Party or Parties Represented (set forth party number[s] from table above or from Form C): 1

Attorney/Firm Name: Board of Elections
 Address: 32 Broadway
 City: NY State: NY Zip: Telephone No.:
 Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice
 Party or Parties Represented (set forth party number[s] from table above or from Form C): 2

Attorney/Firm Name:
 Address:
 City: State: Zip: Telephone No.:
 Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice
 Party or Parties Represented (set forth party number[s] from table above or from Form C):

Attorney/Firm Name:
 Address:
 City: State: Zip: Telephone No.:
 Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice
 Party or Parties Represented (set forth party number[s] from table above or from Form C):

Attorney/Firm Name:
 Address:
 City: State: Zip: Telephone No.:
 Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice
 Party or Parties Represented (set forth party number[s] from table above or from Form C):

Attorney/Firm Name:
 Address:
 City: State: Zip: Telephone No.:
 Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice
 Party or Parties Represented (set forth party number[s] from table above or from Form C):

Use Form C for Additional Party and/or Attorney Information

The use of this form is explained in § 670.3 of the rules of the Appellate Division, Second Department (22 NYCRR 670.3). If this form is to be filed for an appeal, place the required papers in the following order: (1) the Notice of Appeal; (2) any required Additional Appeal Information forms (Form D, E, F, G) and required supporting papers and Attorney Information forms (Form C); (4) the Notice of Appeal; and a statement of grounds to appeal; (5) a copy of the brief or papers from which the appeal is taken; (6) a copy of the decision of the court in the original instance; and (7) a copy of the decision of the court in the original instance, if any.

ORIGINAL

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN
Justice

Part D

-----X
Mirelle P. Leroy,

Index
Number: 21141/09

Petitioner,

- against -

Board of Elections in the City of New York,

Respondent.
-----X

2009 AUG 12 PM 3:41
QUEENS COUNTY CLERK
FILED RECORDED

The following papers numbered 1-5 to read on this petition for an order pursuant to §§16-100, 16-102 and 16-116 of the Election Law declaring valid the designating petition which designated petitioner as a candidate for the public office of City Council of the City of New York, District 28 in the Democratic primary election to be held on September 15, 2009.

Papers
Numbered

Order to Show Cause-Emergency Affidavit-
Petition-Memorandum of Law-Exhibits 1-5

Upon the foregoing papers and after oral argument on the record, and after due deliberation thereon, it is hereby ORDERED and ADJUDGED that the petition is dismissed, based upon respondent's oral motion, for the reasons set forth on the record, upon the grounds that the petition was not timely commenced and that even were it timely commenced, the defect of listing incorrect petition identification numbers on the cover sheet was not de minimis or insubstantial and petitioner failed to cure said defect within the prescribed three-day period.

Accordingly, the petition is dismissed.

Respondent may enter judgment accordingly.

Dated: August 11, 2009



KEVIN J. KERRIGAN, J.S.C.

Clerk

To Be Argued By:

HARRY KRESKY

Time Requested: 15

Minutes

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

-----X

MIREILLE P. LEROY,

Petitioner-Appellant

-against-

Docket No. 2009-07528

BOARD OF ELECTIONS IN THE CITY OF NEW
YORK,

Respondent-Respondent,

-----X

BRIEF FOR PETITIONER-APPELLANT

Law Office of Harry Kresky
Attorney for Petitioner-Appellant
250 West 57th Street, Suite 2017
New York, NY 10107
(212) 581-1516

Queens County Index No. 21141/09

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QUESTIONS PRESENTED

1. Did the time to institute judicial proceedings begin to run at the time a subcommittee of respondent-respondent Board of Elections (hereinafter the “Board”) issued a letter rejecting petitioner-appellant’s amended coversheet? The Court below answered this question in the affirmative.
2. By hearing argument and ratifying the decision of the subcommittee, did the full Board take action from which the time to institute judicial proceedings began to run? The Court below answered this question in the negative.
3. Should a candidate with more than the required number of signatures on her designating petition be removed from the ballot because her cover sheet inadvertently stated she filed 15 volumes when that cover sheet listed volumes numbering 16? The Court below answered this question in the affirmative.

STATEMENT OF THE CASE

This is a case in which the cure was worse than the disease. Petitioner-appellant, a candidate for the Democratic Party nomination for Member of the City Council for the 28th Councilmanic District in Queens County, submitted a designating petition to respondent-respondent Board of Elections in the City of New York with far more than the required number of signatures. (Transcript of oral argument before the court below (hereinafter “T”), p. 26) Petitioner-appellant’s cover sheet stated that 15 volumes had been filed. However, the identification numbers for 16 volumes were listed. (Petition, Exhibit A) Respondent-respondent sent her a notice stating that the cover sheet was out of compliance and giving her an opportunity to cure. The notice stated that:

Failure to file the amended cover sheet within the three day period shall be a FATAL DEFECT.
(Emphasis in original) (Petition, Exhibit B)

An amended cover sheet was filed which corrected the miscount of volumes, but contained other errors not contained in the original, namely, the failure to state Democratic Party at the top and a misstatement of eight volume numbers by the dropping of a “7.” (Petition, Exhibit C) On July 27, 2009 a further notice was sent to petitioner-respondent’s contact person stating:

The Commissioners of Elections (or duly constituted committee thereof), pursuant to the provisions of Rule D6 of the Board's Designating Petition Rules for the September 15, 2009 Primary Election, at a meeting held July 23, 2009, determined that the following will not appear on the ballot for the September 15, 2009 Primary Election since the Amended Cover sheet did not comply with the New York State Election Law and/or the Rules of the Board of Elections, in that the amended cover sheet omitted the name of the Party. (Emphasis in original) (Petition, Exhibit D)

On July 29, 2009 petitioner-appellant submitted a further amended cover sheet that corrected the errors. (Petition, Exhibit E)

Counsel for petitioner-appellant appeared at a hearing held by respondent-respondent for Queens County candidates on August 4, 2009. Her argument that the cover sheet error was not substantial and, in any event, had been corrected was rejected by the Commissioners. (T 20) Immediately thereafter, on August 7, 2009, petitioner-appellant commenced this proceeding to validate.

On the return date of the proceeding, counsel for respondent-respondent who submitted no papers below, made an oral motion to dismiss on grounds of untimeliness. The Court heard argument on the motion. Respondent-respondent took the position that the three day limitations period set forth in Election Law Sec. 16-102(2) began to run on July 27, 2009 the date of the letter rejecting the amended coversheet, describing it as a "final determination." (T 6) Counsel conceded, however, that on August 4, 2009, the date of the hearings for Queens County, a representative of petitioner-appellant appeared and argued her position regarding the cover sheet. In counsel's view, after argument, the Board "declined to reconsider and revisit the subcommittee's determination." (T 7) The "subcommittee" was described as having been created pursuant to Section 3-212(5) of the Election Law and Rule J-5 of the Board Rules. (T 18) Each subcommittee consisted of at least one Democratic and one Republican Commissioner and, according to counsel, a subcommittee met each day during the petition filing period and the following week. (T 18)

Trial Counsel for petitioner-appellant offered into evidence the Board's 2009 calendar and designating petition rules which were marked collectively as Court Exhibit 1. (T 21) Counsel referred to Rule E-1 and argued that what occurred was a preliminary finding of "Prima Facie" defect that could be argued at the

August 4th hearing where a final determination would be made. (T 21-22) Counsel also referenced the Board's calendar which states:

Last day to institute Judicial Proceedings.....Thursday, July 30, 2009 or (3) business days with regard to designating petitions after BOE hearing where the petition is invalidated. (T 20)

According to counsel:

My client was present on the August 4th hearing with the Board of Elections. On the August 4th hearing the commissioners heard what I indicated, and they stated they would place her on the ballot. So for opposing counsel to indicate that nothing happened, I was just there, they told me thank you for coming. More than that happened, They indicated on that date my client would not be placed on the ballot after hearing all the information and evidence I presented to the Court (sic) on the August 4th hearing. (T 20)

With regard to the merits, counsel for petitioner-appellant argued that the cover sheet defect was *de minimus* and should not be grounds to invalidate a designating petition with more than enough signatures. (T 34-35, 39-42) Counsel for respondent-contender contended that the volume numbers were useful to an objector attempting to review the petition to determine if there were enough valid signatures. (T 36-37) In response, however, it was noted that an objector can find out which volumes were filed on behalf of a particular candidate from the Board's computer which picks up the volume numbers directly from the petitions, not from the cover sheet. (T 39-41)

The Court below rendered its decision at the close of the hearing. (T 58-68) It found that the July 27, 2009 letter constituted a final determination, and that the three day limitation period began to run at that point. (T 60-61) The Court held that the existence of an opportunity to cure distinguished petitioner-appellant's situation from that of a Prima Facie defect that is argued and ruled on at the Board's borough hearings. (T 60) The Court did, however, find that on August 4, 2009 the Board conducted a hearing on the validity of the designating petition. (T 61) On the merits, the Court found that the misstatement on the original cover sheet as to the number of volumes filed was not *de minimus*, and that the Board properly invalidated the designating petition. (T 63-65)

ARGUMENT

I. THE PROCEEDING BELOW WAS TIMELY FILED

Section 16-102 of the Election Law states:

2. A proceeding with respect to a petition shall be instituted within fourteen days after the last day to file the petition, or within three business days after the officer or board with whom or which such petition was filed, makes a determination of invalidity with respect to such petition, whichever is later;

Thus provision must be read in conjunction with the publications of respondent-respondent Board on the subject. In this regard the official Board calendar states that the three days begin to run “after BOE hearing where the petition is invalidated.” That same calendar states:

Board of Elections’ HEARINGS ON DESIGNATING PETITIONS at Executive Office, 42 Broadway, 6th Floor starting on Monday, August 3, 2009 and continuing on **Tuesday and Wednesday, August 5 (if necessary) at 10 AM.** Interested parties should contact the Board’s Executive Office after the Commissioners’ Meeting on **Tuesday, July 28, 2009 at 1:30 pm.** To obtain a detailed breakdown of the Hearing Schedule by Borough by calling (212) 487-5300. (Emphasis in original)

Petitioner-appellant reasonably relied on the above in determining that she had three business days from the August 4, 2009 Queens hearing at 42 Broadway to commence her validating proceeding. Respondent-respondent argues that three day period began with its July 27, 2009 letter to petitioner-appellant’s contact person that the amended cover sheet was defective and that “the following will not appear on the ballot for September 15, 2009 Primary Election.” According to the letter, the determination was made by “The Commissioners of Elections (or a duly constituted committee thereof).” In fact, two Commissioners made that determination in private, Polanco and Araujo. (T 18-19) The letter cites Rule D6 of the Board’s rules as the authority for this action. That provision, however, makes no mention of a “duly constituted committee,” but refers, rather to the “Board.” At the hearing, counsel for respondent-respondent pointed to Section 3-212 of the

Election Law and J5 of the rules as the legal basis for action by a committee. (T 18)

Section 3-212 states, in pertinent part:

2. All actions of the board shall require a majority vote of the commissioners prescribed by law for such board.

* * *

5. The board of elections of the city of New York, upon the affirmative vote of six commissioners, may adopt rules authorizing a number of commissioners less than the total membership of the board to act on behalf of the board on matters required to be performed by boards of election pursuant to the provisions of this chapter, provided that such number shall be comprised of commissioners representing equally the two political parties entitled to representation on the board.

Rule J5 states:

Whenever there is not a quorum of Commissioners present on any day scheduled for Commissioners' hearings, a committee of the Commissioners shall rule on the Clerks' or Counsel's Reports. The committee is constituted pursuant to Election Law §3-212 (5). The committee shall consist of the largest equal number of Commissioners from each of the political parties represented on the Board who are available and designated by the President and Secretary of the Board, who may make such designation by telephone. In the absence of the President or the Secretary, the Commissioner of the same political party with the greatest length of service on the Board who is available shall make such designation. The President and Secretary, or senior Commissioners present shall attempt to confer with the other Commissioners of the same political party before making such designation. The committee shall serve only for that hearing date, or until a quorum of the full Board is present, whichever is shorter, unless the full Board shall provide otherwise.

However, according to the Board's calendar (quoted above), the dates for hearings were August 3 through 5, 2009. Moreover, the letter of July 27, 2009 is not a ruling on a counsel or clerk's report.[1]

Therefore, the July 27, 2009 letter is not a determination of the Board, and the three day limitations period did not begin to run. That leaves two possibilities. One, petitioner-appellant was never legally removed from the ballot and, therefore, no judicial proceeding was necessary. Two, the determination occurred at the August 4, 2009 hearing, and a timely validation proceeding was commenced thereafter.

II. PETITIONER-APPELLANT'S COVER SHEET DID NOT CONTAIN ANY DEFECT THAT JUSTIFIED HER REMOVAL FROM THE BALLOT

Section 6-134(2) of the Election Law requires that the regulations governing the binding and filing of designating petitions:

...shall be no more restrictive than is reasonably necessary for the processing of such petitions by the board of elections,

The statute goes on to state in subdivision 10:

The provisions of this section shall be liberally construed, not inconsistent with substantial compliance and the prevention of fraud.

Substantial compliance is the rule in this judicial department, particularly with regard to cover sheet errors. *Pearse v. New York City Bd. of Elections*, 10 A.D.3d 461 (2d Dept. 2004); *Most v. Walker*, 297 A.D.2d 356 (2d Dept. 2002). This principle has been applied to validate petitions where, as in the case at bar, the candidate made an error in utilizing the Board's petition volume identification system. *Siems v. Lite*, 307 A.D.2d 1016 (2d Dept. 2003)

The nature of the cover sheet error here in no way suggests fraud, and the Court below so found. (T 64) Indeed, the number of volumes claimed was less than the volume numbers listed. Further, it appears from the second amended cover sheet that the initial cover sheet also listed a volume number

that was not filed, QN00734. As was noted at oral argument of the proceeding below, the Board's clerks take the volume numbers off of the petitions themselves, not the cover sheets in preparing their official ledger, now available on computer. There is no prejudice to an objector from the listing of the extra volume number. He or she would quickly discover that it does not exist or that it does not contain a petition listing the candidate being challenged, when the petitions for the candidate in question were requested from the Board's staff.

And, of course, in the process of attempting to cure this insubstantial defect, the candidate's agent made other errors that caused the amended cover sheet to be rejected. A subsequent amendment that, finally, got all of the information correct, was ignored. Thus, the very cure procedure, designed to prevent the removal of candidates for cover sheet defects, has resulted in petitioner-appellant being removed from the ballot for an initial cover sheet error that was surely not substantial.

CONCLUSION

For all of the above reasons, the order of the Court below should be reversed, the petition granted and petitioner-appellant's name restored to the ballot for September 15, 2009 primary.

Dated: August 17, 2009

New York, NY

**Respectfully
submitted,**

Law Office of Harry Kresky

by Harry Kresky

CERTIFICATE OF COMPLIANCE

This brief was prepared on a computer word processing system. It contains 2,351 words in Times New Roman 14 point type, double spaced.

Harry Kresky

[1] At the proceeding before the Court below counsel for petitioner-appellant also argued that the July 27, 2009 was a preliminary letter of a Prima Facie defect and, therefore, had to be considered at the Board's hearing pursuant to Rule E1. This argument is consistent with the points being made above. Further, the opinion of the Court below notwithstanding, there is nothing inconsistent with this avenue and the opportunity to cure. An attempted cure might obviate the need for a hearing; it need not take the place of it.

STATEMENT PURSUANT TO CPLR SEC. 5531

1. The index number of the case in the court below is 21141/09.
2. The full names of the original parties are on the cover. There have been no changes.
3. The proceeding was commenced in Supreme Court, Queens County.
4. The proceeding was commenced on August 7, 2009 by petition and order to show cause. No responsive pleadings were served.
5. The nature and object of the proceeding is to validate a designating petition.
6. The appeal is from an order of Hon. Kevin J. Kerrigan entered August 12, 2009.
7. The appeal is being taken on the original record as is customary for election matters.

Steven H. Richman

From: harrykres@aol.com
Sent: Monday, August 17, 2009 10:53 AM
To: WEBMAIL_RichmanS
Subject: Fwd: Transcript re: Mireille Leroy v. Board of Elections hearing on 8/11/09

Steve,
Here is transcript.
Harry

-----Original Message-----

From: Bill Reilly <equibill@gmail.com>
To: harrykres@aol.com <harrykres@aol.com>
Sent: Fri, Aug 14, 2009 2:05 pm
Subject: Fwd: Transcript re: Mireille Leroy v. Board of Elections hearing on 8/11/09

Sent from my iPhone
Bill Reilly
Friends of Mireille Leroy
646-415-3929
equibill@gmail.com

Begin forwarded message:

From: Aspinell1@aol.com
Date: August 14, 2009 1:52:14 PM EDT
To: equibill@gmail.com
Subject: Transcript re: Mireille Leroy v. Board of Elections hearing on 8/11/09

Hi Mr. Reilly,

Just download attached file for transcript.

Angela

1 SUPREME COURT OF THE STATE OF NEW YORK.
COUNTY OF QUEENS : CIVIL TERM : PART D
2 -----X
MIREILLE P. LEROY
3 PETITIONER,

4 -against- Index No. 21141/09
5 BOARD OF ELECTIONS IN THE CITY OF NEW YORK,
6 RESPONDENT.

7 For an Order, pursuant to Sections 16-100,
8 16-102 and 16-116 of the Election Law,
9 declaring valid the designating petition which
10 designated the Petitioner as an aggrieved
11 Candidate for the Public Office of City Council
12 of the City of New York, District 28 City
13 Council of the City of New York,
14 In the Democratic Primary Election to be held
15 September 15, 2009

-----X

12

13 Supreme Courthouse
14 88-11 Sutphin Boulevard
15 Jamaica, New York 11435
16 August 11, 2009

16 B E F O R E:

17 THE HONORABLE KEVIN J. KERRIGAN,
18 J U S T I C E

19 A P P E A R A N C E S:

20

21 VERNITA CHARLES, ESQ.
22 Attorney for the Petitioner
23 44 Court Street, Suite 904
24 Brooklyn, New York 11201

25 NEW YORK CITY LAW DEPARTMENT
26 Attorney for Respondent Board of Elections
27 100 Church Street
28 New York, New York 10007
29 BY: STEPHEN KITZINGER, ESQ.

ams

2

1 A P P E A R A N C E S: (Cont'd.)

2

BOARD OF ELECTIONS OF THE CITY OF NEW YORK
General Counsel for the Board of Elections
32 Broadway, 7th Floor
New York, New York 10004
BY: STEVEN, H. RICHMAN, ESQ.

5

6

ANGELA M. SPINELLI, CSR, RPR
Senior Court Reporter

7

8

* * *

9

THE CLERK: All rise, Supreme Court is now in
session, the Honorable Kevin J. Kerrigan now presiding.

10

11

Come to order.

12

THE COURT: Counselors, you want to come up to the
table, might as well do everything on the record.

13

14

THE CLERK: This is index number 21141 of '09, an
election matter, Mireille P. Leroy versus the Board of
Elections.

15

16

17

MS. CHARLES: Vernita Charles, 44 Court Street,
Suite 904, Brooklyn, New York for petitioner.

18

19

Good afternoon, your Honor.

20

MR. KITZINGER: Stephen Kitzinger, New York City
Law Department, for respondent Board of Elections.

21

22

MR. RICHMAN: Steven H. Richman, general counsel
for the respondents Board of Elections, 32 Broadway, New
York, New York 10004.

23

24

25

THE COURT: Everybody could be seated.

ams

3

Proceedings

1 We, right before lunch, began an off the record
2 discussion of what the issue or issues are in this case.

3 We then broke for lunch. During lunch I had a
4 chance to read not only the cases that counsel Miss
5 Charles handed up in my chambers, but also different
6 sections of the board of elections -- is rules the
7 proper term?

8 MR. KITZINGER: Yes.

9 MR. RICHMAN: Yes.

10 THE COURT: I have the petition by Miss Charles on
11 behalf of Miss Leroy to essentially validate her
12 candidacy and direct the board to place her on the
13 ballot pursuant to the petitions that she submitted.

14 I don't know who wants to go first with, you know,
15 the legal arguments either for or against. When we were
16 in chambers, it sounded to me as if the respondent by
17 its counsels was prepared to make a motion to dismiss.

18 That's probably the starting point for which each
19 side should be heard, and which will lead me to make a
20 decision.

21 Does anybody have any objection to doing it that
22 way?

23 MS. CHARLES: I have no objection, your Honor.

24 MR. RICHMAN: Thank you, your Honor.

25 On behalf of the Board of Elections, respondent in

ams

4

Proceedings

1 this matter, we would move to dismiss the proceeding as
2 being untimely commenced.

3 New York Election Law section 16-102, subdivision
4 2 requires that a matter proceeding to validate a
5 designated petition must be brought no later than
6 14 days after the last date to file the petition. Which
7 in this case would have been July 30th. Or 3 days after
8 removal by the Board of Elections from the ballot.

9 THE COURT: And that date according to you would
10 be?

11 MR. RICHMAN: July 30th. And I'll explain how I
12 get there.

13 THE COURT: Right.

14 MR. RICHMAN: The petitioner in this case filed
15 the petition with a cover sheet timely. The Board of
16 Elections reviewed it, the cover sheet. And on the 21st
17 of July sent a noncompliance notice stating that the
18 cover sheet was defective, because the number of items
19 claimed did not equal the number of volume numbers

20 listed on the cover sheet itself.

21 It claimed 15 volumes, but listed 16 distinct
22 volume identifiers.

23 THE COURT: And that would be identification
24 numbers?

25 MR. RICHMAN: Yes. The volume numbers. It also

ams

5

Proceedings

1 -- one of those volume numbers did not actually have
2 signatures or petition sheets seeking to designate the
3 petitioner for the office in question.

4 Petitioner's contact person was notified of this
5 defect. And advised they had 3 days to cure the defect,
6 otherwise, the defect would become permanent and fatal,
7 thereby causing her to be removed from the ballot.

8 In -- presumably in response to this notice, an
9 amended cover sheet was filed. Unfortunately, this was
10 worse than the first one. While the number of volumes
11 claimed equal the number of volume identifiers listed,
12 the volume identifiers were subject -- were, I think, 8
13 of them were wrong, 8 of the 15.

14 THE COURT: Meaning a wrong number?

15 MR. RICHMAN: The numbers didn't match the actual
16 volumes that purported to designate the petition.

17 THE COURT: Okay.

18 MR. RICHMAN: A duly designated subcommittee of
19 the Board of Elections reviewed this amended cover sheet
20 and determined that it was not a valid cure because of
21 the aforementioned defect. That is, that the volume
22 identification numbers did not match the volumes
23 actually on file with the Board of Elections that
24 purported to designate the petitioner.

