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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 25, 2009 AT 1:30 P.M.

1. Minutes
 - a) 07/14/09
 - b) 07/21/09
 - c) 07/28/09
 - d) 08/03/09
 - e) 08/11/09
2. Marcus Cederqvist
 - a) HAVA Update
 - b) Special Election – 38th Assembly District
3. Steven H. Richman/John P. O'Grady
 - a) Changes to MOU for HAVA Grant
4. Troy Johnson
 - a) Draft – Notice to all Candidates
5. John Ward
 - a) Comparative Expenditures
6. Executive Session
 - a) Personnel

For Your Information

- NYS Board of Elections Weekly Status Report for the Week of August 14, 2009 through August 20, 2009
- Letter in Opposition for Leave Application and for Appeal as of Right in Re Grisela Lajara v Israel Martinez, et. al.
- Matter of Cass v Krakower (2009 NY Slip Op 06266)
- Matter of Kutner v Nassau County Board of Elections (2009 NY Slip Op 06270)
- Matter of Myers v Baisley (2009 NY Slip Op 06274)
- Matter of Peluso v Erie County Independence Party (2009 NY Slip Op 06261)
- Matter of Dixon v Reynolds (2009 NY Slip Op 06260)
- Matter of Masich v Ward (2009 NY Slip Op 06258)
- Matter of Cirillo v Gardiner (2009 NY Slip Op 06267)
- Matter of McDonough v Scannapieco (2009 NY Slip Op 06273)
- Matter of Potanovic v French (2009 NY Slip Op 06275)
- Matter of Detres v Westchester County Bd. Of Elections (2009 NY Slip Op 06268)
- Matter of Williams v Westchester County Bd. Of Elections (2009 NY Slip Op 06277)
- Matter of Kurth v Orange County Bd. Of Elections (2009 NY Slip Op 06269)
- Matter of Testa v DeVaul (2009 NY Slip Op 06276)
- Matter of Dalton v Wayne County Bd. Of Elections (2009 NY Slip Op 06259)
- Supreme Court of the State of New York, New York County – Brandon Brice, et. al., v. Denice Johns, et. al. – Index No. 111289/09
- Supreme Court of the State of New York, Appellate Division: Second Judicial Department – John P. Smyth, Objector and Dierdre A. Feerick as Aggrieved Candidate, against David J. Rosasco – Index No. 19998/09
- Supreme Court of the State of New York, Appellate Division: Second Department – Leroy v. Board of Elections – Index No. 21141/09
- New York Supreme Court, Queens County – Marc C. Leavitt, against Robert Schwartz and The Board of Elections in the City of New York – Index No. 20287/09
- Supreme Court of the State of New York, County of Dutchess – Fran Knapp, Commissioner, Dutchess County Board of Elections, against David Gamache, Commissioner, Dutchess County Board of Elections – Index No. 20096579
- New York Supreme Court, Queens County – Ruben Wills, against Allan W. Jennings, Jr. and The Board of Elections in the City of New York – Index No. 20446/2009
- Revised Calendar for Certificate of Nomination – September 15, 2009 Special Election, Member of Assembly, 38th Assembly Districts – Queens County
- Revised Calendar for Independent Nominating Petitions – September 15, 2009 Special Election, Member of Assembly, 38th Assembly District – Queens County
- Supreme Court of the State of New York, County of New York – Alan J. Gerson, against The Board of Elections in the City of New York – Index No. 09-110759
- New York Supreme Court, Queens County – Marquez Claxton, against Yvonne Mitchell, Juliet Barton and Richard Murphy – Index No. 21060/09

- New York State Supreme Court, Queens County – Isaac Sasson, against Board of Elections in the City of New York and Peter Georgondopoulos, Geno Chou, Emil Skandul, Chi Pu Peng, Jesus B. Sosa, Arlene Fleishman
- Supreme Court of the State of New York, County of Kings – Robert Master, Stephan T. Levin, against Charles Davis, Michael M. Boyer, Joshua D. Jovine and Board of Elections – Index No. 700032/09
- United States District Court, Eastern District of New York – Farouk Samaroo v. Governor David A. Paterson, and The Board of Elections in the City of New York; and Andrew Cuomo, The Attorney General of the State of New York – Docket/Case Number 09/3561
- United States District Court, Eastern District of New York – Farouk Samaroo, against Governor David A. Paterson, in his official capacity, The Board of Elections in the City New York, and Andrew Cuomo, The Attorney General of the State of New York
- United States District Court, Eastern District of New York – Farouk Samaroo, against Governor David A. Paterson, in his official capacity; The Board of Elections in the City of New York; and, Andrew Cuomo, The Attorney General of the State of New York, in this official capacity – Case No. 09 Civ. 3561
- New York Supreme Court - County of Bronx Decisions
- New York Supreme Court, Appellate Division: Second Department – Mireille P. Leroy, against Board of Elections in the City of New York
- Supreme Court of the State of New York, Appellate Division: Second Judicial Department – Decision & Order (Index No. 700032/09 and Index No. 21141/09)
- Feliciano v. Caballero, Ind. No. 110791/09

News Items of Interest

- *Newsday.com*: More NYC Dems voting at upstate residences
- *The Daily News*: Qns. Vet loses bid to run for Assembly seat



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COORDINATOR
CANDIDATE RECORDS UNIT

[Revised Draft, 8/24/09, 8:11 p.m.]