25 In addition, it was also noted that the -- the

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Proceedings

1 party name was not listed on the amended cover sheet.

2 Thereafter, on July 27th the Board of Elections
3 sent a notice to the candidate that the attempted cure
4 was invalid, not effected. Thereby -- therefore, the
5 candidate would not appear on the ballot, she was off.

6 There was never any mention about any further
7 opportunity to be heard, that this was merely a
8 preliminary decision. This is clearly, definitively
9 stated that it was a final determination. That was
10 July 27th.

11 Candidate petitioner had 3 days from that date to
12 commence the action in this court.

13 THE COURT: That's pursuant to 16 --

14 MR. RICHMAN: 102. That was not done. This
15 action was only commenced on August 7th. Which was over
16 one week late. Therefore, this matter is untimely.

17 Now, the Board of Elections also conducted
18 hearings on matters on the prima facie defect calendar
19 as well where general objections followed. The
20 specification of objections were followed by objectors,
21 where clerk's reports were issued.

22 That occurred for the Queens County matters on
23 August 4th. At that time, someone appeared on behalf of
24 the petitioner here, filed a notice of appearance and
25 asked to be heard. The case was argued by that person.

ams

7

Proceedings

1 The commissioners declined to reconsider and
2 revisit the subcommittee's determination that was made,
3 I think, on the 23rd of July and followed up with a
4 letter dated July 27th.

5 It's black letter law that in the State of New
6 York, a denial of a motion for reconsideration does not
7 restart the time for the statute of limitations
8 purposes.

9 For that I refer to Davis versus Kingsbury, 27 NY
10 2d 567 1970 and also Byer's Civil Motions section 828 at

11 page 125 second edition 2006.

12 Therefore, because the only possible date for
13 which the determination to remove the candidate
14 petitioner from the ballot was July 27th. July 30th was
15 the last day on both calculations under 16-102 of the
16 election law to commence this action.

17 As stated before, this action was not commenced
18 until August 7th. It is, therefore, untimely and must
19 be dismissed. Now, petitioner may argue this was --
20 should be considered a prima facie defect. Because once
21 the cure was ineffective it became an incurable defect.

22 That would render every decision by the Board of
23 Elections a prima facie defect, which is clearly not
24 what is in the rules. It clearly makes no sense. And
25 rules -- section D refers explicitly to the cover sheet

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8

Proceedings

1 review process in the noncompliance.

2 In fact, the exact process the Board of Elections
3 followed in this very case. Prima facie matters are
4 matters never subject to cure. Such, as if you file a
5 designated petition, and you fail to list the party on
6 the petition, or the name of the public office,
7 something that you -- can never be cured in any way.

8 THE COURT: And that's visible.

9 MR. RICHMAN: On its face. It is a facial defect.

10 That's not what happened here. What happened here is it
11 was a curable defect. Petitioner was given the
12 opportunity to cure it, failed to do so properly.

13 Therefore, it was determined to be off the ballot
14 on July 27th, making July 30th the last day to timely
15 commence an action to validate the petition.

16 This was not done, it is untimely. This
17 proceeding should be dismissed. We reserve our right to
18 address the substantial compliance matters if the Court
19 declines to grant our motion.

20 THE COURT: All right, just before I hear from
21 Miss Charles, one question: On the August 4th hearing,
22 how did that work?

23 In terms of this particular candidate, pursuant to
24 what I'm hearing, and what I'm seeing, the board had
25 made its determination, which was communicated in the

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9

Proceedings

1 July 27th, '09 letter to Mr. Reilly the contact person.

2 MR. RICHMAN: Yes.

3 THE COURT: What could have happened on
4 August 4th, and what, in fact, did happen? Obviously,

5 from what you said, the board heard someone, either the
6 candidate herself or someone on the candidate's behalf.

7 MS. CHARLES: It was me, your Honor.

8 THE COURT: Okay.

9 MR. RICHMAN: It was counsel.

10 THE COURT: Clear that up. And I think everybody
11 agrees that the board did not reopen the matter or
12 reverse itself.

13 MR. RICHMAN: A commissioner can move -- make a
14 motion to reconsider the subcommittee's consideration.
15 That motion would have to be seconded. If seconded,
16 there would be a vote.

17 And pursuant to the New York election law it has
18 to be a majority of the whole, which would require the
19 affirmative votes of not fewer than 6 commissioners.

20 THE COURT: Of the 10?

21 MR. RICHMAN: Of the 10 possible commissioners.
22 We happen to be full strength right now to restore her
23 to the ballot. This did not happen.

24 THE COURT: So no one made that motion, the motion
25 was never before --

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Proceedings

1 MR. RICHMAN: -- no commissioner made a motion.

2 No commissioner, therefore, could have been seconded or
3 voted on.

4 THE COURT: So, I guess, my question then becomes
5 the determination communicated in the July 27th letter
6 was not a final determination then.

7 MR. RICHMAN: No, it was a time determination.
8 But with virtually, even if your Honor makes a final
9 ruling, the litigant has the right to make a motion for
10 reconsideration, the Court does not have to hear it, can
11 deny it, but that does not trigger or re-trigger the
12 time -- the clock for statute of limitations purposes or
13 appeal purposes as it would be in this Court. Once the
14 determination is made, it is final.

15 THE COURT: Let me ask you this question, and I'm
16 sure you know the procedure better than I do, having
17 presumably dealt with these matters more than me, but I
18 thought that I remember reading probably in the rules,
19 maybe in the statute, doesn't the candidate have to be
20 notified of the opportunity to be heard at the
21 August 4th -- in this case it was the August 4th
22 hearing?

23 MR. RICHMAN: That is if there is a prima facie
24 defect.

25 THE COURT: Only if there is a prima facie defect?

ams

Proceedings

1 MR. RICHMAN: Or if there is a clerk's report
2 following the timely filing of the general objection and
3 specifications of objection.

4 If there is merely a defect that was curable and
5 not cured, they're off the ballot. At the time, the
6 3 days after the NCN notice is sent, if it is not cured,
7 it is a curable defect, and that is your notice. That's
8 your notice and opportunity to cure.

9 The board tells you what the problem is. Tells
10 you to come in, file an amended cover sheet, provide a
11 sample of the form, and you file it, and you cure it,
12 and you're on. If there's -- nothing happened
13 afterwards.

14 This was not a prima facie defect. Like you said,
15 a prima facie defect, is sort of the best way to say it,
16 it is a structural defect, generally, in a preprinted
17 form that there is a defect in the form itself that you
18 can't cure because the signatures have already been
19 affixed to the petition.

20 For example, if you have a printed petition, and
21 the printer for one reason or another fails to include
22 required information, such as the public office being
23 sought, such as mayor of the City of New York, 20th
24 council district, that's not on the petition, it is a

25 facial defect. You can't cure it once the signature has

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Proceedings

1 been affixed to the petition sheet.

2 This is not such a case. That's why it is not a
3 prima facie defect. That is why you do not appear on
4 the prima facie calendar, and you are not given notice
5 and an opportunity to be heard.

6 THE COURT: Let me give you a hypothetical. I
7 know it didn't happen in this instance. But just so I
8 understand all aspects of the procedure.

9 What if -- well, maybe I should find out exactly
10 what the board did in terms of the petitioner here.

11 Miss Charles, on August 4th, argued on behalf of
12 the petitioner. The board never by way of a motion that
13 was seconded, never adopted any sort of a resolution.

14 MS. CHARLES: That's not correct, your Honor.

15 MR. RICHMAN: Your Honor, my understanding --

16 THE COURT: Let me ask them first.

17 MS. CHARLES: Okay.

18 THE COURT: If you disagree with what they say,
19 then let me know.

20 MR. RICHMAN: My understanding is that no motion
21 to reconsider the termination was ever made. He is here

22 and was present at that meeting.

23 THE COURT: I just want to know.

24 MR. KITZINGER: We called the prima facie calendar

25 and heard all the specs relating to Queens County on the

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13

Proceedings

1 morning calendar.

2 At the end of the morning calendar, there were
3 several matters put over to the afternoon. They had to
4 be reworked on by the clerks. Several individuals
5 appeared and asked to address the commissioners. They
6 gave them the opportunity to speak to the board.

7 The commissioners heard the plea, which was we
8 want to be back on the ballot. There was an amended
9 cover sheet, defective, but we filed another one. The
10 commissioners, I believe, politely thanked her for her
11 appearance and took no action whatsoever. Then the
12 commissioners adjourned for a lunch recess.

13 THE COURT: I'll address Miss Charles in a minute
14 to see if she disagrees with that recitation. But let
15 me ask you, taking no action after hearing, Miss Charles
16 then has no legal effect whatsoever?

17 MR. KITZINGER: Correct, your Honor. I believe
18 the commissioners extended her a courtesy. She made the

19 trip to Manhattan, and there was no formal matter before
20 the commissioners that required action.

21 As I said in chambers, there was one additional
22 action earlier this cycle where the board reconsidered
23 its determination to remove a candidate from the ballot,
24 but that instance involved where the board made an error
25 in the records in improperly listing several volumes

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14

Proceedings

1 filed for a specific candidate, and the candidate relied
2 on the board's official record to prepare their cover
3 sheet.

4 When the record was corrected by the board, it
5 happened after the cover sheet was submitted, and when
6 it was brought to the commissioners attention, they
7 determined since the board made an administrative
8 clerical error in entering it into the petition ledger,
9 the wrong volumes, and the candidate relied on that, we
10 shouldn't have penalized them. That's the only instance
11 that has happened.

12 It is about the only instance with respect to
13 cover sheet matters during my 10 years at the board that
14 the board has reconsidered a cover sheet defect and
15 reversed itself.

16 THE COURT: Talk about the Deblasio --

17 MR. KITZINGER: Yes, running for public advocate,
18 Manhattan volumes which didn't have the ID numbers fully
19 inscribed on the volumes.

20 THE COURT: This is a hypothetical question:
21 Could the board at that August 4th meeting after hearing
22 Miss Charles have decided to reverse the determination?

23 MR. RICHMAN: Yes.

24 THE COURT: Notice in the July 27th letter --

25 MR. RICHMAN: -- yes, they could have.

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Proceedings

1 THE COURT: But they could only do it --

2 MR. KITZINGER: -- under rule J 6 of the board's
3 designated petition rules, the board may reconsider any
4 determination, or the determination of any committee of
5 the board.

6 In such event, the board will provide notice to
7 any objector, candidate and representative. So there is
8 a procedure in the rules for the board to reconsider if
9 it so chooses. But it is clearly discretionary on the
10 part of the commissioners of election, whether or not to
11 exercise that discretion.

12 And in this instance, they chose not to exercise

13 any discretion, and to leave the decision on the
14 committee, made July 23rd, and communicated,
15 undisturbed.

16 THE COURT: Let me ask you another hypothetical.

17 MR. RICHMAN: May I just --

18 THE COURT: No, I'm going to lose my train of
19 thought. Could the board -- using this candidate as the
20 example in a hypothetical -- have, after hearing Miss
21 Charles, had someone move and be seconded to reconsider
22 the July 27th determination, and then have a vote, and
23 the vote, let's say, there were 9 members present, and
24 the vote would be 5 not to reconsider and 4 to
25 reconsider, would that then be an action that would

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Proceedings

1 trigger the 16-102 time frame again?

2 MR. KITZINGER: No, your Honor. I think because
3 the failure to have a majority to reconsider and reverse
4 the determination. I think, to modify your
5 hypothetical, a candidate was found valid by the cover
6 sheet committee, and the board moved to reconsider and
7 reverse and remove them from the ballot, I think if you
8 had 6 affirmative votes, then you remove the candidates.

9 In this instance 16-102 was triggered. Initially

10 the candidate was off the ballot July 21st. When the
11 defect notice went out. If they didn't file an amended
12 cure on any cover sheet, they would have been out on the
13 21st.

14 THE COURT: As of the 21st or 24th or 25th?

15 MR. KITZINGER: The board records shows the 21st.
16 The board's review is you are off when you don't have a
17 valid cover sheet. You have a right to cure by filing
18 an amended cover sheet to remain on the ballot.

19 In that case, yes, it would have been on the 24th.
20 It is in the same instance at this point that the board
21 under rule D 6 let the full 3 days run. They have the
22 chance to file the cure. They have one bite at the
23 apple. Then making a determination if it is a valid
24 cure.

25 If not, notice goes out the next business day. In

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Proceedings

1 this case, Express Mail, to let them know they're off
2 the ballot and trigger their right to seek judicial
3 review.

4 THE COURT: So let me just put my last thought
5 forward. So you would argue there's really no set of
6 circumstances by which the commissioners on August 4th

7 could -- keeping the same determination, even if they
8 formally voted for whatever reason to ratify the
9 July 27th, I think, somebody said preliminary
10 determination --

11 MR. RICHMAN: That's correct, your Honor.

12 THE COURT: That also you would argue would not
13 trigger any sort of additional 3 day period?

14 MR. RICHMAN: That's correct, your Honor. Under
15 established New York law, denial of reconsideration does
16 not extend the statute of limitations. That's the Davis
17 versus Kingsbury case.

18 The cases in New York are relatively uniform on
19 this point, and it's well settled law in this state that
20 denial of reconsideration does not restart the clock.
21 Otherwise, whenever -- you could always restart the
22 clock because you could always move for reconsideration
23 and extend indefinitely.

24 MR. KITZINGER: Your Honor, the commissioner
25 committee -- the commissioners committee that made the

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Proceedings

1 initial determination was created pursuant to the
2 authority given to the full board under election law
3 section 3-212, subdivision 5, and as reflected in the J

4 5 procedure is, your Honor, in order to allow us to meet
5 to review, a requirement is a commissioner, one
6 republican and one democratic commissioner, convenes on
7 each day during the filing week so the staff could
8 present materials filed before for review.

9 Accordingly, those decisions have gone on a
10 rotating committee, somewhat random. Almost the way the
11 assignment took place this morning by the list. And
12 during that first week we ended up with 5 different
13 committees, one on the beginning of Tuesday of the
14 filing week through the following Monday. And the
15 process repeated the following week.

16 That's the power given to the board in order to
17 implement statutory obligations. There has to be 10
18 commissioners review the thousands of documents that
19 come in during that week. It makes it somewhat
20 unworkable and cumbersome with having all 10 there.

21 THE COURT: So, one of those committees issued
22 this July 27th --

23 MR. KITZINGER: Yes.

24 THE COURT: -- determination?

25 MR. RICHMAN: That's correct, your Honor.

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Proceedings

1 MR. KITZINGER: Yes. It was actually a committee
2 composed of Commissioner Polanco and Commissioner Araujo
3 from Queens.

4 THE COURT: Let me hear from Miss Charles.
5 Obviously, you disagree, I presume, on the law.

6 MS. CHARLES: Yes, your Honor.

7 THE COURT: Tell me what the points of
8 disagreement are.

9 MS. CHARLES: Sure. The first issue that I would
10 like to state is counsel quotes Davis v. Kingsbury. And
11 he actually stated that case previously, and cited it.
12 I went to the library and looked for it. I did not see
13 this case under that citation.

14 But the question that the Court needs to really
15 look at, they use that to state a motion for
16 reconsideration does not toll the statute of limitations.

17 The first issue is not tolling the statute of
18 limitations, when does the statute of limitations begin
19 to run. And I think opposing counsel phrased it
20 differently. They're saying when the letter was issued
21 on the 27th that's when the statute of limitations runs.
22 We're saying when the hearing was issued on August 4th,
23 that's when the statute of limitation runs.

24 THE COURT: Now, you have to explain to me how you
25 support that position.

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Proceedings

1 MS. CHARLES: Sure. On several documents issued
2 by the Board of Elections, because they stated a lot of
3 rules, the first one is the Board of Elections calendar
4 which states on the first page of the calendar the last
5 day to institute judicial proceedings is Thursday,
6 July 30th or 3 business days with regard to designating
7 petitions after the Board of Elections hearing which
8 petition is invalidated.

9 My client was present on the August 4th hearing
10 with the Board of Elections. On the August 4th hearing
11 the commissioners heard what I indicated, and they
12 stated they would not place her on the ballot.

13 So for opposing counsel to indicate nothing
14 happened, I just was there, they told me thank you for
15 coming. More than that happened. They indicated on
16 that date my client would not be placed on the ballot
17 after hearing all the information and evidence I
18 presented to the Court on the August 4th hearing.

19 In addition, I would like the Court to look at
20 page 7 of your booklet there which is also from the
21 Board of Elections rules for designating petitions.

22 THE COURT: Does anybody have any objection if we

23 mark this as a court exhibit?

24 MS. CHARLES: No.

25 MR. KITZINGER: No.

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Proceedings

1 MR. RICHMAN: No.

2 THE COURT: We'll deem it now and mark it later.

3 (Whereupon, the aforementioned was deemed marked
4 Court Exhibit 1 by the Reporter.)

5 THE COURT: It is the calendar and designating
6 petition rules, opportunity to ballot, petition rules
7 for the September 15, 2009 primary election. And this,
8 of course, is produced by the Board of Elections of the
9 City of New York. So you would now be referring to page
10 7?

11 MS. CHARLES: Yes, your Honor.

12 Opposing counsel indicated that you get one shot
13 to cure, and if you don't -- paraphrasing -- if you
14 don't use your one shot, you're dead.

15 Here it states in E 1: The Board of Elections
16 reviews each cover sheet and petition to insure
17 compliance with the New York State election law.

18 The first thing I want to indicate is notice under
19 prima facie matters. They're dealing with the cover

20 sheet issues.

21 It is incorrect to state we're dealing with --
22 cover sheets are not prima facie, because we're dealing
23 with cover sheets. Under the Board of Elections it says
24 that if a cover sheet fails to comply with the
25 requirements of the New York City election law, not

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Proceedings

1 subject to cure under 61342 of the election law, the
2 board shall notify the candidate in writing of a
3 preliminary finding, and it says he or she may appear at
4 the commencement of the board hearing on said petition
5 to contest the preliminary filing. They may appear to
6 contest the findings.

7 Now, my client, if we're using the opposing side's
8 arguments saying you have one shot to cure, once your
9 one shot is gone, it's not curable. It is no longer
10 subject to a cure under section 61342 of the election
11 law.

12 As such, they have a right to appear at the
13 hearing and be heard. I came to the hearing, I signed
14 my name, because the protocol for these elections is
15 there's no calendar like we have outside where you can
16 look and see what number you are. It's not like that.

17 You come in and sign in and say what candidate you're
 18 representing and sit and wait for the board to call your
 19 name.

20 As we waited for the board to call the name, they
 21 knew what was going on with the case. I gave my
 22 evidence, and the board's response was you had -- in
 23 essence -- paraphrasing -- you had one shot to do the
 24 amended cover sheet, and that's it.

25 The board did not even regard the Supreme Court's

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Proceedings

1 holdings, substantial compliance. And that is not one
 2 of perfection. They didn't look at that. Quoting
 3 Pearse, all the other cases.

4 The Supreme Court held several times, even in a
 5 case where someone didn't submit an amended cover sheet,
 6 that the original cover sheet was defective. No amended
 7 cover sheet was submitted. Even though they had an
 8 opportunity to cure, the Court held voters should not be
 9 disenfranchised if substantial. The Board of Elections
 10 was ordered to put them on the ballot.

11 What they looked at was the original cover sheets
 12 in substantial compliance. So the issue for this Court
 13 of first impression is when does the statute of

14 limitations run. Does it start on July 27th, or
15 actually would it be the 28th because it was issued on
16 the 27th.

17 So I guess overnight mail the 28th, or does this
18 Court look at the documentation that was issued by the
19 Board of Elections that says you have 3 days after the
20 board of election hearing, it says this, or the prima
21 facie matter, saying that you have 3 days after the
22 board of election hearings.

23 The issue is these documents are issued to the
24 general public. So that the general public has an
25 opportunity to be part of the electoral process. The

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Proceedings

1 general public looks at the statute, and the general
2 public gets -- this is documentation issued by the Board
3 of Elections as guidelines and rules of how to be on the
4 ballot and follow their rules and regulations.

5 Any reasonable person would read this and say 3
6 business -- July 3, '08 or 3 business days with regard
7 to designating petitions after the Board of Elections
8 hearing where petition is invalidated. If you look at
9 the other page I quoted to your Honor on page 7 talking
10 about you have 3 days after the hearing, 3 days after

11 the hearing.

12 And last but not least opposing counsel mentioned
13 that there was another case that was very similar to
14 this. I would say the Deblasio case. In the Deblasio
15 case, the Board of Elections reversed its hearing. It
16 is very interesting that the Court should note that no
17 one is saying anything about the 3 business days in
18 there.

19 Why was that hearing heard before the Board of
20 Elections if there was no right to cure? You get
21 one shot in the case. There was one error in the
22 amended cover sheet, so the amended cover sheet did not
23 cure the original cover sheet.

24 If you have one shot, why was Deblasio offered an
25 opportunity for a hearing? If there's supposed to be

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Proceedings

1 uniformity among the ballots, why was Deblasio offered
2 the hearing and us purportedly not offered a hearing?

3 If opposing counsel is saying these hearings have
4 no legal effect, why did that have a legal effect of
5 putting him on the ballot?

6 This is a case of first impression because I went
7 through every case. And this is a question for this

8 Court to determine, what is the legal effect of the
9 hearings on August 4th?

10 Opposing counsel wants to say it is a nullity,
11 means nothing, a motion for reconsideration, I never
12 said it was. Opposing counsel would like to label it as
13 such. This Court has to determine the legal defect of
14 the Board of Elections hearing on August 4th, was it a
15 day I am wasting time, or is it legal.

16 In effect, the commissioners said, no, counsel,
17 we're not going to put your candidate on the ballot.
18 It's not like no one said anything and said thank you
19 for coming. They made a statement. Counsel, your
20 candidate will not be placed on the ballot on
21 August 4th.

22 I ask this Court to see this timely and find --
23 look at the other case law indicating this case was in
24 substantive part, it was in substantial compliance. The
25 Court followed the progeny of Pearse and other cases

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Proceedings

1 that the voters don't need to be disenfranchised.

2 If 900 signatures were needed, my client gave way
3 and above that. Maybe triple. That we ask this Court
4 to hear the hearts of all these voters that signed these

5 petitions.

6 Thank you, your Honor.

7 THE COURT: All right, let me put to the side for
8 a moment the substantial compliance argument, because I
9 want to first focus on what happened and what the legal
10 effect was. What the legal or procedural effect was of
11 what happened.

12 One question I have for you is it certainly seems
13 just looking at the prima facie matter section that the
14 board did not treat this situation as a prima facie
15 matter because I don't think anybody is prepared to show
16 that the board issued some sort of a letter or
17 communication that said there's a defect.

18 Yet, the client or petitioner or candidate --
19 candidate I guess -- may appear at the hearing on
20 August 4th at whatever time to contest such preliminary
21 finding.

22 I want to focus in on whether or not this is a
23 prima facie matter. You say it is, they say it isn't.
24 And let's look at the language as you pointed out.

25 The board in its July 27th letter makes no mention

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1 of the candidate failing to comply with, you know, the

2 requirements of the election law and is not able to cure
3 under 61342. There is no where in that July 27th letter
4 any mention of that.

5 Do we ignore that? Or do we believe that because
6 of the defects that the board pointed out in the
7 July 21st communication that the board clearly believes
8 this is not a prima facie matter, because you're not
9 dealing with a situation where the cover sheet that was
10 submitted, which is Exhibit A to the petition, left out
11 the party affiliation, the district that the candidate
12 was running in, the address of the candidate, the name
13 of the contact person.

14 There's nothing on the cover sheet that was
15 submitted with the petitions that appears to equal what
16 respondent's counsel indicated would be the equivalent
17 of a prima facie defect.

18 What is your belief of what a prima facie defect
19 is? Right now talking about the cover sheet that was
20 submitted with the petitions.

21 MS. CHARLES: Yes.

22 THE COURT: That's where everything starts.

23 MS. CHARLES: The prima facie defect basically, as
24 I understand it here, is any issue on the -- on the
25 original cure document, the original cure document

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Proceedings

1 that's not subject to a cure. So, and when I say the
2 issue is now what's subject to a cure, that's the issue.

3 THE COURT: No, but first you have to better
4 define for me --

5 MS. CHARLES: Okay.

6 THE COURT: -- what you think a prima facie defect
7 on a cover sheet is.

8 MS. CHARLES: Anything on the cover sheet that
9 cannot be cured under section 61342.

10 THE COURT: And an example would be?

11 MS. CHARLES: It could be --

12 THE COURT: Along the lines of what respondent's
13 counsel said or what I just said, right?

14 MR. RICHMAN: Your Honor --

15 THE COURT: Wait, let me --

16 MS. CHARLES: It could be something in terms of
17 the number of signatures. Or it could be --

18 THE COURT: I would argue that that probably
19 wouldn't be a prima facie defect. Wouldn't a prima
20 facie defect be a defect that is obviously visible?

21 MS. CHARLES: On the face.

22 THE COURT: By looking at the cover sheet.

23 MS. CHARLES: On the face.

24 MR. KITZINGER: Your Honor, most cover sheets --

25 MS. CHARLES: Yes.

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1 MR. KITZINGER: -- are curable. Look at the list,
2 everything from no party name down is a curable defect.

3 Prima facie --

4 MR. RICHMAN: No cover sheet is curable.

5 MR. KITZINGER: If it's the first bite of the
6 apple. What would be a prima facie --

7 THE COURT: Say that again.

8 MR. KITZINGER: Even if you file no cover sheet
9 last night was --

10 THE COURT: You file petitions with no cover
11 sheet?

12 MR. KITZINGER: Right. You can cure that by
13 filing an amended cover sheet to correct the defect.
14 Prima facie matters are normally related to the petition
15 itself.

16 In other words, if you print the petition without
17 the district. I can't think of any prima facie cover
18 sheet matters to be done. Cover sheets are dealt with
19 in part C and D, including determination for cure.

20 Only petition defects are curable as follows,
21 improperly bound petitions, the courts held in the third

22 and fourth departments -- and if the page numbering is
23 not in sequential order, we have to come up with a
24 method to say take the copy of the petition, number it
25 correctly, file that, and we'll compare it. Those are

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1 the only 2 defects on -- facially that can be cured
2 under the current election law.

3 THE COURT: Doesn't section E 1 specifically refer
4 to a cover sheet and/or a petition?

5 MR. KITZINGER: Yes.

6 THE COURT: What if the petition for some reason
7 is perfect, it has the party affiliation and everything
8 else that's necessary, but for some reason the cover
9 sheet omits the party affiliation?

10 MR. KITZINGER: They get a notice like the
11 July 2nd notice instead of indicating items, you get
12 item 3, name of the party omitted from cover sheet, and
13 you get the choice to do it.

14 We have, your Honor, 15 specific items plus a 16
15 for other. If something happens that it is not done,
16 for example, no cover sheet attached to the petition --
17 cover sheet is attached which is against our rules, name
18 of party is omitted, candidate's name is omitted from

19 the cover sheet. That's a curable defect. If the
20 candidate's name is omitted from the petition pages,
21 that's not curable. We know of no case.

22 THE COURT: I'm looking at the July 21st form
23 letter even if the candidate's name is omitted from the
24 cover sheet that's curable?

25 MR. KITZINGER: If on the petition, they get this

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Proceedings

1 notice, and item number 9 would be circled and given the
2 same instructions that defect can be cured within 3
3 business days from the date of the notice by filing an
4 amended cover sheet.

5 THE COURT: All right, Miss Charles.

6 MS. CHARLES: Issue -- do you see the confusion or
7 the ambiguity on this first statement here saying they
8 review cover sheets, and if the board determines the
9 cover sheet and/or petition fails to comply with
10 requirement is the section.

11 Now, opposing counsel is saying there is no
12 situation where a cover sheet would not comply. That
13 totally contradicts this section. This section is
14 saying if there is an issue with the cover sheet and the
15 cover sheet does not become curable under section 61342,

16 then you should be able to be a part of the prima facie
17 matters. That's under this subsection.

18 So you can't have it both ways. You can't say
19 there's no situation where your cover sheet is not
20 curable under this section, and then it doesn't apply.

21 THE COURT: The candidate is better off the way it
22 is here, almost any cover sheet defect is curable.

23 MS. CHARLES: I am --

24 THE COURT: -- which I didn't think was the case.

25 MS. CHARLES: Oh, yes, it is. But this is the

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1 issue. It says if it's not subject to cure. In other
2 words, after you had a second shot of the apple, after
3 you had the first bite, you can cure. If you're not
4 subject to cure, you have a right to come to the
5 hearing.

6 THE COURT: But if you take it through to its
7 conclusion, and you're really arguing that in the first
8 instance you had a right to cure, you failed to cure
9 because of an error, and now because of the July 27th
10 letter, you have no right to cure, then you go on to the
11 next --

12 MS. CHARLES: -- to the hearing.

13 THE COURT: So, the way this is all set up, aren't
14 you getting a major second bite at the apple when your
15 first bite -- which it's clear from all the enumerated
16 things on the July 21st letter -- can be cured wasn't
17 cured?

18 MS. CHARLES: But, your Honor, the Courts are not
19 looking at if you have cured it. There are cases where
20 it was never cured. Antoine --

21 THE COURT: Now, you got to get into those cases
22 and tell me what the defect was.

23 MS. CHARLES: Sure. In Antoine v. Boyland the
24 defect was specifically twofold. One, they had an
25 objector that wasn't served. And the second was, is

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1 that they were off by one volume. And it is right here.
2 They were off by one volume in the cover sheet, and the
3 Court said that's not what we look at.

4 THE COURT: That would be, let's say, they put
5 down 18 volumes on the cover sheet, and there were
6 really 19 volumes.

7 MS. CHARLES: Exactly. It says I could show it to
8 you.

9 THE COURT: Doesn't one of the cases that you hand

10 up -- because we had a chance to look at the briefs on
11 line -- doesn't one of them that held that the defect
12 was not substantial deal with an attorney was the one
13 who applied for the ID numbers, but a different person
14 was put down as the contact person on the cover sheet?

15 MR. RICHMAN: Your Honor, those are all timely
16 commenced.

17 THE COURT: Yeah, there is an additional factor,
18 but I'm focused on -- because we sort of got into what
19 might be substantial and what might not be substantial,
20 which is an area that we have to cover for purposes of
21 making a full record.

22 So my question is: Are those cases just focusing
23 on what the defect was in those cases on the cover
24 sheet, are they different from the defect in this cover
25 sheet, and in the amended cover sheet?

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1 MS. CHARLES: They are very similar. The issue in
2 here was they didn't use correct volume identification
3 numbers.

4 THE COURT: Right.

5 MS. CHARLES: And that was the issue in this case.
6 And in our case we didn't use correct volume

7 identification numbers.

8 THE COURT: Which case are you talking about?

9 MS. CHARLES: There were 3 I handed up. One is
10 Antoine v. Boyland. And I think I gave your Honor the
11 other one was Pearse. Matter of Pearse. And the third
12 one that I submitted to your Honor I believe --

13 THE COURT: You know what, while you're looking
14 for that, let me ask counsel for the respondents the
15 question. So what if the ID number on a petition volume
16 is off by a digit, what's the problem there that would
17 really require invalidating the petition?

18 MR. RICHMAN: The cover sheet serves the purpose
19 of notifying the public which volumes are being claimed
20 by the candidate. And, therefore, what one needs to
21 review in order to determine whether or not to file an
22 objection and specification of objection to challenge
23 the sufficiency of the candidate's signatures.

24 Therefore, by having all of these volumes wrong,
25 it made it very difficult for the objector to come into

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1 the Board of Elections office to review the cover sheet
2 and find the correct volume to review.

3 THE COURT: How does that process work for

4 purposes of making a record? The cover sheet is in one
5 place and the volumes are in another place?

6 MR. KITZINGER: Your Honor, under our rule, we try
7 to encourage -- we require that the cover sheet be filed
8 separately from the volumes -- says face of requiring
9 cover sheet on every volume is no longer required. All
10 that is required is the ID number. And which are pre
11 issued stickers you saw in chambers.

12 The purpose of the cover sheet is to give
13 identification information available in an easy format.
14 So you don't have to look through 15 volumes of size to
15 determine whether or not you will commence a challenge,
16 etcetera.

17 THE COURT: Somebody wants to challenge, let's
18 say, these petitions, they come to the board, and they
19 get the cover sheet, and then they look at what volumes
20 are on the cover sheet?

21 MR. KITZINGER: Yes. The first step is a public
22 area would be in the candidate area. You could either
23 pay for a copy or write down the list and go to the
24 public inspection area and say I want to look at volume
25 number whatever.

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1 So when you look at the volumes -- and also it is
2 by party as well. That's why when the original cover
3 sheet came in, the defect was -- you had a volume
4 listed. You claim 15 volumes, there are 16 volume
5 numbers. One of which the candidate doesn't appear on.

6 Whether this was, you know -- at least creates
7 confusion in the mind of the objector going forward. We
8 have an obligation under election law to review that
9 cover sheet within 2 business days, matching it up to
10 the record.

11 The way we do that, a copy of the ID number and
12 first page of each petition is made by the board, and we
13 have staff members or a bipartisan team reviewing,
14 matching it up. They identify the defects. They are
15 presented to the commissioners committee.

16 At that point, the notice goes out to the
17 candidate or to correct the defect. The fact is the
18 amended cover sheet actually compounds errors, it
19 doesn't even have the name of the party, as you know
20 there are 5 parties.

21 THE COURT: Let's focus more on the ID numbers on
22 the amended cover sheet. So let's say somebody wants to
23 challenge this candidate's petition based on the amended
24 cover sheet, where would the problem come in?

25 MR. KITZINGER: When they ask to look, they ask to

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1 examine Queens volume 090021, let's say. That volume
2 would have been brought to them and the candidate's name
3 wouldn't appear anywhere on that volume.

4 THE COURT: You mean that --

5 MR. KITZINGER: That was assigned.

6 THE COURT: Might be for some other candidate?

7 MR. KITZINGER: Yes. We issue in sequence
8 beginning with 001 up into the 900s, I believe. For
9 each borough. The borough number, because there is also
10 a volume KG 21 and NY 21.

11 When they looked at that time, I think one of the
12 specifications they could have filed is the candidate
13 doesn't appear on the petition and start the whole
14 process of -- she had insufficient signatures. They're
15 claiming that the entirety of the 15 volumes constituted
16 requisite or excess amount of signatures required.

17 Actually the statement which is the equivalent of
18 an affidavit is contained on the cover sheet is
19 incorrect. This petition consists of all those numbers
20 for the candidate that required signatures. Those
21 volumes don't have signatures for that candidate.

22 THE COURT: Let's follow-up on this particular

23 volume 090021. Somebody wants to challenge or review
24 those signatures, requests that volume, comes back and
25 it is John Doe candidate from another district.

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1 MR. KITZINGER: Right.

2 THE COURT: Does the Board of Elections at that
3 point have any ability to recover -- and I think
4 somebody mentioned in chambers there's one digit missing
5 from that particular ID number.

6 MR. KITZINGER: Yes.

7 THE COURT: Seeing now that it's the wrong volume
8 for the wrong candidate, does the board at that point
9 without too much of an effort have the ability to
10 retrieve the correct volume?

11 MS. CHARLES: They do.

12 MR. KITZINGER: Your Honor, again, it would be a
13 requirement to go through it the same way that our staff
14 reviews the cover sheet by looking at the cover sheet ID
15 number on the first page. That's how we determine the
16 defect.

17 We don't examine the actual petition volumes. I
18 guess the person could go through and try to look at the
19 other volumes again. You may have a tip off because of

20 the sequence that you have 719 to start and go to 729 to
21 730.

22 The other way to be -- to check the petition
23 ledger, which is where the volume should have been
24 recorded, if it was properly recorded directly, and
25 that's available for public inspection.

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1 We have public viewing terminals. You would go in
2 and say you want to see the candidates running for the
3 29th Council District. Ask which district, which party,
4 and then you could get a list at that point and see the
5 defects. But we are under the legal obligation to
6 review it, and if there is a defective cover sheet, give
7 notice to the candidate or contact person to correct it.

8 THE COURT: We're jumping around. Would this or
9 would this not be a substantial defect?

10 MS. CHARLES: It is not a substantial defect.
11 Tell you why. It's like going to a computer and getting
12 a printout, the IDs given are barcoded. Once you have
13 it, it is in the computer.

14 A person comes to the Board of Elections, goes to
15 the computers, I want to know what identification
16 numbers they are that were assigned to her. From there

17 it prints out. These are the identification numbers.
18 You take that number -- because they're in different
19 places, where the books are is different from where the
20 computers are.
21 You take the paper, you go with the identification
22 numbers listed, and that's it. So what's written here
23 is not the only means. You can print out the deed right
24 there at your home, and have a copy. Or you can chose
25 to go get the book in the library. If for some reason

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1 there is a problem, you can see exactly on the computer
2 where it is.

3 THE COURT: Let me ask you this question -- and it
4 is a hypothetical -- based on this fact, and it's only a
5 hypothetical.

6 MS. CHARLES: I understand.

7 THE COURT: Could the contact person for a
8 candidate -- and I'm not saying that happened here, it's
9 only a hypothetical because I'm trying to figure out
10 whether this could be a substantial defect or not --
11 could the contact person for a candidate decide to try
12 to make it as difficult as possible for somebody who
13 challenged my candidate's petitions, so I'm going to in

14 15 volumes listed on the cover sheet give correct volume
15 numbers on half of them, so that the member of the
16 public who may not be sophisticated, hypothetically, in
17 doing things like this at election time, have a more
18 difficult time in trying to first review a volume for
19 that candidate in that district, and second to then
20 attempt to challenge that volume; could this be done?

21 Again, I'm not saying it was done here, but
22 hypothetically could this be done intentionally to try
23 to make it more difficult for somebody to review and
24 challenge a set of petitions which might then go over
25 the line into potential fraud and/or other things which

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1 would then equal a substantial defect?

2 MS. CHARLES: Sure. I would say, no, and I will
3 tell you why procedurally. You get these stickers given
4 to you by the board. You put them on your
5 documentation. The stickers issued by the board
6 enumerate in the computer which numbers they gave you.

7 THE COURT: When you say "you," you mean the
8 candidate?

9 MS. CHARLES: Yes. The candidate is given
10 numbers. So the numbers are placed, are required to be

11 placed on each volume. They will not take them for
12 filing unless each volume has its specific
13 identification number attached to each volume.

14 After it is given to the clerk, the clerk takes
15 them and goes wherever they go. Let's say that the
16 numbers they gave me is 1 to 15, make it easy. If I
17 want to be facetious, and I say it is number 50, it is
18 number 9, and I write that on my cover sheet because I
19 want to, the person comes to the Board of Elections and
20 types up Vernita Charles running for whatever -- mayor.

21 It says what the numbers were that were issued to
22 the candidate, not what number I fabricated. Then those
23 numbers are filed. So anything I want to do to thwart
24 people finding my documentation is not on me because the
25 identifications are given to me. Make sure these are

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1 the duly scanned numbers, and the Board of Elections
2 files them wherever it goes. So I don't see how false
3 numbers can thwart.

4 THE COURT: But under my hypothetical, where there
5 is a motive attached to putting down incorrect numbers,
6 if you take it to its conclusion, would the cover sheet
7 ID numbers really mean anything?

8 MS. CHARLES: The cover --

9 THE COURT: Because then a person has to go to a
10 second step and maybe a third step to get what he or she
11 wants. So, would the cover sheets then lose their
12 intended purpose?

13 MS. CHARLES: If, even if we say that, let's say,
14 that you're right, and there was a facetious intention
15 to thwart people from filing objections and the amended
16 -- and we look at the amended cover sheet --

17 THE COURT: Right.

18 MS. CHARLES: -- because the Court should note
19 that the original and amended are filed together. So
20 the party would have the option of looking at both
21 sheets. That's very important.

22 But if we were to look at the amended cover sheet
23 and throw away all the incorrect numbers, every one
24 that's not duly filed connected with my file, you still
25 have over 900 signatures. The amount --

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1 THE COURT: -- not focused on that. Right now,
2 I'm focused on the overall intention of the cover sheet.

3 Would that not open the door to cover sheets
4 willy nilly being erroneous, and who then would be on

5 the cover sheet?

6 MS. CHARLES: That's why the courts state that the
7 review is substantial compliance. Was it substantial
8 looking at the original cover sheet and amended cover
9 sheet, was it substantial compliance.

10 What I was saying to your Honor is if you were to
11 throw away all the incorrect numbers, because the
12 insinuation is fraud or trying to stop the Court from
13 having or the Board of Elections from having an
14 opportunity to review the correct signatures, if we were
15 to throw away all the incorrect numbers, it still is way
16 above and beyond the requisite amount. My client would
17 have no reason to benefit from changing these numbers.

18 This is not a case where there was only 900 cases
19 and 935 were given. 900 signatures were there, and
20 approximately over 2000, 2500 were given. If we throw
21 away half the signatures, we still have a surplus of 300
22 signatures. I'm looking at the amended sheet, not the
23 cover sheet, saying my client has no reason to benefit
24 from misplacing --

25 THE COURT: But should substantial compliance --

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1 because I think somebody mentioned earlier this might be

2 a case of first impression, whether it is or not, not
3 sure, but let's say it is, if I have to decide the
4 substantial compliance issue, don't I need to think
5 through what could possibly happen in the future, not
6 just for this candidate, but for future different types
7 of hypotheticals, using the same factual error, meaning,
8 you know, 1 or 2 digits off in an ID number.

9 So does it really matter whether the candidates
10 need 900 signatures, comes in with 45000, if the
11 principle to be decided is whether or not something --
12 even if it isn't by way of a mistake has the potential
13 in other circumstances to be fraudulent.

14 MS. CHARLES: Well, the question that your Honor
15 asks was there any fraud committed.

16 THE COURT: In my hypothetical.

17 MS. CHARLES: And I'm saying to your Honor that my
18 client would have no reason to benefit from doing any
19 specific and purposeful misidentification of numbers.
20 Fraud would not be furthered by putting any
21 misidentifying numbers. It would hurt her and not help.

22 Because those numbers one can argue would not be
23 allocated to the numbers needed for her requisite amount
24 of signatures. So it's not in her benefit to not give
25 the proper identification numbers because arguably the

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1 Board of Elections could say since that's not the proper
2 identification number, we're not going to include them,
3 and that lowers your opportunity to meet your threshold.
4 So as result there is no benefit at all from placing
5 incorrect --

6 THE COURT: But what if you had the same situation
7 with several ID numbers being incorrect, and your
8 candidate had far fewer signatures? What I'm trying to
9 get at, does the number of signatures matter?

10 MS. CHARLES: Yes.

11 THE COURT: Or does the overriding principle
12 matter regardless of how many signatures the candidate
13 comes in with?

14 MS. CHARLES: The number of signatures matters
15 because the issue about all these petitions is the
16 number of signatures. That's the whole reason for the
17 petition process. The issue that people come to the
18 Board of Elections to fight is about numbers of
19 signatures.

20 If we strike objections, how many can we reduce
21 your numbers. It is all about the numbers. If you are
22 going for 900 signatures, as my client needs to, and she
23 submitted 3000 and half were taken off, they're coming
24 to court to say, no, these people have invalidating

25 petitions, just specifically on the numbers. And the

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1 number of signatures.

2 So this whole proceeding is -- except for the
3 cover sheets -- are usually based on the number of
4 signatures, and whether fraud was involved obtaining
5 those signatures, etcetera. This is all about the
6 numbers, your Honor.

7 THE COURT: So, if I hold -- and, again, I'm not
8 holding anything at this point, because I don't know
9 what I'm doing -- but if I hold in your favor, that on
10 this set of facts, there was substantial compliance,
11 with the requirements of the election law vis-a-vis
12 cover sheets, and what's required to be placed on cover
13 sheets, would the door be opened, as I was talking about
14 earlier, to somebody with, let's say, you need 900 valid
15 for a council candidacy, somebody who only has a
16 thousand signatures that they file, which was, you know,
17 very close, if petitions are challenged, somebody being
18 more likely in that scenario to put down incorrect ID
19 numbers to try to prevent or make it more difficult to
20 challenge that person's petitions.

21 What I have to figure out is if I go your way, am

22 I opening up the door to making this particular portion
23 of the cover sheet essentially meaningless.

24 MS. CHARLES: My response to your Honor is no. I
25 guess -- let me explain my response. It is not that the

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1 cover sheet is meaningless. The cover sheet has to have
2 the proper candidate's name, the address, the democratic
3 party, all of that is necessary.

4 The Court has held in several of those cases
5 submitted to you that the issue of the identification
6 numbers is technical in nature. Several of the cases
7 that I submitted stated that. And that cases should not
8 be placed off the ballot because of technical
9 irregularities.

10 But if you are dealing with the address, that
11 she's not within the district of the party, all those
12 issues, that is something that can be amended. But the
13 courts have specifically stated things like that unless
14 you can show that the requisite amount of signatures has
15 not been met. That is not something that the voters
16 should be disenfranchised for. The case law is really
17 long and lengthy concerning that.

18 MR. KITZINGER: 2 things. Identification numbers.

19 I direct you to B 1 saying no one is required to --
20 required to apply for petition volume identification
21 numbers before filing any petition volume.

22 And then B 5, it is not correct when counsel says
23 the board will not accept the petition without an ID
24 number. B 5 provides whenever a petition volume is
25 filed without a preassigned volume identification

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1 number, the board will assign a petition volume
2 identification number at the time the petition volume is
3 filed.

4 And that is exactly the problem that happened in
5 the Deblasio circumstance. 3 petition volumes were
6 filed with handwritten VOL numbers, 71, 72 and 73. What
7 should have been done by the board staff was put a full
8 volume identification number on clearly listed in the
9 identifying county as well.

10 The defect was Deblasio, or the Deblasio campaign
11 assumed because New York volume 71, 72, 73 -- again, to
12 say a candidate has to be attributable to -- given a
13 candidate could be a party, an organization or club can
14 ask for 150 ID numbers, not given to a specific
15 candidate. Only used on behalf of the applicant.

16 And I will tell you for a fact that the various
17 party organizations do provide that service for many of
18 their candidates, and apply in bulk for the first one to
19 200 numbers.

20 Again, so the process is important for the board
21 to state that information, because if the volume came in
22 without ID numbers, we would assign it. The candidate's
23 responsibility is to figure it out. In this instance,
24 said candidate had the numbers. Again, this was error
25 on the part of the candidate.

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1 We don't ask for a lot on the cover sheet. We ask
2 for your name, the office you're running for, where you
3 live, which party you're running for, how many volumes
4 comprise your petition, and ID numbers. It's not very
5 complex or detailed. Not needing special talents.

6 Making the entire rule book available in
7 sequential order. You start from the beginning with
8 definitions to getting ID numbers to filing to cover
9 sheets all the way through to the last step which is the
10 hearing. We've done that. Made all the sample forms
11 available to the candidates and representatives.

12 It's as easy as possible for any candidate. The

13 board asks for accurate information to be given. Given
14 the opportunity and responsibility to review the
15 materials if there is a defect, give notice to the
16 candidate, ask them to correct it. That happened. It
17 didn't get corrected properly.

18 We gave the required notice. Pearse talks about
19 the candidate didn't have notice. We responded by
20 adopting rule D 6. Which mandates the board to send the
21 notice to the candidate or the contact person when we
22 find that the amended cover sheet is not appropriately
23 cured. And allowing them to begin the judicial
24 proceedings.

25 Again, Pearse they didn't have that ability. The

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1 Appellate Division was concerned about the lack of due
2 process. The board recognized that and provided
3 adequate notice. The letter dated July 27th is the form
4 letter we used, provided to each candidate with a
5 specific notation of what the problem was, why they
6 don't appear on the ballot.

7 We gave that notice to them. I think if you read
8 the rules in its entirety, which we urge candidates to
9 do, you will see cover sheet defects and order goes D 6

10 precedes part E. That's when you get notice that the
11 candidate doesn't appear on the ballot.

12 If you read D 6, you shouldn't be confused about
13 part E. When you go to part J, you see it talks about
14 specifications of objections, reports of the clerk,
15 counsel's reports. There is no discussion of seeking
16 amended or additional review cover sheets.

17 And I agree, your Honor, that part E talks about
18 occasionally cover sheets may be a prima facie defect.
19 Using that word, because we haven't come across one in
20 the 10 years I've been at the board.

21 THE COURT: Could this defect on the amended cover
22 sheet be viewed as di minimus in light of the situation
23 where the candidate has way more signatures than
24 necessary in order to qualify for the ballot?

25 MR. RICHMAN: The board does not count signatures.

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1 That is the problem. It's to -- it goes beyond what the
2 board's role is here. You adopt petitioner's argument,
3 really part of your review would be to basically
4 validate a proceeding, counting all the signatures.

5 And in order to say, well, okay, even if you drop
6 those 8 volumes, the 7 remaining volumes had enough

7 valid signatures, so you have to count the signatures
8 and determine whether each one was valid. That's not
9 the point.

10 THE COURT: You're arguing -- that issue is not
11 before me.

12 MR. RICHMAN: It's not, and it is not appropriate
13 to be before you. It is not an issue with -- with
14 regard to the petition. With regard to the prima facie
15 issue, the defect that is subject to cure is in the
16 cover sheet, that is the defect we're talking about.

17 We're not talking about the amended cover sheet
18 having a defect, not subject to a cure or subject to a
19 cure. The defect that was identified, that was subject
20 to the cure was in the cover sheet.

21 Prima facie matters section E refers to cover
22 sheets and petitions. It was the defect in the cover
23 sheet that was subject to a cure. Petitioner would have
24 you read it that any cover sheet original, amended,
25 second amended, once you stop filing cover sheets,

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1 they're no longer subject to a cure. That's not a
2 logical interpretation of the rule.

3 THE COURT: So your argument is the only way to

4 analyze this is by looking at the defect in the cover
5 sheet, not the amended cover sheet?

6 MR. RICHMAN: For prima facie purposes, yes.
7 Because that is the defect that is subject to the cure.
8 With regard to the -- some other timeliness issues, I
9 didn't have an opportunity to respond to petitioner when
10 she said on August 4th the board said, sorry, we are not
11 going to place your candidate back on the ballot.

12 Well, that was if she had asked a week before,
13 that would have been the same thing she was told or
14 today. Each time she asked the question, and was told
15 her client is not going to appear on the ballot, doesn't
16 restart the clock. It doesn't work that way.

17 You can't simply have an opportunity at your own
18 whim simply by asking the question to restart the clock.
19 It is black letter law in the State of New York, denial
20 for a motion of rehearing does not restart the clock.
21 If there is a change after rehearing, then you would go
22 from that date, because something has changed.

23 Not -- what did I say before -- not all defects
24 are prima facie defects, as your Honor recognized.
25 Additionally, ruling E 1 states on its face these are

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1 patent defects. We're talking about in order to
2 determine whether or not certain of these defects were
3 actually defects you had to go beyond the cover sheet
4 itself, determine volume 734 didn't relate to the
5 candidate. One has to look at the volume itself. It is
6 not a facial or patent --

7 THE COURT: Let me ask you on that issue, on the
8 cover sheet that was filed, would it be a facial defect
9 in light of the fact that the total number of volumes is
10 15, but if you count the ID number, I presume there's
11 16?

12 MR. RICHMAN: I would say no, because you're
13 looking at more than one item. You have to go beyond
14 the 15. You can't look at -- looking at the 15 doesn't
15 tell you that it is defective. If there were no numbers
16 there.

17 THE COURT: But it says 15. But there's actually
18 16. So doesn't that on its face mean there's some sort
19 of an error making the cover sheet defective?

20 MR. RICHMAN: No. Looking at the 15 for a facial
21 defect, looking at the 15 in isolation doesn't tell you
22 it is defective. Looking at the 16 volume identifiers
23 doesn't tell you it is defective. A prima facie defect
24 is noticeable as a defect in isolation.

25 THE COURT: Is there a definition in the board's

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1 rules of what prima facie means?

2 MR. KITZINGER: No, your Honor. Only in the sense
3 that when the board determines that it appears -- a
4 cover sheet and/or petition on its face fails to comply
5 with requirements not subject to cure.

6 Litigation involving the cure process, generating
7 this letter has extended what has been availability of
8 the only 2 defects as are curable not listed on that
9 list relate to the petition itself, the page numbering,
10 sequential or binding defect.

11 We have another form letter for that. With
12 respect, your Honor, you were correct, there is a form
13 notice that goes out with respect to a prima facie
14 matter. It relates to a petition or cover sheet itself.
15 But the generic term for petition. If you run in a
16 political party other than which you are enrolled in,
17 you need a certificate of authorization or acceptance
18 has to be filed.

19 If one or the other are not filed, you're not just
20 off the ballot, we'll send out a prima facie defect
21 notice and a certificate of acceptance not filed,
22 certificate of authorization not filed.

23 Prima facie is our response to the requirements of
24 both the federal and state courts that we give the
25 candidate the opportunity to at least make an appearance

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1 or representation before we remove him from the ballot.

2 In the notice of July 21st we give the candidate
3 that choice by saying file an amended cover sheet,
4 correct your defects, and you will be back on the
5 ballot. And, again, your Honor, it is -- I don't know
6 how much more the board can do, speaks for itself in
7 this case.

8 Looking at the original cover sheet, the number of
9 volumes filed doesn't agree with the claimed
10 identification numbers on the cover sheet.

11 There are incorrect identification numbers on the
12 cover sheet. Candidates should know what volumes they
13 filed and identify them. We don't go to the point in
14 saying in the letters we've done the work for you, and
15 these are your volumes, and these are filed for you.
16 Candidates have the right to not claim volumes with
17 their name on -- they may review the volumes and say
18 they don't want to be associated with the signatures in
19 the volumes. We gave them that choice as well.

20 The point is the candidate has the obligation or
21 the representative to file the cover sheet basically
22 saying this represents my candidacy and judging them to
23 be accurate with the information they have. If they
24 don't have the numbers, it is available, given 3
25 business days, not an overnight quick response.

ams

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Proceedings

1 The fact is the cure came in a day early. They
2 could have spent another day working on that. They had
3 3 full days. The concern the board has is if the cover
4 sheet requirement is visciated, maybe the legislature
5 should look at that. It's important for identifying
6 members of the public what's, whose been filed.

7 Again, you don't always have to file cover sheets
8 if a petition is less than 10 pages. You don't file
9 more than one volume. If it's less than 10 pages,
10 you're home free. I think the other part when we had a
11 city wide petition for mayor of 142 volumes, a cover
12 sheet is useful not only for the board's administrative
13 purposes but for the public to know what's been filed.

14 The same with public advocate. There we made a
15 mistake and took responsibility for our error. Assuring
16 in the future much closer attention would be paid.

17 THE COURT: Miss Charles, you have the last word.
18 Go in the back and figure out what I will do.

19 MS. CHARLES: Your Honor, just 3 things I want to
20 say, I think your Honor hit it on the head, no
21 definition of what a prima facie matter is. Opposing
22 counsel saying on its face someone can look at it and
23 determine if -- it doesn't make sense, that's a prima
24 facie matter.

25 To assume the general public wants to be a part of

ams

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Proceedings

1 the electoral process is supposed to understand what's
2 in the minds of the Board of Elections and not just read
3 the plain language of the documentation that's before
4 them is not fair. And it is not realistic.

5 The other things is, you know, the hearing was
6 scheduled to say that if I came before the Board of
7 Elections and asked them today if my client would be on
8 the ballot, doesn't follow the statute of limitations is
9 misleading and misguiding.

10 There were hearings scheduled for that day by the
11 Board of Elections for people that their petitions are
12 invalidated. There was a forum created for people to
13 come that day. To say anything else I think is really

14 not fair and is not correct.

15 And last but not least, opposing counsel talked
16 about identification numbers being issued in blocks to
17 parties. While that may be so, when the party submits
18 documentation, it is filed under the name of the person
19 that is filing for the petition -- particular seat.

20 So, if there is a group of volumes taken out by
21 the democratic party, for whatever party, when it is
22 filed with the Board of Elections it is assigned --
23 numbers are taken off from that bulk and assigned to
24 volumes, and then placed in the computer by scan, whom
25 it was assigned to upon filing of the petitions. And

ams

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Proceedings

1 that's an important part that was left out.

2 The other thing I ask this Court to look at is
3 opposing side said, well, look at the first original
4 cover sheet. If they're going to say look at the
5 original first cover sheet, let's look at it. Look at
6 the one identification number. And I'm asking the Court
7 to look at the case law I submitted, which talks about
8 the disenfranchisement of the voter.

9 THE COURT: All right, give me a few minutes and
10 we'll go in the back. Sort out everything that I heard.

11 MR. KITZINGER: Your Honor, could I have
12 permission to go to courtroom 63, they have a request
13 for my presence?

14 THE COURT: You going to be there for a long time?

15 MR. KITZINGER: I have no idea.

16 THE CLERK: They called and said they needed to
17 confirm something.

18 THE COURT: 20 minutes come back to put the
19 decision on the record.

20 MR. RICHMAN: Can I give you an e-mail address to
21 shoot me an e-mail?

22 MR. KITZINGER: I will leave one of the interns.

23 THE COURT: I'm probably just going to put a
24 decision on the record.

25 THE CLERK: It has to be in writing, Judge.

ams

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Proceedings

1 MR. RICHMAN: The order has to be --

2 MR. KITZINGER: Your Honor, I will leave one of my
3 law student interns here.

4 (Whereupon, a recess was taken.)

5 THE CLERK: Remain seated. Come to order please.

6 THE COURT: All, right we're going to go on the
7 record. I don't have anything prepared in terms of

8 writing. What I'm going to do is, I'm going to give you
9 a decision on the record. And then I'm going to follow
10 it with a written judgment, which has to be done in
11 cases of this nature.

12 So what I've done is, obviously, I've read the
13 order to show cause and petition. I've digested the
14 legal arguments that both sides have made. And I've
15 deliberated for the last, you know, 15 minutes or so,
16 and I'm going to do the following, and I'm going to try
17 and take it in some sort of logical order, and hopefully
18 what I say will make sense orally.

19 The way I look at this case is, I don't see this
20 as a prima facie matter case for the following reason:

21 Based on the board's rule E 1, notwithstanding
22 that there's no definition of what a prima facie matter
23 is, and we explored that, I don't think any candidate
24 wants to be in a position of having his or her cover
25 sheet and/or petition viewed in terms of a defect as a

ams

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Proceedings

1 prima facie defect. A candidate wants the opportunity
2 to cure a defect. And that's what took place here.

3 So, logically, the candidate by the contact person
4 took the opportunity to cure the cover sheet defects

5 pointed out in the July 21, '09 letter by submitting the
6 amended cover sheet stamped July 23rd well within the 3
7 day cure period.

8 What next happened is in terms of chronology the
9 July 27, '09 letter from the board indicating that the
10 candidate would not appear on the ballot because of
11 noncompliance in terms of the cover sheet, and there is
12 a specification of what the problem with the amended
13 cover sheet filing was.

14 Trying to go in chronological order, jumping to
15 the argument that Miss Charles is making, we can't, in
16 my mind, then either treat what happened from the
17 beginning as a prima facie defect because the rules
18 mandate no ability to cure.

19 So here we had the cure attempt. It was rejected.
20 We can't now then jump into a prima facie definition of
21 the cover sheet defect. Now say there's no ability to
22 cure, but the candidate now has the ability to appear at
23 the August 4th hearing in this case to contest what
24 would be the July 27th board's determination.

25 I view it as you can't have both things. You

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Proceedings

1 can't have a defect, an ability to cure, and attempted

2 cure, then a determination that the cure was
3 insufficient, and then jump into the rule and the
4 procedure regarding what takes place after what the
5 board considers to be a prima facie defect without a
6 cure period.

7 You had a cure period. Now, you can't, in my
8 mind, get into a situation where you don't have a cure
9 period. And even if you ignore what happened pursuant
10 to the cure period, and just look at the events from
11 July 27th onward, I believe the petitioner would then be
12 getting 2 bites at the apple.

13 The first bite being the cure period. The second
14 bite being after notification on July 27th, that the
15 cure was unacceptable then to treat the defect as prima
16 facie without a cure, but then allowing the candidate to
17 appear and contest at the August 4th hearing, would then
18 be giving the candidate more than the rules as
19 instituted by the board would allow for.

20 So, I don't believe that this cover sheet defect,
21 whether you look at the original or whether you look at
22 the amended, fits into a prima facie matter situation.

23 So, given that, the August 4th hearing -- and it
24 is conceded that Miss Charles had an opportunity to
25 present her candidate's and client's arguments as to why

ams

Proceedings

1 they believe the board was in error, I don't view the
2 August 4th hearing, even if you want to call it a
3 hearing, and I'll call it a hearing for purposes of
4 making my decision and trying to make it flow logically,
5 I don't think that's a hearing that falls under the
6 prima facie matter procedure.

7 Such that in my mind the July 27th determination
8 by the board sent to Mr. Reilly is the determination of
9 the board. And what took place on August 4th, in my
10 view, under the rules of the board, which I'm required
11 to consider, as well as the election law, I don't think
12 that hearing had any legal effect in terms of saying
13 that the board made its final determination on
14 August 4th or reconsidered the July 27th determination,
15 kept the same result, and now has issued the equivalent
16 of a new determination or a final determination on
17 August 4th, which would be the starting point for
18 commencing the action under 16-102.

19 I don't view the August 4th date as the
20 determining date for the reason that I just stated.

21 So I don't believe that following the prima facie
22 matter argument that the August 4th date is a
23 determining date in any sense of the word.

24 Notwithstanding that view, I will still reach the issue

25 of whether or not the error made in the original cover

ams

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Proceedings

1 sheet and even in the amended cover sheet is either di
2 minimus or substantial, because I think it needs to be
3 addressed in any event.

4 And not only for this case, but maybe for future
5 cases as well. If you look at what's necessary to be
6 enumerated on the cover sheet, besides party
7 affiliation, what district seat you're running for, what
8 residence, address of the candidate, there is the name
9 and address of the contact person with phone number and
10 fax number, to me the 2 most important items besides
11 those other items on the cover sheet are the number of
12 volumes and the identification numbers.

13 One of the other cases that was referenced, and I
14 think it might have been the Siems versus Light case, or
15 it might have been -- I don't think -- it might have
16 been the Pearse case. No, Siems versus Light. And the
17 cite is 307 AD 2d 1016. I don't know if that was one of
18 the cases that was referenced earlier in the day.

19 But an example of what the Court looked at in that
20 case in terms of the cover sheet was the issue of on one
21 hand the attorney for the candidate requested the ID

22 numbers, you know, via an application. But the contact
23 person specified on the cover sheet was someone else
24 other than the attorney.

25 And the question in that case was whether or not

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Proceedings

1 that amounted to a di minimus defect or a substantial
2 defect, which would invalidate the petition. There,
3 without getting into all the details, the Court found --
4 and that was the Second Department -- that the defect
5 there was di minimus.

6 The question in our case is whether the defect or
7 defects here are di minimus. And we had, for my
8 benefit, an extensive discussion with hypotheticals to
9 try to find out at least for me whether the defects here
10 are di minimus or not, whether a candidate's petitions
11 should be invalidated because of this.

12 And it's sort of a tough issue in light of the
13 fact that the election law is supposed to be liberally
14 interpreted. And in light of the fact that one does not
15 want to try to disenfranchise voters. And I think all
16 of us want to see as many candidates on the ballot as
17 meet the qualifications established by the election law.

18 But the question becomes does the situation lead

19 to potential problems that the Board of Elections in its
20 wisdom or some people might question their wisdom, but,
21 I don't in terms of the board being the body that has
22 knowledge of election law, election procedure, and is
23 the body that comes up with rules to attempt to insure
24 that elections are not fraudulent or fraught with fraud,
25 and that elections are fair and honest, and that

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Proceedings

1 procedures for people to get on the ballot are fair, and
2 do not open the door to potential fraud, which no one
3 would want to see if it occurred.

4 And I don't believe anything -- that anything
5 along those lines occurred here. And I think I made
6 that clear when I asked my hypotheticals regarding what
7 the potential problem would be with ID numbers that were
8 not accurate on the cover sheet, and what problems that
9 might lead to. And whether or not those problems equal
10 defects that are or are not di minimus.

11 And with not all that much to guide me in terms of
12 prior precedent, I have some problem with where defects
13 of this nature might lead. If I hold that the defects
14 here both on the original and on the amended are di
15 minimus, given the fact that this is one of the more

16 important items to be identified on the cover sheet, I
17 don't want to see a situation where it makes a person's
18 job more difficult in trying to ascertain petition
19 volumes, review petition volumes, potentially challenge
20 petition volumes.

21 And I don't believe that the burden should be
22 placed on one who wants to review volumes and/or
23 challenge volumes when a candidate has had the
24 opportunity not only in the first instance when the
25 candidate or someone on his behalf or her behalf files

ams

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Proceedings

1 the petitions and the cover sheet, or has the
2 opportunity to cure a defect, I don't think the burden
3 should be on a member of the public to locate volumes
4 even if one agrees with the argument made by Miss
5 Charles that it is not all that hard with
6 computerization and the process by which the board keeps
7 petitions and volumes to find a particular volume or
8 more than one volume.

9 I think there is the potential for problems if I
10 call that there is a di minimus defect here and overlook
11 everything else in terms of what I said earlier about
12 the problem with the time frame in commencing this

13 action.

14 And I'm really not prepared to hold that the
15 defect here is di minimus. I've given it a bit of
16 thought. I don't like to eliminate someone from running
17 for office. I wouldn't be the one doing it in the first
18 instance. The board has done it. I would be doing it,
19 I guess, in the second instance. But I don't feel
20 comfortable with looking at the defect here and viewing
21 it as di minimus.

22 And I don't believe after considering the
23 arguments that makes a difference whether a candidate
24 has way more than the number of signatures required for
25 that office, even if the ID number petitions were

ams

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Proceedings

1 eliminated, and that would leave the remaining petitions
2 and the signatures therein as sufficient to get that
3 candidate on the ballot.

4 I don't think that the analysis should be based
5 only on the number of signatures because you would have
6 the situation where the same type of defect would be di
7 minimus for a candidate who has many more thousands of
8 signatures than necessary, but the candidate who only
9 has a handful of signatures over the amount necessary

10 would have their same defect be viewed to be substantial
11 just based on the number of signatures and whether there
12 are close to or way more than the number of signatures
13 required.

14 I don't think that should be the analysis in
15 deciding whether this type of defect is di minimus or
16 not. So, even though I don't know that I have to reach
17 the di minimus defect issue, since on the procedural
18 issue I don't believe that this petition was timely
19 commenced in view of the fact that I don't believe the
20 August 4th hearing had any legal effect, I'm still
21 reaching the issue of whether or not the defect here was
22 di minimus, and I'm holding for the reasons stated that
23 I don't believe that the defect here was di minimus. So
24 for that additional reason, I'm prepared to dismiss the
25 petition.

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Proceedings

1 I am in the process of following up the decision
2 that I'm placing on the record with a written decision
3 which ends in judgment of the Court. Hopefully you'll
4 have that in a few minutes.

5 So, the foregoing constitutes the decision, order
6 and judgment of the Court. Which I will hopefully sign

7 in writing in a few minutes.

8 I would note for the record, the exception to my
9 ruling by Miss Charles. If you give me a couple of
10 minutes, let me see if I can sign off on the written
11 decision.

12 Does anybody have anything to add?

13 MR. RICHMAN: We will take a faxed copy.

14 THE COURT: I think I might have it in a few
15 minutes. Why don't you just hang out. Somebody may
16 produce something ASAP with it, so I would rather do it
17 this afternoon, or, you know, later this evening, all
18 right.

19 MS. CHARLES: Sorry, you'll fax it?

20 THE COURT: No, no, I'm going to give it to you in
21 a few minutes hopefully. So just hang out.

22 CERTIFIED TO BE A TRUE AND ACCURATE TRANscript OF THE
23 ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

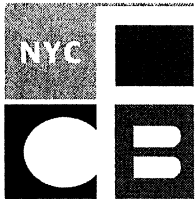
24

25

ANGELA M. SPINELLI, CSR, RPR
Senior Court Reporter

ams

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**New York City
Campaign Finance Board**

40 Rector Street, New York, NY 10006
tel. 212.306.7100
fax 212.306.7143
www.nyccfb.info

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GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 AUG 14 PM 4: 25

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Art Chang

Richard J. Davis

Katheryn C. Patterson

Mark S. Piazza

Members

Amy M. Loprest

Executive Director

Shauna Tarshis Denkensohn

Deputy Executive Director

Sue Ellen Dodell

General Counsel

Dear Friends:

We hope you will consider supporting our mission to keep New York City voters informed about their candidates by organizing a Debate Watch party for the official 2009 New York City Debate Program. The Campaign Finance Board administers debates between candidates for citywide office, with a mandate to present these debates to the widest possible audience. The Debate Program provides the public with an opportunity to hear candidates discuss the issues of the day, giving potential voters a greater ability to play an active and informed role in the democratic process.

The Debate Program is administered by the CFB, in concert with various civic and media partners who sponsor the debates. CFB sponsors two debates before each election, and one additional debate in the case of a runoff election. Candidates for citywide office who join the Campaign Finance Program are required to take part in debates before each election.

Hosting a Debate Watch party gives you the opportunity to help more voters gain more information about the candidates. Civic engagement is contagious – please help your friends, colleagues, and acquaintances stay informed and make educated decisions at the polls this election season.

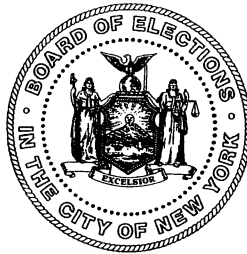
Visit our website, www.nyc.info/debates, for the complete schedule of debates and tools for hosting a party. The first of the CFB debates, a debate among candidates in the Democratic primary for comptroller, will be aired on Sunday, August 23. If you have any questions about the Debate Program or hosting a watch party, you can reach Amanda Konstam, Public Affairs Officer, at AKonstam@nyccfb.info or (212) 306-5262.

The CFB and this year's Debate Program sponsors look forward to providing New York City voters with a series of debates that are both compelling and informative – we would be honored for you to be a part of our efforts by hosting a Debate Watch party.

Sincerely,

Amy M. Loprest

F.Y.I.



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COMMISSIONERS

BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004-1609
(212) 487-5300
www.vote.nyc.ny.us

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

STEVEN H. RICHMAN
GENERAL COUNSEL
Tel: (212) 498-5338
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E-Mail:
srichman@boe.nyc.ny.us

August 14, 2009

TO: ✓ The Commissioners of Elections

FROM: Steven H. Richman, General Counsel

COPIES: Marcus Cederqvist, George Gonzalez, Pamela Perkins, Steve Ferguson, Charles Webb, & Steven Denkberg, Temporary Legal Staff & OCG Files; Chief Clerk & Deputy Chief Clerk, Manhattan Deputy Chief Clerks, Bronx

RE: **DEPARTMENT OF JUSTICE PRE - CLEARANCE OF SUBMISSIONS NUMBERED 2009- NY -01(as amended) & 2009-BX-01; 2009-BX-02 & 2009 BX-04**

Attached hereto are copies of letters dated August 10, 2009 and July 8, 2009 (received on August 14, 2009) from Christopher Coates, Chief of the Voting Section, Civil Rights Division, U.S. Department of Justice advising that the Attorney General of the United States does not object to our pre-clearance submissions:

2009 NY-01, (dated June 19, 2009 as amended by Modification dated July 24, 2009) making eight (8) poll site changes in the 65th, 66th, 67th, 68th, and 73rd Assembly Districts, all County of New York for the September 2009 Primary Election;

2009 BX-01. (May 8, 2009) creating a new poll site in the 80th Assembly District and closing a poll site in the 83rd Assembly District, County of the Bronx for the September 2009 Primary Election.

2009 BX-02. (dated May 8m 2009) making six (6) poll site changes in the 79th, 81st, 83rd, and 85th Assembly Districts, County of the Bronx for the September 2009 Primary Election;

2009 BX-04. (dated June 12, 2009) making one (1) poll site change in 83rd Assembly District, County of the Bronx for the September 2009 Primary Election.

Therefore, the changes are effective as of August 10, 2009.

Thank you for your attention to this matter.

Attachments



U.S. Department of Justice

Civil Rights Division

CC:MSR:JKI:cv
DJ 166-012-3
2009-1941
2009-2005

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

August 10, 2009

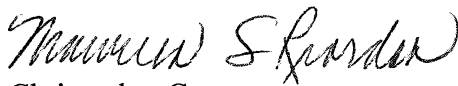
Steven H. Richman, Esq.
General Counsel
32 Broadway, 7th Floor
New York, New York 10004-1609

Dear Mr. Richman:

This refers to the polling place changes for the City of New York in Bronx, Kings, and New York Boroughs, New York, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submissions on June 18 and 25, 2009; supplemental information was received through July 27, 2009.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41 and 51.43.

Sincerely,

for 
Christopher Coates
Chief, Voting Section

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 AUG 14 PM 1:06



U.S. Department of Justice
Civil Rights Division

CC:MSR:JKI:cv:maf
DJ 166-012-3
2009-1667
2009-1689
2009-1854

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

July 8, 2009

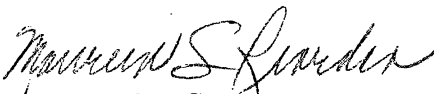
Steven H. Richman, Esq.
General Counsel
32 Broadway
New York, New York 10004-1609

Dear Mr. Richman:

This refers to twenty-one polling place changes and the addition of three polling places for the City of New York in Bronx, Kings, and New York Boroughs, New York, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submissions on May 13, 14, and June 5, 2009.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41 and 51.43.

Sincerely,

for 
Christopher Coates
Chief, Voting Section

2009 AUG 14 PM 1:06

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

Counts
F42

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, BERNICE D. SIEGAL
Justice

Election PART I

Index Number: 19998/2009

-----x
In the Matter of the Application of
JOHN P. SMYTH as Objector and
DIERDRE A. FEERICK as Aggrieved
Candidate

Petitioners,

-against-

DAVID J. ROSASCO,

-and-

the Board of Elections of the City
of New York,

Respondents,

-----x
The following papers numbered 1 to 5 to read on this petition for
an order declaring invalid the DESIGNATING petition which
purports to designate the above-named candidate-respondent as
Democratic candidate for the Public Office of CITY COUNCIL MEMBER
of the 26th Council Member District Queens County, New York State
to be voted for at the Primary Election to be held on September
15, 2009.

PAPERS
NUMBERED

Order to Show-Petition-Exhibits Annexed..... 1-4
Verified Answer..... 5
Court Exhibit Annexed.....

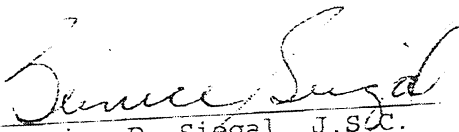
Upon the foregoing papers and after oral argument and testimony
on the record and after due deliberation thereon, it is hereby
ORDERED and ADJUDGED that the petition is granted for the reasons
set forth on the record, upon the grounds that the petition was
timely commenced and the specific objections of the aggrieved
party were properly before the court, the number of valid
signatures were found to be below the required nine hundred (900)

and respondent failed to rehabilitate any invalid signatures.

Accordingly , it is hereby ordered and adjudged that the petition is granted.

Petitioner may enter judgment accordingly.

Dated: August 13, 2009


Bernice D. Siegal, J.S.C.

Comm. Fy.
Fy2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X

In the Matter of

STEPHANIE ZGALJIC,

Petitioner-Candidate,

-against-

THE NEW YORK CITY BOARD OF ELECTIONS,

Respondent.

for an Order pursuant to Article Six and Article 16
of the Election Law Validating REPUBLICAN
Party Designating Petitions of the Petitioner-
Candidate

-----X

SHORT FORM ORDER

Index No. 21023/09

In a special proceeding pursuant to Article 16 of the Election Law, Petitioner-Candidate seeks an Order of the Court, granting relief to Petitioner-Candidate, nullifying and setting aside the determination made by Respondent New York City Board of Elections ("NYCBOE") to invalidate the designating petition of Petitioner-Candidate for the public office of Female Member of the State Committee, 36th Assembly District, Queens County, in the primary election and general elections.

Respondent NYCBOE, through its counsel, the New York City Corporation Counsel's Office, having advised this Court that it would not take an affirmative position on the Petitioner's application.

Accordingly, upon the foregoing, it is hereby

ORDERED AND ADJUDGED that the Petition is granted as follows:

1. The determination of the Respondent New York City Board of Elections, to invalidate the designating petition filed on behalf of Petitioner-Candidate, is vacated and annulled; and the

2. The NYCBOE is directed to place the name of the Petitioner/Candidate on the certified ballots of the Republican Party Primaries to be held on September 15, 2009, for nomination for election to public office of Female Member of the State Committee, 36th Assembly District, Queens County.

This constitutes the Decision and Judgment of the Court.

Dated: Jamaica, New York
August ____, 2009



PETER J. O'DONOGHUE, J.S.C.

Com mtg
FYI

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, Lee A. Mayersohn
Justice

I.A.S. PART 3

In the Matter of the Application of
Ruben Wills as Candidate Aggrieved,

Index No.: 20446/2009

Petitioner

-against-

Allan W. Jennings, Jr. And The Board
of Elections of the City of New York

Respondents

All parties are hereby forwarded to the Board of Elections forthwith to resume the line by line count with respect to the petitioner's objections.

Both candidates and their respective campaign representatives are directed to appear and remain at the Board of Elections throughout the line by line count.

The parties shall continue the line by line count until 9:00 P.M. this evening, Friday August 14, 2009 with a one hour break for lunch and a break for dinner between 5 P.M. and 6:30 P.M.

The parties, including both candidates shall continue the line by line count on Saturday, August 15, 2009 from 9:00 A.M. until 5:00 P.M. with a one hour break for lunch and on Sunday, August 16, 2009 from 9:00 A.M. until 5:00 P.M. with a one hour break for lunch.

The Board of Elections shall provide at least one employee to administer and oversee the proceedings.

The parties shall contact the Court on Friday, August 14, 2009 at 4:30 P.M. to advise as to the status of the disputed signatures.

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GO. BOARD OF ELECTIONS
IN THE COUNTY OF QUEENS
2009 AUG 14 AM 11:55

If at anytime the parties stipulate that the respondent has a sufficient number of undisputed signatures to remain on the primary ballot, then the parties may terminate the line by line count and notify the Court of petitioner's intent to withdraw his petition and objections filed with the Board of Elections.

Further proceedings in this matter are adjourned until Monday, August 17, 2009 at 9:30 A.M., for a traverse hearing and for a hearing on the validity or invalidity of respondent's petition signatures.

Petitioner's attorney is directed to file a Notice of Appearance with the Queens County Clerk on or before the close of business on Friday, August 14, 2009.

A copy of this order has furnished to the parties and petitioner's attorney in court.

Dated: August 14, 2009



LEE A. MAYERSOHN
J.S.C.

COMM 176
F.Y.I.

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART G
Justice

JUDGMENT

In the Matter of the Application of

MARC C. LEAVITT

Index No: 20287/09

Petitioner-Candidate-
Aggrieved,

-against-

ROBERT SCHWARTZ,

Respondent-Candidate,

and THE BOARD OF ELECTIONS IN THE CITY OF
NEW YORK

Respondent,

For an order, pursuant to Article 16
of the Election Law to declare the
invalidity of a designating petition.

Petitioner-Candidate, Marc Leavitt, seeks to declare
fraudulent and invalidate the designating petitions of the
Respondent-Candidate, Robert Schwartz, a candidate for the office
of Borough President of Queens County.

4,000 valid signatures are required to be filed for the
position of Borough President. At the court's direction the
Queens County Board of Elections has reviewed the candidate's
petitions and reported that of the 8,772 signatures submitted
2,839 were invalid leaving a total of 5,933 valid signatures.

Of the 5,933 valid signatures the Board "noted" that the
Petitioner has claimed 417 additional signatures are invalid as

being signatures of a similar handwriting (Exhibit 17). Although not ruled on by the Board the Petitioner has, through a documentary submission, requested that this Court find that these additional signatures are invalid.

Assuming all of these signatures were disallowed by the Court, the Respondent would still have filed 5,515 valid signatures, 1,516 more than needed to qualify.

On August 12th and 13th this Court took testimony from 17 persons whose names appear on petitions filed by the Respondent. Two witnesses indicated that they signed the petitions and 15 indicated that they did not. One witness testified that in addition to himself, he signed for four additional members of his family.

If this court were to invalidate all of the 14 petitions, (each containing 5 signatures) 70 additional signatures would be lost to the Respondent leaving a total of 5,446 valid signatures, 1,446 in excess of the number needed to qualify. It is therefore the Petitioner's claim, not that an insufficient number of signatures have been filed, but that the evidence adduced establishes that the designating petitions of the Respondent are permeated with fraud.

The Respondent's petition coordinator has testified. No evidence of any kind was presented that either this witness or the Respondent-Candidate himself committed any fraudulent act or participated in or encouraged anyone on their behalf to engage in any fraudulent activity.

It is the Petitioner's position that the testimony of the witnesses and the documentary evidence submitted establishes that a number of the subscribing witnesses submitted petitions containing either fraudulent or irregular signatures thereby engaging in fraud. This, the Petitioner claims, creates the inference and requires the conclusion that all of the petitions are permeated with fraud.

The petitioner must establish this claim by clear and convincing evidence and the threshold is high. Just how high can be seen from the altitude reached in the case of Matter of Pilat v. Sachs, 59 AD2d 515, aff'd 42 NY2d 984.

In that case the respondent, Mario Cuomo, needed 2,551 valid signatures to secure the ballot line of the Liberal Party for the Office of Mayor of the City of New York. The respondent filed 5,373 signatures. 1,158 were declared invalid by the Board of

Elections leaving a balance of 4,215.

In a proceeding before the Supreme Court 410 signatures were found to be forged and another 1,138 invalidated for technical reasons leaving a balance of 2,667 valid signatures, 116 more than needed.

The petitioner made several arguments to invalidate the signatures. One argument was that the inference and conclusion necessarily suggested by 2,706 invalid signatures, slightly more than half of the total number submitted (containing 410 forgeries, almost 10% of the total) was that the petitions were invalid as they were "permeated with fraud."

The lower court rejected that argument. On appeal the Appellate Division unanimously affirmed, citing from Justice Cooke's dissent in Proffitt v. May 40 NY2d 829 wherein he quoted from the Appellate Division's decision in Lefkowitz v. Cohen, 262 A.D. 452:

"... We think it was error in such case to hold void a petition which contained a sufficient number of valid signatures as specified in the Election Law. To reject this petition would result in depriving qualified signers of the benefit of having the name of their designee appear on the official ballot. They should not lose their right simply because others over whom they have no control may have perpetrated a wrong. Persons who obtain signatures to designating petitions are not the agents of all of the signers so to make those who are honest chargeable with knowledge that some of the signatures are forged or fraudulent." Further, Abraham, New York Election Law (1950) at pages 115-116: "The presence of forged signatures, however abundant upon petition sheets, will not as a matter of law, invalidate any sheet or the entire petition."

The Court of Appeals unanimously affirmed.

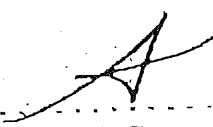
Although the testimony of the witnesses who appeared before this Court was uncontested, this Court can not conclude that the entire process was permeated with fraud or even that all of the 14 individual petitions contain totally untrustworthy

signatures. Similarly this Court's review of the documentary evidence submitted fails to establish by clear and convincing evidence that all of the 417 signatures questioned are fraudulent. The Petitioner has failed to meet his burden of proof.

It is therefore Ordered and Adjudged, that the petition to invalidate the designating petitions of the Respondent-Candidate Robert Schwartz is dismissed.

Dated: August 14, 2009

D# 39


J.S.C.

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FY2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JIMMY MCMILLAN

Plaintiff,

-against-

NEW YORK CITY BOARD OF ELECTIONS

Defendant.

-----X
AMON, United States District Judge:

NOT FOR PUBLICATION
MEMORANDUM &
ORDER

08-CV-3679 (CBA)

Plaintiff Jimmy McMillan (“McMillan”) brought this action against the New York City Board of Elections (“the Board”) asking this Court to reinstate plaintiff’s name as a candidate for State Senator for the 21st Senatorial District in the November 4, 2008 New York State general election. By order dated September 22, 2008, the Court granted McMillan’s request to proceed *in forma pauperis*. The Board filed a motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons stated below, the Board’s motion to dismiss the complaint is granted.

On or about August 19, 2008, an independent nominating petition (“the Petition”) was filed with the Board purporting to nominate McMillan as a candidate for State Senator from the 21st Senatorial District. Pursuant to N.Y. Election Law § 6-142(2) and (2)(f), the Petition required at least 2,030 signatures in order to be valid. See Kitzinger Decl., Ex. B. McMillan submitted a petition containing not more than 40 signatures on a total of 4 sheets. See Kitzinger Decl., Ex. A. By letter dated August 25, 2008, the Board notified McMillan that the petition appeared to be deficient on its face and that a hearing would be held on September 4, 2008, at which time McMillan could contest the Board’s preliminary findings. At the September 4 hearing, the Board determined that Petition was invalid for failing to comply with New York

State Election Law and the Rules of the Board of Elections. See Ex. to Complaint. McMillan commenced this action by filing of the Complaint with the Pro Se Office on September 10, 2008.

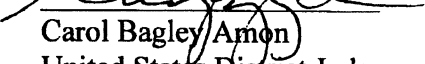
The Court lacks jurisdiction to hear McMillan's claims. McMillan is a resident of the State of New York, and therefore there is no diversity jurisdiction against an entity of the City of New York. McMillan's complaint is based solely on issues of state election law and does not present a federal question under 28 U.S.C. § 1331. Further, even if this Court were to construe McMillan's complaint to assert a constitutional claim under the Fifth and Fourteenth Amendments of the U.S. Constitution, the Second Circuit has held that the combination of a Board of Elections hearing and available state court judicial review provides adequate process to a candidate whose name is removed from the ballot pursuant to Board regulations. Rivera-Powell v. New York City Bd. of Elections, 470 F.3d 458, 467-68 (2d. Cir. 2006). McMillan was afforded the opportunity to contest the board's decision at a hearing on September 4, 2008, and, had he chosen to do so, McMillan could have pursued a state statutory remedy provided by Article 16 of the Election Law and therefore received adequate process as a matter of law under Rivera-Powell.

Finally, even if this Court had jurisdiction to hear McMillan's substantive claims, the Court finds that the Board appropriately rejected McMillan's petition, pursuant to N.Y. Election Law § 6-154(2) and the Board's Designating Petition and Opportunity to Ballot Petition Rules for 2008, Rule E1. The Board properly determined that the Petition was not prima facie valid, since the Petition contained less than forty signatures, far fewer than the 7,500 signatures necessary to constitute a valid petition.

Accordingly, the complaint is dismissed. The Clerk of the Court is directed to close this case.

SO ORDERED.

**Dated: Brooklyn, New York
August 13, 2009**


**Carol Bagley Amon
United States District Judge**

County
FYZ

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JIMMY MCMILLAN

Plaintiff,

-against-

NEW YORK CITY BOARD OF ELECTIONS

Defendant.
-----X

AMON, United States District Judge:

For the reasons set forth on the record, plaintiff Jimmy McMillan's motion for a preliminary injunction is denied and defendant's motion to dismiss is granted.

The Court lacks jurisdiction to hear plaintiff's claims. The plaintiff is a resident of the State of New York, and therefore there is no diversity jurisdiction against an entity of the City of New York. Plaintiff's complaint is based solely on issues of state election law and does not present a federal question under 28 U.S.C. § 1331. Further, even if this Court were to construe plaintiff's complaint to assert a constitutional claim under the Fifth and Fourteenth Amendments of the U.S. Constitution, the Second Circuit has held that the combination of a Board of Elections hearing and available state court judicial review provides adequate process to a candidate whose name is removed from the ballot pursuant to Board regulations. Rivera-Powell v. New York City Bd. of Elections, 470 F.3d 458, 467-68 (2d. Cir. 2006).

Finally, even if this Court had jurisdiction to hear plaintiff's substantive claims, the Court finds that defendant appropriately rejected plaintiff's petition, pursuant to N.Y. Election Law § 6-154(2) and the Board's Designating Petition and Opportunity to Ballot Petition Rules for the September 2009 Primary Election, Rule E1. The defendant properly determined that plaintiff's

NOT FOR PUBLICATION
ORDER

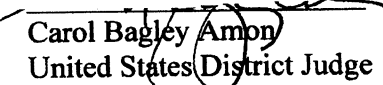
09-CV-3383 (CBA)

petition was facially defective and not subject to a cure under Section 6-134(2) of the Election Law based upon the presence of "peel-off" labels bearing the names of two candidates that had been affixed over the candidate name originally present on the Petition.

Accordingly, the complaint is dismissed. The Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Brooklyn, New York
August 13, 2009


Carol Bagley Amon
United States District Judge

Comments
Fyz

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----x Index No:700024/09

In the Matter of the Application of

JUMAANE D. WILLIAMS,

**ORDER WITH NOTICE OF
ENTRY**

Petitioner,

-against-

THE BOARD OF ELECTIONS IN THE CITY OF
NEW YORK,

Respondent,

-and-

ERLENE J. KING,

Respondent,

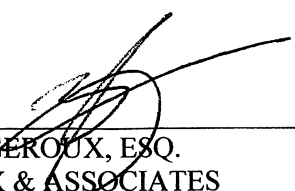
for an order, pursuant to Article 16
of the Election Law, to declare the
invalidity of a designating petition which
purports to designate ERLENE J. KING as a
candidate for the MEMBER OF THE CITY COUNCIL,
45th COUNCIL DISTRICT, CITY OF NEW YORK in the
Democratic Party Primary Election to
be held September 15, 2009.

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-----x

PLEASE TAKE NOTICE that the attached is a true copy of the Order in this matter that
was entered in the Office of the Clerk of the Supreme Court, Kings County, on August
13, 2009.

Dated: 8/14/09.


BRIAN FIGEROUX, ESQ.
FIGEROUX & ASSOCIATES
Attorneys for Plaintiff
26 Court Street, Suite 701
Brooklyn, NY 11242
718-834-0190

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of
JUMAANE D. WILLIAMS,
Petitioner [and Aggrieved Candidate],

SPECIAL ELECTION PART

Index No. 700024/09

Calendar No. 15

Hon. David I. Schmidt

-against-

THE BOARD OF ELECTIONS IN THE CITY OF
NEW YORK,
Respondent,

-and-

ERLENE J. KING.
Respondent,

for an order, pursuant to Article 16
of the Election Law, to declare the
invalidity of a designating petition which
purports to designate ERLENE J. KING as a
candidate for the MEMBER OF THE CITY COUNCIL,
45th COUNCIL DISTRICT, CITY OF NEW YORK in the
Democratic Party Primary Election to
be held September 15, 2009.

The following papers numbered 1 to 4 used in this proceeding

Order to Show Cause and Petition Annexed 1 - 2.....
Stipulation of Reference
Other Papers....Bill of Particulars/Offer of Proof/Witness List. 3.....
Order To Show Cause with Exhibits and Answer Annexed 4.....

Name of Candidate/s	Office	District
Jumaane D. Williams	City Council....	45 th District.....

Upon the foregoing papers and after oral argument held before the court in this proceeding brought pursuant to Article 16 of the Election Law to declare invalid the

designating petition purporting to name respondent Erlene J. King as a candidate for the above-mentioned public office in the primary election to be held on September 15, 2009,

AND respondent Erlene J. King having moved by order to show cause with counterclaim for an order validating her designating petition,

AND petitioner Jumaane D. Williams (petitioner) having orally moved for summary judgment dismissing the counterclaim, the court finds as follows:

Background Facts and Procedural History

A designating petition was filed with the Board of Elections in the City of New York (the Board) on July 16, 2009 purporting to designate Erlene J. King as a candidate for the public office of Council Member of the New York City Council from the 45th Council District, Kings County, New York. The petition itself consisted of four separate volumes, namely KG0900865, KG0900866, KG0900867, and KG0900868. Each volume contained a separate cover sheet setting forth the required information (*i.e.*, the name and address of the candidate and office being sought). In addition, each cover sheet designated one Neil Albert as a “contact person to correct deficiencies” and provided Mr. Albert’s address and phone number. Further, the cover sheets complied with the Board’s own rules by authorizing the Board to transmit any determination to Mr. Albert via his fax number provided therein (*see* 9 NYCRR § 6215.7[c] and Rule D3 of the Board’s Rules for Designating/Opportunity To Ballot Petitions adopted March 24, 2009 and Pre-Cleared May 20, 2009 by the Attorney

General of the United States).¹

Objectors Roxan London and Ernest Skinner filed specifications of objections (KG 102, KG 102 Amended, and KG 71) with the Board after the designating petition was filed. Those specifications sought to invalidate certain signatures set forth in Ms. King's designating petition. Petitioner, himself, commenced the instant proceeding on July 29, 2009 as an aggrieved candidate seeking to invalidate Ms. King's designating petition, and the matter was made returnable on August 3, 2009 before this court.²

The Board determined on July 30, 2009, 14 days after Ms. King originally filed her designating petition, that the petition contained a cover sheet error. Specifically, the Board ruled that the petition failed to contain a "summary cover sheet" in violation of "9NYCRR §6215 or this Board's Rules for Designating/Opportunity To Ballot Petitions adopted on March 24, 2009 . . ." Consequently, the Board notified Mr. Albert in a correspondence dated

¹That rule pertinently provides that:

"Notification of a determination of noncompliance shall be given by written notice by depositing such notice on the day of such determination with an overnight delivery service, for overnight delivery, on the next business day, or by personal delivery by the day after the determination to the candidate or the contact person, if designated, at the address stated on the petition. Notification shall be given by overnight delivery or personal delivery only, unless the candidate shall have filed with the board written authorization, signed by the candidate, for the board to give notification by facsimile transmission. In the event that the candidate shall have authorized notification by facsimile transmission, then the board shall notify the candidate or the contact person, if designated, by facsimile transmission on the day of the determination to the number set forth by the candidate and shall, in addition, mail a copy of the determination to the candidate."

²Objectors London and Skinner are not parties to this proceeding or any other proceeding to invalidate. Consequently, said objectors forfeited any right to challenge in court the Board's determinations regarding their specifications.

July 30, 2009 of this purported defect and stated that Mr. Albert/Ms. King had three business days to correct the defect by filing an amended cover sheet at the Board's offices in Manhattan. The Board sent its notice via United States Postal Service Express Mail to Mr. Albert at his stated address. However, there is no evidence that the Board faxed the notification to Mr. Albert despite Ms. King's aforementioned cover sheet authorization that Mr. Albert be notified of the Board's determinations via facsimile transmission.³ Instead, Mr. Albert's own affirmation indicates he discovered a pink USPS "notice of attempted delivery" on his front door upon returning to his home at 5:30 PM on July 31, 2009. Mr. Albert further avers that work and religious commitments made him unable to retrieve the subject mail (which contained the Board's notice) until August 5, 2009.

The Board in the interim generated preliminary clerk's reports on August 3, 2009 regarding the aforementioned specifications of objections. Those reports indicated that Ms. King had more than the 900 valid signatures required for being placed on the primary ballot.⁴

The court initially considered the instant invalidating petition on the morning of August 3, 2009. The clerk's report at that point had not yet been confirmed by the Board inasmuch as the Board's Commissioners were not scheduled to hear matters relating to Kings

³Although the Board is a party to this action and has been served with all papers, the Board has chosen not to appear and thus petitioner's counsel alone represents their position in this matter.

⁴Specifically, with respect to the KG 102 specs, the clerk's report indicated that Ms. Williams had 1121 valid signatures. With respect to KG 71, the clerk's report indicated that Ms. Williams had 2000 valid signatures.

County until that afternoon. However, petitioner, an aggrieved candidate herein, submitted a bill of particulars containing de novo specifications of objections in accord with the court's published part rules. Ms. King, though, failed to submit an answer to the invalidating petition by 9:30 AM on the August 3, 2009 return date as required by the part rules. The court, in any event, directed the parties to proceed to the Brooklyn Board of Elections to commence a line by line review of the de novo specifications filed with the court. The Board's Commissioner's on the afternoon of August 3, 2009 confirmed the clerk's report relating to the objectors' specifications notwithstanding the purported summary cover sheet defect.

Thereafter, the Board officially ruled Ms. King off the ballot on August 5, 2009 at 9:16 AM after no attempt was made to cure the purported cover sheet defect. Ms. King alleges in this regard that she learned about the cover sheet problem when her attorneys were provided with a copy of the Board's July 30, 2009 letter on August 5, 2009 at 10 AM. An attempt ensued to file a "summary cover sheet" with the Board on August 5, 2009 at 12:16 PM. The line by line review of petitioner's de novo specifications was concurrently completed on August 5, 2009, and such review showed that Ms. King had 2,016 valid signatures, 1,116 more than she needed to be placed on the ballot.⁵

Ms. King sought to address the Board's August 5, 2009 action ruling her off the ballot

⁵The parties consented, in light of the Board's action ruling Ms. King off the ballot, to the validity of the numbers reached by the special referees who conducted the line by line without reading a referee's report into the record and without an application to confirm the referee's report.

by filing an order to show cause on August 6, 2009 under the existing index number for petitioner's instant invalidating proceeding. Annexed to the show cause order is a verified answer containing a counterclaim (in reality, a cross claim⁶) seeking an order validating the designating petition filed by Ms. King with the Board and directing the Board to place Ms. King on the ballot as a candidate for the subject office for the Democratic party primary election to be held September 15, 2009. The instant applications/motions are now before the court.⁷

Discussion

Three issues emerge in this matter: First, the court must determine if there is a sufficient basis to excuse the untimeliness in filing Ms. King's answer and accept the answer considering that its filing comes over three days after the filing deadline in the court's published part rules. Second, if the court accepts the late answer then it must determine whether to entertain the cross claim contained in the answer seeking to validate Ms. King's designating petition. Finally, if the cross claim sufficiently presents the validation issue then the court must evaluate the appropriateness of the Board's action in ruling Ms. King off the ballot based upon the cover sheet defect.

⁶In this regard the court notes that Ms. King was removed from the ballot pursuant to the sua sponte actions of her fellow respondent the Board and a cross claim seeks relief against the Board, not petitioner.

⁷Ms. King has taken this approach of seeking to validate through an answer with a counterclaim/cross claim rather than commencing a so-called "Pell proceeding" (named after *Matter of Pell v Coveney*, 37 NY2d 494 [1975] and now codified in Election Law 16-102 (2)) under a new index number to validate her designating petition.

The Late Answer

The court has discretion regarding the untimely filing of the answer to insist on strict adherence to its rules for submissions in Election Law proceedings (*Matter of Wooten v Barron*, 242 AD2d 351, 352 [1997]). However, the court also has discretion to allow late filings in individual cases should unique circumstances present themselves as in the instant matter. Specifically, the Board of Elections' own rules require in this case that "[w]ithin two business days of the receipt of the petition, the board with whom such petition was filed shall review the petition to determine whether the petition complies with the cover sheet . . . requirements of these regulations" (Rule D1 of the Board's Rules for Designating/Opportunity To Ballot Petitions adopted on March 24, 2009; 9 NYCRR § 6215.7 [a]). The Board's rules further require that "[i]n the event that, upon the review conducted pursuant to subdivision (a) of this section, the board determines that a petition does not comply with these regulations, the board shall *forthwith* notify the candidate . . . named on the petition of its determination and reasons therefor" (Rule D2 of the Board's Rules for Designating/Opportunity To Ballot Petitions adopted on March 24, 2009; 9 NYCRR § 6215.7 [b]) [emphasis added]).

Here, the Board received Ms. King's petition on July 16, 2009 and waited a full two weeks before even attempting to notify her of the cover sheet defect, clearly in violation of the above-cited rules regarding forthwith notification within two business days of receipt of the petition. Moreover, the Board compounded this error by failing to fax the notification

to Mr. Albert in accord with Ms. King's authorization. This background shows that Ms. King had no reason to suspect she would need to file an answer challenging her removal from the ballot based upon a cover sheet defect when her answer was due under the court's published rules on the August 3, 2009 return date at 9:30 AM. In addition, it would seem particularly unjust to strictly apply the part rules regarding time requirements for submissions when the net effect of such application would remove Ms. King's name from the ballot based upon the cover sheet defect given the Board's own untimeliness in failing to provide Ms. King with notice of the cover sheet defect. Accordingly, the court will accept Ms. King's late answer under the unique circumstances of this case.

The Validation Counterclaim/Cross Claim

The court initially notes that interposing a cross claim in an Election Law proceeding requires leave of the court (*see* CPLR 402; *Matter of White v Bilal*, 21 AD3d 573 [2005], *lv denied* 5 NY3d 824 [2005]). Here, the court deems Ms. King's August 6, 2009 order to show cause constitutes a request for such leave and grants leave under the present facts.

Election Law § 16-102 (2) offered Ms. King the right to commence a validating proceeding challenging the Board's actions within three business days of the Board's August 5, 2009 determination to remove her from the ballot based upon the cover sheet defect. However, Ms. King, as mentioned above, chose to file an answer to petitioner's existing invalidating petition with a cross claim to validate her designating petition. Commencing a validating proceeding under a new index number may have represented a preferable

alternative for Ms. King, but courts do allow litigants to assert validating claims via a cross claim, counterclaim, and even an affirmative defense to an invalidating petition provided the validating claim is asserted before the statute of limitations expires and the claim contains sufficient particularity (see e.g., *Matter of Rodriguez v Rivera*, 112 AD2d 889 [1985]; *Matter of Straniere v Cutolo*, 59 AD2d 572 [1977] aff'd 42 NY2d 984 [1977]; see also Goldfeder's Modern Election Law, Chapter 4, at 55, n 21 [1st ed 2007]⁸). Here, the court has allowed filing the answer with cross claim on August 6, 2009, the day after the Board determined the invalidity of the designating petition. Consequently, Ms. King brought the cross claim before the three-day statute of limitations set forth in Election Law § 16-102 (2) expired.

Furthermore, the cross claim, contrary to petitioner's contention, contains sufficient particularity. The cross claim, in this regard, involves no challenges to the Board's rulings regarding the validity of individual signatures in the designating petition thereby negating a need to specifically identify which signatures were at issue (*compare Matter of Dickerson v Daily*, 196 AD2d 610 [1993], *lv denied* 82 NY2d 653 [1993]). Rather, the cross claim involves a basic cover sheet defect. In addition, the order to show cause which included the answer as an attachment also included Ms. King's affidavit that specifically identified the alleged cover sheet defect. Even further, a copy of the Board's notification regarding the

⁸That footnote pertinently provides that "[t]he Court will permit the candidate to resuscitate signatures without having previously commenced an anticipatory Validating lawsuit if she interposes an Affirmative Defense or Counterclaim in her Verified Answer that alleges that her petition is valid and has a sufficient number of signatures. However, this Answer must be served either prior to the expiration of the statute of limitations, or if the Invalidating lawsuit is served on the last day of [the] limitations period, immediately thereafter."

"summary cover sheet" defect appears as another attachment to these papers. Consequently, both petitioner and the Board were given notice of the exact nature of Ms. King's cross claim. Accordingly, under the unique circumstances of this case, the cross claim seeking to validate the designating petition is properly before the court and petitioner's motion to dismiss the cross claim is denied.

The Board's Action

The court notes regarding the merits of the cross claim that Ms. King filed four individual cover sheets and attached each individual cover sheet to each of the four volumes of her designating petition. However, the applicable rules adopted March 24, 2009 required her to only file one summary cover sheet and keep it separate from her petition volumes. More specifically, those rules regarding cover sheets require that "[a] cover sheet must be filed for all petitions containing ten or more sheets in one volume or consisting of more than one volume. The cover sheet SHALL BE FILED SEPARATELY from the petition volume(s). It shall not be attached to any petition volume" (Rule C1 of the Designating/Opportunity to Ballot Petition Rules for the September 15, 2009 Primary Election, p 4).

It is well-settled, notwithstanding the apparent violation of the Board's cover sheet rules, that de minimus errors in a candidate's cover sheets which present no danger of fraud or confusion either to the Board or voters provide no basis for invalidating the candidate's

designating petition or otherwise ruling the candidate off the ballot (9 NYCRR § 6215.6 [a])⁹; *Matter of Toporek v Beckwith*, 32 AD3d 684 [2006]; *Matter of Magelaner v Park*, 32 AD3d 487 [2006]; *Matter of Pearse v New York City Bd. of Elections*, 10 AD3d 461 [2004]; *Matter of Most v Walker*, 297 AD2d 356 [2002]; *Matter of Hogan v Goodspeed*, 196 AD2d 675 [1993], *affd in part, dismissed in part* 82 NY2d 710 [1993]). The rationale behind these rulings is grounded in policy considerations disfavoring disenfranchising potential voters when a candidate substantially complies with the Board's cover sheet rules. Here, Ms. King's cover sheets substantially complied with the Board's rules. More specifically, the cover sheets contained all required information including Ms. King's name, address, the office for which she was running, the total number of volumes filed, as well as the individual volume numbers. The fact that an individual cover sheet was attached to each of Ms. King's four volumes rather than a single unattached summary cover sheet covering all four volumes posed no threat of fraud or confusion either to the Board or voters. Finally, as mentioned earlier, it would be inequitable and fundamentally unfair to remove Ms. King from the ballot based upon a hypertechnical interpretation of the Board's cover sheet rules when the Board itself failed to comply with its rules requiring "forthwith" notification of cover sheet defects within two business days of the filing of Ms. King's designating petition.

⁹That provision entitled "Construction of rules; substantial compliance" pertinently provides that "these rules shall be liberally construed and technical defects shall be disregarded where there has been substantial compliance and where a strict construction is not required for the prevention of fraud."

The Board, under the circumstances, erred in ruling Ms. King off the ballot based upon the cover sheet error. Accordingly, it is

ORDERED, that the petition to invalidate Respondent Erlene J. King's designating petition is denied AND petitioner's motion to dismiss Ms. King's cross claim is denied AND Ms. King's cross claim to validate is hereby granted;

AND IT IS FURTHER ORDERED that respondent Board of Elections in the City of New York shall place on the ballot for the aforesaid Primary Election the name of the candidate Erlene J. King.

ENTER FORTHWITH,



J. S. C.

HON. DAVID L SCHMIDT

Dated: August 13, 2009

Comm Mtg - FYI

At a Special Election Part 1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 14th day of August, 2009.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS:

-----X
In the Matter of the Application of
ADRIAN M. STRAKER,

PETITIONER-CANDIDTE

- against -

Index #700033/09

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK,
BERNARD HOLLOWAY, OBJECTOR AND MARTIN E.
CONNOR, OBJECTOR'S CONTACT PERSON,

RESPONDENTS

for an order, pursuant to article 16 of the Election Law declaring the validity of a designating petition which designates the above-named petitioner-candidate as Democratic candidate for the public office of Member of the City Council -36th District, as stated in the above mentioned designating petition and as set forth herein.

Calendar No. 33

Hon. David I. Schmidt

-----X
The following papers numbered 1 to 3 used in this proceeding

Order to Show Cause and Petition Annexed 1,2.....
Stipulation of Reference
Other Papers..... (answer);..... (bill of particulars/offer of proof).3.....

Name of Candidate/s	Office	District
Adrian M. Straker.....	Member of the New York City Council ...	36 th District.....

Upon the foregoing, petitioner Adrian M. Straker, moves by way of an order to show cause, for an order validating a petition purporting to designate her as a candidate for the public office of Member of the New York City Council from the 36th Council District in the Democratic Party Primary Election to be held on September 15, 2009.

On July 16, 2009, petitioner filed designating petitions containing approximately 1148 signatures with the New York City Board of Elections (the Board). The record reveals that specifications of objections Number KG 67 were filed by William Locario against Ms. Straker's designating petitions. These objections were dismissed by the Commissioners of the Board on August 3, 2009. Accordingly, as there were no valid objections to the signatures contained in volumes 34, 35 and 36, all 551 signatures contained therein are considered valid. Specifications of Objections Number KG 58 were filed with the Board by respondent Holloway pertaining to Volumes 31, 32, and 33 of the designating petition.

The Board confirmed a Clerk's Report on August 3, 2009 which found that Ms. Straker had 811 valid signatures, or 89 less than were required to be placed on the ballot. On August 6, 2009, Ms. Straker instituted the instant validating proceeding which was returnable before this court on August 10, 2009. On that date the matter was referred out to court appointed referees for a line by line review of the specifications of objections ruled As Specified by the Board of Elections. On August 11, 2009, a Referee's Report was rendered which found that Ms. Straker had 851 valid signatures. Respondent Holloway moved to

confirm the referee's report and Ms. Straker raised various objections to the report.¹ Ms. Straker, along with her campaign manager Lauren Peart, were sworn in and their testimony revealed that the Specifications of Objections to Volumes 31, 32 and 33 of Ms. Straker's designating petitions were never served on either Ms. Straker, or on Ms. Peart, who is the first person listed on Ms. Straker's Committee to fill Vacancies. In fact, the testimony revealed that what appears to have been served upon them were duplicate copies of the specifications of objections to Volumes 34, 35 and 36, the ones declared invalid by the Board, and not the objections to Volumes 31, 32 and 33. Respondent Holloway admitted that this is what occurred and that the specifications of objections to Volumes 31, 32 and 33 were never served upon Ms. Straker.

Election Law § 6-154 provides, in pertinent part, that "specifications of the grounds of the objections shall be filed within six days thereafter with the same officer or board and if specifications are not timely filed, the objection shall be null and void. Each such officer or board is hereby empowered to make rules in reference to the filing and disposition of such petition, certificate, objections and specifications."

¹More specifically, she presented affidavits from subscribing witnesses which established the validity of 29 more signatures together with 8 others for whom Ms. Straker made an offer of proof reflecting their status as registered democrats within the district. Collectively, these 37 signatures would have left Ms. Straker 12 short of the necessary 900. She was then seeking more time to contact other signatories or subscribing witnesses to resuscitate additional disallowed signatures when the determinative issue arose, as discussed above.

Section H 9 of the Designating Petition and Opportunity to Ballot Petition Rules for the September 2009 Primary Election promulgated by the Board of Elections of the City of New York² provides as follows:

(a) For petitions designating a candidate for public office, the objector must serve a copy of the specifications personally or by certified mail upon the candidate for public office before filing such specifications with the Board.

(b) For petitions designating a candidate for party position, the objector must serve a copy of the specifications personally or by certified mail upon the first person listed under the committee to fill vacancies or the contact person before filing such specifications with the Board.

It has been held that the failure to comply with the regulations of the Board of Elections, concerning the obligation of an objector to serve a copy of their written specifications of objections on a candidate or to the first named person on the committee on vacancies on the petition (in cases involving a party position) deprives the Board of Elections of its jurisdiction to pass upon such objections (*see Moran v Board of Elections*, 122 AD2d 908, 909 [1986]; *Ryder v Power*, 3 NY2d 894 [1957]; *see also Zogby v Longo*, 154 AD2d 889 [1989] (court held that objector's failure to comply with similar NYS Board of Election rule (9 NYCRR 6204.1(b)) by failing to serve a copy of the specifications of objections upon the candidate on or before the date of the filing of the specifications and by


²These rules were adopted by the Board on March 24, 2009 and were pre-cleared by the Attorney General of the United States on May 20, 2009.

failing to file proof of such service prior to the hearing on the specifications deprived Board of jurisdiction to pass upon the objections).

Here, Mr. Holloway admitted to the court that the objectors failed to serve Ms. Straker with copies of their specifications of objections to Volumes 31, 32 and 33 of her designating petition and instead merely served duplicate copies of the specifications of objections to Volumes 34, 35, and 36. Based upon the foregoing, the Board lacked jurisdiction to pass upon the objectors' specifications of objections to Ms. Straker's designating petitions. As she submitted 1148 signatures, which is more than the 900 needed to be placed upon the ballot for the office she was seeking. It is therefore ordered that the petition to validate granted.

It is further ordered that the respondent Board of Elections of the City of New York shall place on the ballot for the September 15, 2009 Primary Election the name of Adrian M. Straker for the public office of Member of the New York City Council from the 36th Council District.

E N T E R,


J. S. C.

Dem party
F.Y.Z.

SUPREME COURT OF THE STATE OF NEW YORK
OF THE COUNTY OF KINGS

Petitioner,

BARBARA N. TAYLOR

- against -

CITY OF NEW YORK BOARD OF ELECTIONS,
STATE OF NEW YORK BOARD OF ELECTIONS,
AND COMMISSIONERS OF ELECTIONS
CONSTITUTING THE BOARD OF ELECTIONS,
HON. VELMANNETTE MONTGOMERY,
CANDIDATE FOR THE 18TH STATE SENATE

NOTICE OF MOTION

FOR LEAVE TO FILE THE
NOTICE OF INTENTION
IN LIEU OF FILING CLAIM
UNDER CPLR §203[D]

INDEX NO. 700023-08

Respondents .

OTHER (P)

PLEASE TAKE NOTICE that upon the annexed affidavits of BARBARA TAYLOR, sworn to on this 11th day of August 2009, due deliberation having been heard under open public office monitor review, in full examination of the legal matter of [1] the Direct Recording Electronic [DRE] voting systems controversies, and related [2] unsettled holdover Election contest public office title disputes, the above entitled petitioner shall motion this Court, at IAS Election Term Part I, in Room 541, on August 25, 2009, at 9:30 am, or as soon as counsel may be heard, at the Supreme Court on 360 Adams Street, Brooklyn, New York, for an order granting permission to toll the inactive and active periods accruing within the Claim application process, in suspension of the general limitation for filing the prospective Election Claim [Complaint] under legal provision of Section 8(b) of the Court of Claims Act which renders the formal filing motion application as timely if enacted on or before expiration of the general filing limitation period [August 13, 2009].

PLEASE TAKE FURTHER NOTICE pursuant to Section 2214(b) of the Civil practice laws and Rules, service of copies of any answering affidavits on the undersigned should be served at least within 1 day before the return date upon which this legal matter is noticed to be heard. Pursuant to CPLR §2217, petitioner affirms no application for the same relief was submitted to this Court.

DATED: BROOKLYN, NEW YORK
AUGUST 12, 2009

Barbara N. Taylor
BARBARA N. TAYLOR,
128 LEWIS AVENUE 11D
BROOKLYN, NY 11221

RECEIVED
G.O. BOARD OF ELECTIONS
IN THE CITY OF NEW YORK
AUG 13 PM 3:25

N
KING
SUPREME COURT
MOTION SUPPORT
APPROVED
DATE 8/12/09

SUPREME COURT OF THE STATE OF NEW YORK
OF THE COUNTY OF KINGS

Petitioner,

BARBARA N. TAYLOR

- against -

CITY OF NEW YORK BOARD OF ELECTIONS,
STATE OF NEW YORK BOARD OF ELECTIONS,
AND COMMISSIONERS OF ELECTIONS
CONSTITUTING THE BOARD OF ELECTIONS,
HON. VELMANNETTE MONTGOMERY,
CANDIDATE FOR THE 18TH STATE SENATE

AFFIDAVIT IN SUPPORT

FOR LEAVE TO FILE THE
NOTICE OF INTENTION
IN LIEU OF FILING CLAIM
UNDER CPLR §203[D]

INDEX NO. 700023- 08

Respondents .

STATE OF NEW YORK
COUNTY OF KINGS

BARBARA N. TAYLOR , Pro se petitioner does affirm as follows ,

1. I am the petitioner of the above entitled action brought under the Election law, and do submit this affidavit in support of the accompanying motion application for leave to toll the general filing limit period, thereby permitting the filed Notice of Intention to stand in lieu of the impending Claim , notwithstanding submission of the prospective claim to the court, annexed thereto is the prospective claim accompanying the filed motion application papers.

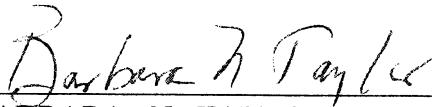
2. Petitioner, reserves the right to enter this motion under general provision of Article 2 of the Civil Practice Laws and Rules which provides that any motion application authorized under Article 2 of the CPLR , and filed within the general limitation for filing said application shall be rendered timely on the grounds that, the time within which an action must be commenced, except as otherwise expressly prescribed, shall be computed from the time the cause of action accrued to the time the claim is interposed. And furthermore, if the defense or counterclaim arose from a transaction or occurrence, or series of transactions or occurrences, upon which the relief asserted in the claim or complaint is dependent, then the defense is not barred to the extent the legal demand in the complaint has upon the claim asserted in the complaint action.

3. As a condition of the open holdover tenancy agreement , the State consented to the enactment of a thorough examination of all valid Election Contest legal challenges and questions of law shall be settled once full legal argument and evidence is submitted by all sides [incl. Candidates, Relators, Election Officials, respective acting Court and Legislative members and Election monitoring and review committees.

4. The petitioner shall move this court for an order of judgment , by virtue of the existing state of equitable and collateral estoppel], thereby holding each side to abidance to its original disposition respecting the legal argument presented in defense and/or opposition to the impending rule nisi application enacted by petitioner, in challenge of the legal validity of DRE election returns and votes.

5. Furthermore, an application shall be made for further injunctive relief, of which includes formal request for the examination and review of the existing forms of electronic discovery abuse and interference by public interest groups and election opponents with the general enactment of the formal Election Law proceedings as prescribed by law, for the purpose of requesting a protective order under provision of CPLR 3103, thereby preventing any further acts of discovery abuse, and/or related acts of computer trespass [unauthorized access] associated with the general access to litigants personal computer in the general electronic evidence review and legal transcription processes.

DATED: BROOKLYN, NEW YORK
AUGUST 12, 2009


BARBARA N. TAYLOR,
128 LEWIS AVENUE 11D
BROOKLYN, NY 11221

SERVICE TO:
ATTORNEY FOR RESPONDENT
GENERAL COUNSEL, S. RICHMAN
32 BROADWAY
NEW YORK, NY 10007

ATTORNEY FOR RESPONDENT
HON. VELMANNETTE MONTGOMERY
30 THIRD AVENUE
BROOKLYN, NY 11217

ASSISTANT ATTORNEY GENERAL, J. GRABER [CC: HON. ANDREW CUOMO
FOR ATTORNEY GENERAL CUOMO AT ALBANY OFFICE]
120 BROADWAY 24TH FLOOR [DOCUMENT SVCE UNIT]
NEW YORK, NY 10751
MR. J. HARRIS, PUBLIC INTEGRITY UNIT

SUPREME COURT OF THE STATE OF NEW YORK
OF THE COUNTY OF KINGS

Petitioner,

BARBARA N. TAYLOR

- against -

CITY OF NEW YORK BOARD OF ELECTIONS,
STATE OF NEW YORK BOARD OF ELECTIONS,
AND COMMISSIONERS OF ELECTIONS
CONSTITUTING THE BOARD OF ELECTIONS,
HON. VELMANNETTE MONTGOMERY,
CANDIDATE FOR THE 18TH STATE SENATE

PROPOSED CLAIM

IN LIEU OF FILING CLAIM
UNDER CPLR §203[D]

INDEX NO. 700023- 08

Respondents .

1. The mailing address of the claimant for the purpose of record is, 128 Lewis Avenue 11D, Brooklyn, New York, 11221.

2. This claim arises from the acts and omission of the defendant as follows:
Following months of open public office monitor review ;

(a) the State is still prepondering formal settlement of the impending Election Contest title and title exchange challenges. Furthermore under conferral with State administrator [J. Harris] , as of the 30th day of July, 2009 the State had not concluded its formal inquest concerning the nature of the impending filed Notice of Intention Election Claim [to test title] , previously served by petitioner upon the Office of the Attorney General. However, as a result of the imputed discovery enacted among State Attorneys, Officers and Officials, and before the Petitioner, and Respondents enjoined as parties to this action, all major issues raised by this impending cause of action have already been examined and reviewed by all sides , and parties to the above entitled action.

(b) Subsequently, as of yet , neither the State or Federal Legislative members have formally disclosed knowledge of the direct influence of any of the proposed national constitutionally-related amendments upon the final outcome of the impending election contest results.

3. Therefore, petitioner seeks the right to formal discovery and disclosure of any facts, evidence or cross-testimony admitted to by all sides and parties to this action off-the-record, to be formally admitted into evidence upon the record, as pursuant to the general provisions of Article 31 of the Civil Practice laws and rules. Therefore, sufficient cause thereof appearing,

petitioner enters a motion for leave to permit formal discovery and disclosure of facts and evidence essential to this cause of action to be scheduled among the petitioner and respondents, upon said terms and agreement as shall be stipulated by all parties to this action.

4. Under the present existing holdover tenancy agreement, the State is expected to settle all suspended *nun pro tunc* Direct Record Electronic [DRE] and Help America Vote Act [HAVA] voting system and election reform related Election Contest complaints and title, and title exchange challenges, for once and for all, by implementation of an advanced process under application of the weight and sufficiency evidence standard. However, as of yet, no formal decisions have been issued, and no formal Legislative recourse actions have been enacted respecting the undetermined HAVA Election reform, and impending Election contest title challenges. However, upon recent inquiries made upon the State in the months of June and July, it could not be confirmed what the State's disposition was regarding settlement of the holdover 2008 Election Contest title challenges.

5. Subsequently, petitioner respectfully requests that formal inquiry be submitted by the State, upon all respective acting members of the State and Federal Legislature, and Election Officials, as pursuant to the general provisions under Article 63 of the Executive Law.


6. This claim accrued on or about the 15th day of May 2009 [in afternoon] following conclusion of the continual open public office monitor and review sessions generally held by the general litigants.

7. The damages or civil injuries as incurred by claimant are as follows:

Legal damages include the general loss and/or abridgement of the general legal right and entitlement under the Election law to test title to the elective office [of State Senate, 18th District] held in question, as a certified Candidate action regarding which legal application may be enacted by reason of the continual defiance and infringement of the legal rights and entitlements of the petitioner by law.

8. This Claim is served and filed within 90 days of accrual.

DATED: BROOKLYN, NEW YORK
AUGUST 12, 2009



BARBARA N. TAYLOR,
128 LEWIS AVENUE 41D
BROOKLYN, NY 11221

SUPREME COURT OF THE STATE OF NEW YORK
OF THE COUNTY OF KINGS

Petitioner,

BARBARA N. TAYLOR

- against -

CITY OF NEW YORK BOARD OF ELECTIONS,
STATE OF NEW YORK BOARD OF ELECTIONS,
AND COMMISSIONERS OF ELECTIONS
CONSTITUTING THE BOARD OF ELECTIONS,
HON. VELMANNETTE MONTGOMERY,
CANDIDATE FOR THE 18TH STATE SENATE

Respondents .

SUPPLEMENTED PLEADING

FOR LEAVE TO FILE THE
NOTICE OF INTENTION
IN LIEU OF FILING CLAIM
UNDER CPLR §203[D]

INDEX NO. 700023- 08

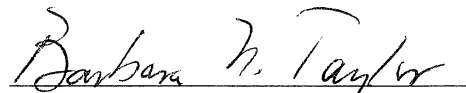
I, BARBARA N. TAYLOR do affirm that as petition of this action ,

1. I am familiar with the legal arguments, facts, and issues as related to this impending action through means of imputed discovery enacted by respondent[s] and petitioner.

2. Furthermore I submit this supplemental pleading for the purpose of entering formal application to restore the above action to the court calendar by reason of disposal of the case, under general provision of Article §2221 of the Civil Practice Laws and Rules, and for whatever further injunctive relief deemed essential by law, in support of this impending motion application for relief. Additionally, petitioner submits formal application to ~~be reinstated~~, for the purpose of securing all legal rights and entitlements under the law, as a Candidate with legal standing to defend herself in the litigation of the prospective impending title proceedings in pursuit by the State, in relation of the above entitled aggrieved candidate.

3. Additionally, in further support of this action petitioner respectfully enters a motion directing the court to enact legal warning and notice upon all parties and nonparties seeking to adjoin in any further formal or informal legal actions or interests in respect to the impending title proceeding actions, of the prospective civil penalties which may be imposed by law in punishment for contempt of actions , if the occurrence of the displayed manner of abusive, aggravating, annoying, and excessive contemptuous actions complained of to the court, and respective acting authorities of the law, including the Police Dept., District and Attorney Generals Office, Civil Complaint Review Board, Crime Victims Board, NYC 311, FBI Taskforce, etc.


DATED: BROOKLYN, NEW YORK
AUGUST 13, 2009


BARBARA N. TAYLOR,
128 LEWIS AVE. 11D
BROOKLYN, NY 11221

VERIFICATION

STATE OF NEW YORK
COUNTY OF KINGS

Subscribed to this day, it is thereby affirmed under penalty of perjury, that a meritorious claim was stated by this action; and that this action is not frivolous, and originates from a justiciable controversy concerning which the petitioner has filed application for relief in the Supreme Court of the State of New York.

Barbara A. Taylor, Subscriber-Petitioner
Sworn before me this 12 day of August, 20 09
 , Notary Public

Commission Expiration 9/22/2012

State of New York

County of Kings

BOBBY P. SONI
Notary Public, State of New York
No. 01SO6193740
Qualified in Kings County
Commission Expires September 22, 2012

SUPREME COURT OF THE STATE OF NEW YORK
OF THE COUNTY OF KINGS

Petitioner,

BARBARA N. TAYLOR

-against-

CITY OF NEW YORK BOARD OF ELECTIONS,
STATE OF NEW YORK BOARD OF ELECTIONS,
AND COMMISSIONERS OF ELECTIONS,
CONSTITUTING THE BOARD OF ELECTIONS,
HON. VELMANNETE MONTGOMERY,
CANDIDATE FOR THE 18TH STATE SENATE

Respondents.

INDEX NO. 700023/08

To the best of my knowledge, information and belief,
Formed after a reasonable inquisition of the circumstances
Presentation of these papers or the contentious there
Are not, frivolous, as defined in subsection [c] of section
130-1.1 of the Rules of the Chief Administrator [22 NYCRR]

Signature B Taylor
Print Name Barbara Taylor
Address 128 Lewis Avenue
Brooklyn NY 11221
Telephone numbers 347 663 3340

Service of a copy of the within is thereby admitted

Dated _____

Attorney for NYC Board of Elections

Com mt
F42



~~ORIGINAL~~

Spec-ele

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF QUEENS
SHORT FORM ORDER/JUDGMENT

PETER J. O'DONOGHUE, JUSTICE - ELECTION Part H

In the Matter of the Application of

MARTIN CONNOR, JR.,

Index No:19992/09

Petitioner,

-against-

SALIM EJAZ,

RESPONDENT-CANDIDATE
AND

THE BOARD OF ELECTIONS IN THE CITY OF NEW
YORK

Respondent

for an order, pursuant to section 16-100,
16-102 & 16-116 of the election law, declaring
invalid the designating petition purporting to
designate the respondent-candidate for the
public office of City Comptroller of the City
of New York, State of New York in the democratic
primary election to be held September 15, 2009 &
restraining the board of election from printing
and placing the name of said candidate upon the
official ballots of such primary election

It is ordered and adjudged that the petition having been
withdrawn per stipulation entered into by respective counsel,
this day, in open court. The proceeding is therefore dismissed.

Dated: August 12, 2009

JSC
HON. PETER J. O'DONOGHUE

Con Mls
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~~ORIGINAL~~

Spec-ele

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF QUEENS
SHORT FORM ORDER/JUDGMENT

PETER J. O'DONOGHUE, JUSTICE - ELECTION Part H

In the Matter of the Application of

SALIM EJAZ,

Index No:20960/09

Petitioner-Candidate,

-against-

MARTIN O'CONNOR, JR.


&
BOARD OF ELECTIONS IN THE CITY OF NEW
YORK

Respondent

for an order, pursuant to section 16-100,
16-102 & 16-116 of the election law, declaring
valid the designating petition which designated
the petitioner-candidate as a candidate for the
public office of City Comptroller of the City
of New York in the democratic primary election
to be held September 15, 2009

It is ordered and adjudged that the petition having been
withdrawn per stipulation entered into by respective counsel,
this day, in open court. The proceeding is therefore dismissed.

Dated: August 12, 2009



JSC

HON. PETER J. O'DONOGHUE

County
FY1

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part 10
Justice

-----X

Mirelle P. Leroy,

Index
Number: 21141/09

Petitioner,

- against -

Board of Elections in the City of New York,

Respondent.

-----X

The following papers numbered 1-5 to read on this petition for an order pursuant to §§16-100, 16-102 and 16-116 of the Election Law declaring valid the designating petition which designated petitioner as a candidate for the public office of City Council of the City of New York, District 28 in the Democratic primary election to be held on September 15, 2009.

Papers
Numbered

Order to Show Cause-Emergency Affidavit-
Petition-Memorandum of Law-Exhibits..... 1-5

Upon the foregoing papers and after oral argument on the record, and after due deliberation thereon, it is hereby ORDERED and ADJUDGED that the petition is dismissed, based upon respondent's oral motion, for the reasons set forth on the record, upon the grounds that the petition was not timely commenced and that even were it timely commenced, the defect of listing incorrect petition identification numbers on the cover sheet was not de minimis or insubstantial and petitioner failed to cure said defect within the prescribed three-day period.

Accordingly, the petition is dismissed.

Respondent may enter judgment accordingly.

Dated: August 11, 2009



KEVIN J. KERRIGAN, J.S.C.

Counts
F4C

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART G
Justice

JUDGMENT

In the Matter of the Application of
JAMES WU

Index No: 20007/09

Petitioner-Candidate-
Aggrieved,

-against-

YEN S. CHOU,

Respondent-Candidate,

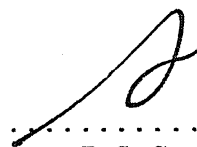
and THE BOARD OF ELECTIONS IN THE CITY OF
NEW YORK

Respondent,

For an order, pursuant to Article 16
of the Election Law to declare the
invalidity of a designating petition.

It is ordered and adjudged that the petition having been
withdrawn per stipulation entered into by respective counsel,
this day, in open court. The proceeding is therefore dismissed.

Dated: August 11, 2009
D# 39



.....
J.S.C.

2009 AUG 12 AM 11:13

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

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Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART G
Justice

JUDGMENT

In the Matter of the Application of
JAMES WU

Index No: 20008/09

Petitioner-Candidate,

-against-

THE BOARD OF ELECTIONS IN THE CITY OF
NEW YORK

Respondent.

-and-

JESUS B. SOSA, CHI PU PING, STEVEN
GREENE, AND YICHI WANG,

Respondents-Citizen Objectors.

for an order, pursuant to Article 16
of the Election Law to declare the
validity of a designated the within
petitioner as a candidate for election to the
PUBLIC OFFICE OF NEW YOUR COUNCIL MEMBER FROM
THE 20TH COUNCIL DISTRICT, QUEENS COUNTY,
STATE OF NEW YORK.

It is ordered and adjudged that the petition having been
withdrawn per stipulation entered into by respective counsel,
this day, in open court. The proceeding is therefore dismissed.

Dated: August 11, 2009
D# 39



2009-AUG-12 AM 11:13

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GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

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Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART G
Justice

JUDGMENT

In the Matter of the Application of
JAMES WU,

Index No: 20297/09

Petitioner-Candidate,

-against-

SHAO ZHENG ZENG, TICHI WANG and JESUS B.
SOSA,

Respondents-Citizen Objectors

-and-


THE BOARD OF ELECTIONS IN THE CITY OF
NEW YORK

Respondent.

for an order, pursuant to Article 16
of the Election Law to declare the
validity of a designated the within
petitioner as a candidate for election to the
PUBLIC OFFICE OF NEW YOUR COUNCIL MEMBER FROM
THE 20TH COUNCIL DISTRICT, QUEENS COUNTY,
STATE OF NEW YORK.

It is ordered and adjudged that the petition having been
withdrawn per stipulation entered into by respective counsel,
this day, in open court. The proceeding is therefore dismissed.

Dated: August 11, 2009
D# 39



J.S.C.

2009 AUG 12 AM 11:13

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

Counts
101

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART G
Justice

JUDGMENT

In re Application of JESUS B. SOSA and
CHI PU PENG,

Index No: 19630/09

Petitioners,

for an order pursuant to the Election Law of the State of New York, declaring invalid and striking out the petition purporting to designate JAMES WU as a Candidate for the nomination for the public office of Council Member from the 20th City Council District, County of Queens, City on New York, and restraining the Board of Elections from printing and placing names of said respondent candidate upon the ballot to be used at the Primary Election of the Democratic Party to be held on September 15, 2009.

-against-

THE BOARD OF ELECTIONS IN THE CITY OF
NEW YORK AND JAMES WU,

Respondents.

It is ordered and adjudged that the petition having been withdrawn per stipulation entered into by respective counsel, this day, in open court. The proceeding is therefore dismissed.

Dated: August 11, 2009
D# 39


.....
J.S.C.

2009 AUG 12 AM 11:13
RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

Short Form Judgment

County
Fee

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART G
Justice

JUDGMENT

In Matter of the Application of
YEN S. CHOU,

Index No: 19632/09

Petitioner,

for an order pursuant to the Election Law of the State of New York, declaring valid the petition designating Petitioner as a Candidate for the Democratic nomination for the Public Office of Council Member from the 20th City Council District, Borough of Queens, City on New York, and directing said Board of Elections to print the name and place of Petitioner upon the ballot to be used at the forthcoming Primary Election of the Democratic Party to be held on September 15, 2009.

-against-

THE BOARD OF ELECTIONS IN THE CITY OF
NEW YORK, STEVE GREENE, MAX HONG,
XINFANG HE and HOWARD HICKS,

Respondents.

It is ordered and adjudged that the petition having been withdrawn per stipulation entered into by respective counsel, this day, in open court. The proceeding is therefore dismissed.

Dated: August 11, 2009
D# 39


.....
J.S.C.

2009 AUG 12 AM 11:13
RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

County
FY?

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN Part D
Justice

-----X

Mirelle P. Leroy,

Index
Number: 21141/09

Petitioner,

- against -

Board of Elections in the City of New York,

Respondent.

-----X

The following papers numbered 1-5 to read on this petition for an order pursuant to §§16-100, 16-102 and 16-116 of the Election Law declaring valid the designating petition which designated petitioner as a candidate for the public office of City Council of the City of New York, District 28 in the Democratic primary election to be held on September 15, 2009.

Papers
Numbered

Order to Show Cause-Emergency Affidavit-
Petition-Memorandum of Law-Exhibits..... 1-5

Upon the foregoing papers and after oral argument on the record, and after due deliberation thereon, it is hereby ORDERED and ADJUDGED that the petition is dismissed, based upon respondent's oral motion, for the reasons set forth on the record, upon the grounds that the petition was not timely commenced and that even were it timely commenced, the defect of listing incorrect petition identification numbers on the cover sheet was not de minimis or insubstantial and petitioner failed to cure said defect within the prescribed three-day period.

Accordingly, the petition is dismissed.

Respondent may enter judgment accordingly.

Dated: August 11, 2009



KEVIN J. KERRIGAN, J.S.C.

Comm Mth
FVZ

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 83R**

In the Matter of the Application of

JOSE ADAMES,
Petitioner,
- against -

Index No. 111228/2009
Seq. 001

NYC BOARD OF ELECTIONS,
Respondent.

REFEREE'S REPORT

By oral direction of Hon. Edward Lehner, IAS Part 19, dated August 10, 2009, the issues raised in this proceeding to restore petitioner, **Jose Adames**, to the ballot for the Democratic Party primary election to be held on September 15, 2009 for the public office of Mayor of the City of New York, , were referred to the undersigned Special Referee to hear and report with recommendations.

The matter came before the undersigned on August 10, 2009. Petitioner appeared pro se. Respondent appeared by counsel as follows:

Petitioner, pro se

Respondent (Board of Elections)

Jose Adames,
641 West 207th Street apt. 1A
New York, NY 10034

Stephen Kitzinger, Esq.
NYC Law Dept.
100 Church St. Room 2126
New York, NY 10007-2601
212-788-0849
Skitzinger@law.nyc.gov

Tel. No. 718-825-3036
646-374-7753

Steven Richman, Esq.
NYC Board of Elections
32 Broadway, 7th Floor
New York, NY 10004-1609
212-487-5338
Srichman@boe.nyc.ny.us

Petitioner submitted his Verified Petition and the exhibits thereto, and orally

argued his contentions on the record. Respondent's counsel did not submit any papers, but orally argued in opposition thereto.

Election Law § 16-116 requires that a special proceeding under this article shall be heard upon a verified petition *and such oral or written proof as may be offered*, and upon such notice to such officers, persons or committees as the court or justice shall direct, and shall be summarily determined (Emphasis added).

Election Law § 16-102 (2) requires, in relevant part, that “[a] proceeding with respect to a petition shall be instituted within fourteen days after the last day to file the petition, or within three business days after the officer or board with whom or which such petition was filed, makes a determination of invalidity with respect to such petition, whichever is later” Pursuant to this year's election calendar, the last date to commence a judicial proceeding with respect to a designating petition was Thursday, July 30, 2009. This proceeding was commenced by the filing of an Order to Show Cause (OSC), signed by Hon. Sherry Klein Heitler, Ex Parte Part, on August 6, 2009, and Verified Petition, dated August 6, 2009. The OSC was returnable on August 10, 2009.

By letter dated July 21, 2009, the Board notified petitioner that his cover sheet failed to comply with its rules and regulations for the following reason:

No identification number(s) claimed on cover sheet.

The letter further stated that: “Failure to file an amended cover sheet within the three day period shall be a **FATAL DEFECT**.” On July 23, 2009 (i.e., within the three-day period), petitioner filed an amended cover sheet, bearing Identification Number 796, which number had been assigned by the Board to his designating petitions. By letter

dated July 27, 2009, the Commissioners of the Board determined that petitioner's amended cover sheet **did not** comply with the New York State Election Law and/or Rules of the Board of Elections, in that:

the petition volume identification number claimed on the amended cover sheet is not a valid identification number.

Petitioner sought reargument or reconsideration by the Board. On Monday, August 3, 2009, on a motion to vacate the determination, the commissioners voted Yes 3; No 1; Abstain 6. It appears that under respondent's rules, a majority vote of *all* of the Commissioners (not merely of those voting) is required in order to vacate a determination. Therefore, the determination disallowing petitioner's designating petitions based upon the alleged noncompliance of the cover sheet stood. As previously noted, this proceeding was commenced on August 6, 2009.

Based upon the oral arguments by respondent's counsel, it appears that the alleged deficiency in the petition volume identification number placed on petitioner's amended cover sheet was that it was only three digits long and failed to identify the county where filed, i.e. New York County. Respondent's counsel argued that theoretically there could be up to five volumes bearing the petition identification number 796, one for each borough, and, in fact, there was another cover sheet number 796 filed in Queens County, QN0-00796, assigned to Daniel Dromm, a candidate seeking the nomination by the Working Families Party for the office of member of the City Council-25th CD.

As a noted commentator has written:

The Board of Elections may disqualify a candidacy *if the error is material*, and the candidate will have to ask a court for relief. Obviously, extreme care should be taken by the candidates when submitting the Cover Sheet and/or the Amended Cover Sheet.

Jerry H. Goldfeder, *Goldfeder's Modern Election Law* at 44 *et seq.* [1st ed 2007]
[emphasis added])

In Magelaner v Park, (32 AD3d 487 [2nd Dept 2006]), the Appellate Division, Second Department, held as follows:

Terence Y. Park's amended cover sheet was in substantial compliance with the Election Law and the rules promulgated by the Board of Elections of the City of New York (hereinafter the Board) and presented no danger of fraud or confusion either to the Board or to the voters (see Election Law § 6-134[10]; 9 NYCRR 6215.6[a]; Matter of Pearse v New York City Board of Elections, 10 AD3d 461, 462; Matter of Siems v. Lite, 307 A.D.2d 1016; Matter of Most v. Walker, 297 A.D.2d 356, 357; Matter of Jonas v. Black, 104 A.D.2d 466, *affd* 63 N.Y.2d 685). As a result, the Supreme Court erred in granting the petition to invalidate the designating petition (see 9 NYCRR 6215.7[d]) and in denying the petition to validate the designating petition (see Matter of Pearse v New York City Bd. of Elections, 10 AD3d at 462).

In the absence of relevant Appellate Division, First Department, authority, this court must follow the determination of the Appellate Division, Second Department (People v Shakur, 215AD2d 184, 185 [1st Dept 1995]).

A strict adherence to the amended cover sheet rules would run afoul of the spirit behind the Election Reform Act of 1992, to “make it easier for alternative candidates to emerge, so that voters have a wider choice from which to select” (Governor’s Mem. of Approval, 1992 McKinney’s Session Laws of N.Y., at 2877). As Professor Goldfeder noted:

In both 1992 and 1996, the Legislature determined to undo the draconian effect that the Election Law, and its strict judicial

constructions, had had in unfairly eliminating candidates from securing a place on the ballot. By eliminating a myriad of technicalities that have long been used to invalidate petitions and signatures for reasons having nothing to do with whether a signatory of a petition was qualified to do so, this legislation will help ensure that all our citizens have a fair opportunity to obtain access to the ballot. ... By making the process of running for elective office easier and fairer, we honor that tenet and return government to the people.

(Governor's Mem. of Approval, 1996 McKinney's Session Laws of N.Y., at 1939).

Applying the foregoing to the instant proceeding, I find that petitioner's amended cover sheet was in substantial compliance with respondent's rules and that there was no danger of fraud or confusion either to the Board or to the voters, and that the Board's hypertechnical application of its rules to petitioner's amended cover sheet is precisely the type of conduct which the Election Reform Acts of 1992 and 1996 intended to prevent.

However, it has long been the law that a mere request for reconsideration of an adverse decision and the denial thereof, does not extend the statute of limitations (*Davis v Kingsbury*, 27 NY2d 567 [1970]; Howard G. Leventhal, 1 Byer's Civil Motions § 8:28 at 125 [2nd rev ed 2006]). Respondent preserved and orally made a motion to dismiss the petition on the ground that this proceeding was not commenced in a timely manner. Respondent has met its burden of proof as to the merit of its affirmative defense (CPLR 404 [a]). The fact that petitioner is appearing pro se does not entitle him to greater right than any other litigant and such appearance may not be used to deprive defendants of the same rights enjoyed by other defendants (Roundtree v. Singh, 143 AD2d 995, 996 [2d Dept 1988]).

Accordingly, it is my recommendation that the court grant respondent's motion to dismiss this proceeding on the ground that it is untimely, and that the application of petitioner to be placed on the ballot for the Democratic Party primary election to be held

on September 15, 2009 for the public office of Mayor of the City of New York, be denied, and that the court confirm the Referee's report, and that judgment be entered accordingly.

This shall constitute the decision, report and recommendation of the Special Referee.

DATED: August 10, 2009

Respectfully submitted,

Howard G. Leventhal,
Special Referee



Community
Fy2

STATE OF NEW YORK

DAVID A. PATERSON
GOVERNOR

PETER J. KIERNAN
COUNSEL TO THE GOVERNOR

August 12, 2009

Steven H. Richman, Esq.
General Counsel
City of New York, Board of Elections
Executive Office, 32 Broadway
New York, New York 10004

Dear Steve:

Thank you for your memorandum of July 23, 2009 regarding S.1366. Governor Paterson signed the legislation on July 28, 2009.

Very truly yours

Peter J. Kiernan
Counsel to the Governor

2009 AUG 14 PM 4:13
RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK
ALBANY 12224

*Com mty
FY 2*

Supreme Court of the State of New York
County of Kings:

EUGENE MYRICK	Petitioner(s)
- against -	
CALIPH T. MATHIS II et al.	Respondent(s)

SPECIAL ELECTION PART
Index No. 700007/09
Calendar No. 3
HON. DAVID SCHMIDT

The following papers numbered 1 to used in this proceeding

Order to Show Cause and Petition Annexed

Stipulation of Reference

Other Papers.....

Name of Candidate/s	Office	District
EUGENE MYRICK	Borough President	BROOKLYN

Upon the foregoing papers in this proceeding brought pursuant to Article 16 of the Election Law to declare the Nominating/Designating petition purporting to nominate/designate the above named person/s for the above-mentioned office in the Primary Election to be held on September 15 2009 VALID

S.C.

AND the petition herein is, dismissed for failure to serve all necessary parties, timely file proof of service or comply with the published rules of the Special Election Part (see *Quis v. Putnam County Bd of Elections*, 22 AD3d 565 [2005]) *Keep off*
AND IT IS ORDERED that the respondent Board of Elections in the City of New York shall the ballot for the aforesaid Primary Election the name(s) of the above-mentioned named candidates.

HON. DAVID I. SCHMIDT

ENTER,

J. S. C.

HON. DAVID I. SCHMIDT

Dated: AUGUST 5, 2009

2009 AUG 12 PM 1:19
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GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

MARTIN E. CONNOR

Counselor at Law
61 Pierrepont Street
Brooklyn, New York 11201
Telephone: 718-875-1010
Facsimile: 718-875-6044
e-mail: sendem1@aol.com

August 7, 2009

Steven H. Richman, Esq.
General Counsel
Board of Elections in the City of New York
32 Broadway, 7th Floor
New York, New York 10004-1609

Re: Eugene Myrick for Brooklyn Borough President

Dear Mr. Richman:

Enclosed is a copy of the Order entered in Supreme Court, Kings County, dismissing the candidate Eugene Myrick's proceeding to validate and directing that his name remain off the ballot as ruled by the Board.

I have had no indication that Mr. Myrick intends to appeal. After the court session, Mr. Myrick's "consultant", Garry Tilzer, remarked that they may go to federal court. Should the Board receive notice of any federal court action in this matter, please let me know so that I can take steps to intervene on behalf of my clients, the citizen objectors.

Very truly yours,



Martin E. Connor

Encl.

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GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 AUG 12 PM 1:19

War vet battles gov in fight over Assembly seat

FAROUK SAMAROO, a 26-year-old Army veteran just back from Afghanistan, is embroiled in a new war — this time with Gov. Paterson.

Samaroo, who wants to run for Assembly, plans to file a federal suit today in hopes of forcing a traditional primary election for disgraced former Assemblyman Tony Seminerio's seat, instead of a special election in which party bosses handpick the candidates.

Samaroo contends Paterson, a fellow Democrat, exceeded his authority by calling a Sept. 15 special election after five candidates had already petitioned their way out to the ballot.

"Over 2,000 voters signed my nominating petitions, and the governor seeks to disenfranchise them," Samaroo said. "He wasn't elected to his position as governor, so he doesn't understand that voters have a right to choose. I'm going to educate him in court this week."

Queens' 38th Assembly District has been a headache for Paterson since Seminerio, a 30-year veteran Democratic lawmaker, abruptly resigned at the end of June and pleaded guilty to influence-peddling. At first, Paterson took no action,

seeming to indicate Seminerio's seat would be filled through the regular primary and general elections.

Five candidates successfully filed petitions for the race, including Democrats Samaroo, Albert Baldeo and Nick Comaianni, along with Mike Miller, who has been cross-endorsed by the Conservative Party, which regularly supported Seminerio.

Donna Marie Caltabiano, who runs a Forest Park senior center, is the only Republican.

Miller has the inside edge with Queens Democratic leaders, a big plus in the case of a special election. But Baldeo has the support of state Senate President Malcolm Smith (D-Queens) and powerful Rep. Gregory Meeks (D-Queens).

On Aug. 6, Paterson abruptly bowed to pressure from Queens Democratic officials and announced a special election to be held on Primary Day.

In a special election, leaders from each major party each get to pick a single candidate, instead of candidates vying in primaries for the party line on the general election ballot.

In a bizarre move, Paterson's office rescinded the proclamation calling for the

special election less than four hours after issuing it, saying it had been sent out by "mistake" by the governor's counsel, Peter Kiernan.

Exactly one week later, however, Paterson issued a third proclamation and declared the special election was back on.

The governor claimed a special election would be the most "cost-effective" way of filling Seminerio's seat. But a source close to Assembly Speaker Sheldon Silver (D-Manhattan) confirmed Silver had helped make up Paterson's mind.

Silver is also worried the Democrats could lose the conservative-leaning district in the general election, when Mayor Berg's name will appear on the GOP line to pull voters to the polls.

Unless something changes, the winner of the special election will fill Seminerio's seat for an entire two-year term.

Baldeo is also mulling a federal lawsuit, according to his consultant Doug Forand.

He said the governor may have run afoul of voting rights rules, too, because the district includes a majority of minori-



War veteran Farouk Samaroo, vying for Assembly, is furious at Gov. Paterson's call for special elections. Photo by AP

ty-group voters.

Samaroo compared the special election snafu with Paterson's bungled selection of a successor to Sen. Hillary Clinton.

"The governor had only two legislative vacancies to handle this year . . . and both of them he couldn't get right," Samaroo said. "All he had to do in this case was nothing. Apparently, he's not even good at nothing."

ebenjamin@nydailynews.com

Read Elizabeth Benjamin's 'The Daily Politics' every day on www.NYDailyNews.com/blogs/dailypolitics

BY BRENDAN BROSH
DAILY NEWS WRITER

A QUEENS City Council candidate took the brawl for City Hall literally yesterday, throwing a punch at a rival in a wild argument over election rules, witnesses said.

The brouhaha broke out at the borough's Board of Elections office, witnesses said.

Ruben Wills — who's running for the 28th Council District seat — took a swing at former City Councilman Allan Jennings, but missed and socked an aide, Jennings said.

Wills, 38, is challenging Jennings' petitions to get on the ballot for the upcoming Democratic primary in September.

"He leaped up and came after me," said Jennings, 42, who held the seat from 2001 to 2005. "He wanted a signature off, and I disagreed."

Jennings campaign worker Frank Perero said he was sitting in front of a computer when Wills' fist hit him and knocked him to the ground.

"All of a sudden, Mr. Wills pops with an angry look on his face, and I find myself on the floor," said Perero. "My back is killing me."

Wills, who told the Daily News he is withdrawing his petition challenge, accused Perero of "buffoonery to act like he was assaulted."

He also accused Jennings of "using the F-word used for homosexuals. He used it 10 or 11 times. He kept going with it."

Wills and Jennings are running against incumbent Thomas White for the seat that represents Richmond Hill, South Ozone Park, Jamaica and Rochdale Village.

A Board of Elections employee restrained Wills, who then left the building. Cops found him in a nearby store, Jennings said. He was not arrested.

"I can confirm that an incident happened," said Board of Elections spokeswoman Valerie Vasquez-Rivera. "A police report was filed."

Wills — who used to work for state Sen. Shirley Huntley — tried to run for Congress against Rep. Gregory Meeks in 2008, but was kicked off the ballot.

He vowed at the time to march on Washington if he was not allowed back in the race.

Wills also had a number of judgments and liens against him for not paying child support, taxes or his student loans, public records show.

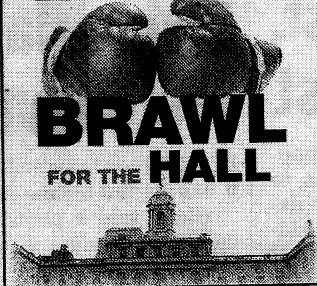
Jennings is no stranger to controversy either.

The erratic former councilman made national news when

POI puts punch into Council campaign

County
FYI

DAILY NEWS



he threw a metal object at a reporter on live TV.

Jennings also placed ads in Chinese language newspapers proclaiming his love for a folk dancer he was dating and his dis-

Race for Queens City Council seat turns into brawl when Ruben Wills throws punch at opponent Allan Jennings — and hits Frank Perero.

like for his wife.

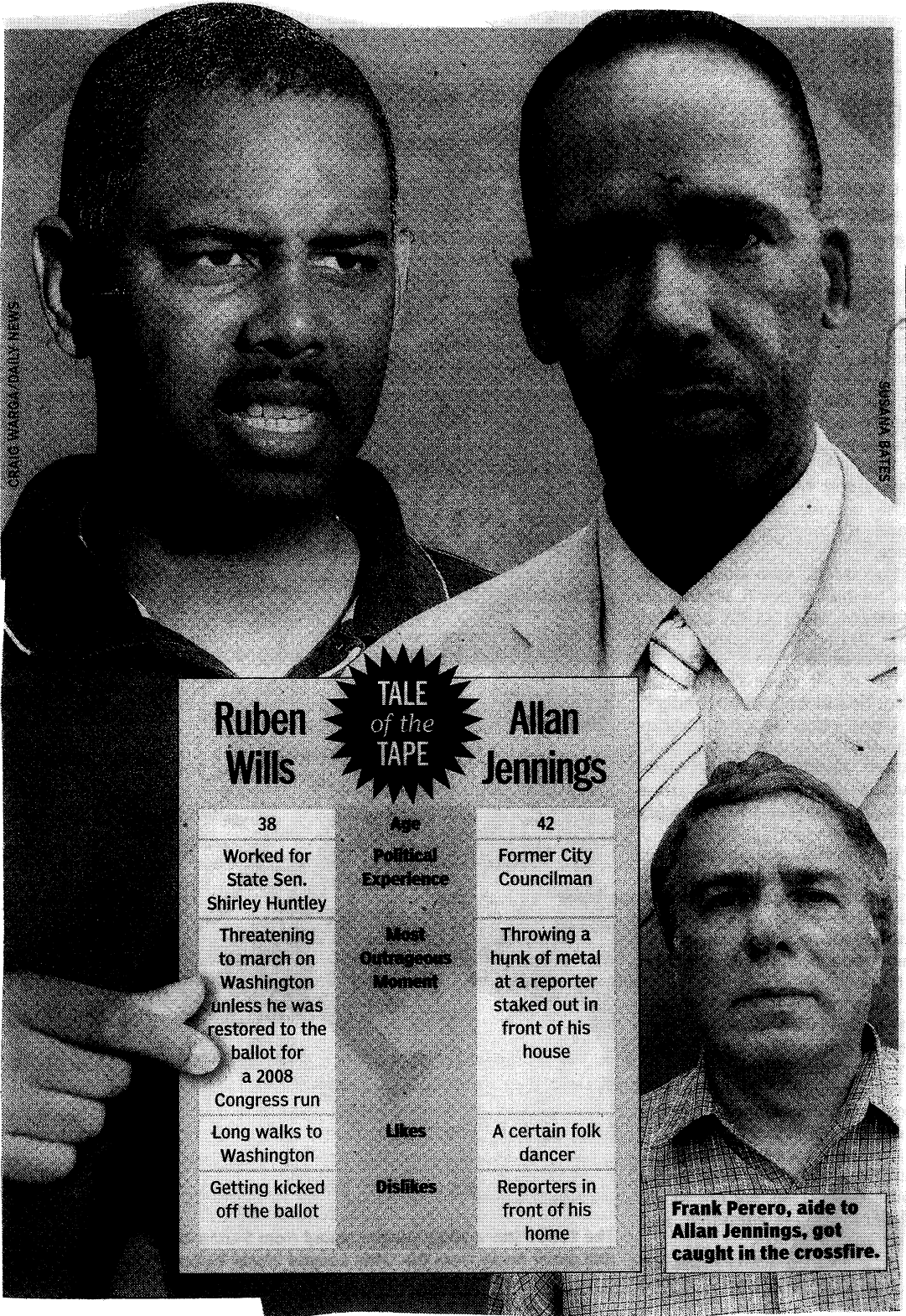
He was accused of threatening a fellow Council member with biblical verses and used Council envelopes to promote his real estate business.

He was also censured in December 2005 for making sexual advances toward two female staffers and forcing them to remain quiet.

The women, who sued in federal court, received a \$300,000 settlement from the city.

In 2005, Albert Baldeo, a candidate for the same Council seat was accused of aiming a gun at rival Robert Mahadeo and demanding that he drop out of the race. The charges were later dropped.

"We should be getting away from this type of politics," said Lynn Nunes, who is also running for the seat. "People need to be focusing on issues in the community."



CRAIG WARGA/DAILY NEWS

SUSANNA BATES

**TALE
of the
TAPE**

**Ruben
Wills**

38
 Worked for State Sen. Shirley Huntley
 Threatening to march on Washington unless he was restored to the ballot for a 2008 Congress run
 Long walks to Washington
 Getting kicked off the ballot

Age
Political Experience
Most Outrageous Moment
Likes
Dislikes

**Allan
Jennings**

42
 Former City Councilman
 Throwing a hunk of metal at a reporter staked out in front of his house
 A certain folk dancer
 Reporters in front of his home

Frank Perero, aide to Allan Jennings, got caught in the crossfire.