NOTICE TO ALL CANDIDATES

August 24, 2009

TO: All Persons who are candidates in the
September 15, 2009 Primary Election:

Pursuant to the applicable provisions of the Election Law of the State of New York, the Rules and Regulations of the New York State Board of Elections and the Rules, Regulations, Policies and Procedures adopted by the Commissioners of Elections in the City of New York, please take notice of the following information:

All activities relating to any type of paper ballot will be conducted at each Borough Office of the Board of Elections (locations of which are set forth in Schedule A).

All activities relating to the mechanical voting machines and Ballot Marking Device(s) (BMD's) will be conducted at each Borough Voting Machine Facility of the Board of Elections (locations of which are set forth in Schedule B).

1. Optical Scanning System Test

Pursuant to the provisions of New York State Board of Elections Rule 6210.11, you or your representative designated in writing may attend a test of the optical scanning system used to canvass and/or recanvass paper ballots used in the September Primary. You or your representative designated in writing, may appear and observe the test(s) in the applicable Borough(s) where you are a candidate, which will be conducted in accordance with the following schedule:

<u>BOROUGH</u>	<u>DATE & TIME OF TEST</u>
<u>New York</u>	<u>Tuesday, September 8 at 10:00 AM</u>
<u>Bronx</u>	<u>Wednesday, September 9 at 10:00 AM</u>
<u>Brooklyn</u>	<u>Thursday, September 10 at 10:00 AM</u>
<u>Queens</u>	<u>Friday, September 11 at 10:00 AM</u>
<u>Richmond</u>	<u>Tuesday, September 8 at 2:30 PM</u>

2. Inspection of Voting Machines, BMD's & Paper Ballots

- (a) Pursuant to the provisions of Section 7-128(2) of the NYS Election Law, you or your representative designated in writing may inspect the voting machines & BMD' to be used in the September 15, 2009 Primary on **Tuesday, September 8, 2009 between the hours of 10:00 A.M. and 3:00 P.M.**
- (b) Pursuant to the provisions of Section 7-128(1) of the NYS Election Law, you or your representative designated in writing may inspect the paper ballots (including the Ballot Marking Devices-BMDs ballots) to be used in the September 15, 2009 Primary on **Tuesday, September 8, 2009 between the hours of 10:00 A.M and 3:00 P.M.**
Note: This inspection will take place at the Borough Voting Machine Facility, not the Borough Office.

3. CANVASS AND/OR RECANVASS OF VOTES CAST

MACHINES AND PAPER BALLOTS

- (a) Pursuant to the provisions of Sections 9-102 and 9-208 of the NYS Election Law, (as amended by Chapter 116 of the Laws of New York State 2009) you or your representative designated in writing may be present and observe the recanvass of votes cast on the voting machines and the canvass of any and all write-in votes cast on the voting machines. This canvass/recanvass will commence on **Friday, September 18, 2009 at 10:00 A.M.** and will continue until such canvass/recanvass of all machines is completed. *Please note that the number of Board of Elections teams per borough that will conduct this canvass/recanvass is noted below:*

Manhattan:	24 teams
Bronx:	11 teams
Brooklyn:	12 teams
Queens:	8 teams
Staten Island:	8 teams.

You may appoint a sufficient number of watchers to have at least one watcher with each team.

- (b) Pursuant to the provisions of Sections 9-200 and 9-209 of the NYS Election Law, you or your representative designated in writing may be present and observe the canvass or recanvass of any emergency and BMD ballots votes cast on Primary Day. This canvas and recanvass will commence on **Thursday, September 17, 2009 at 10:00 A.M.** and will continue until completed.
- (c) Pursuant to the provisions of Sections 9-200 and 9-209 of the NYS Election Law, you or your representative designated in writing may be present and observe the canvass of votes cast on any and all valid absentee and/or affidavit ballots. This canvass will commence on **Thursday, September 17, 2009**, immediately following the recanvass of emergency ballots (if any), and will continue until completed, including Saturday and Sunday. *Candidates may appoint a sufficient number of watchers to ensure adequate representation throughout the canvass of the paper ballots. Please note that the*

1780 Grand Concourse
Bronx, NY 10457
718 - 299-9017

1932 Arthur Ave.
Bronx, NY 10457
No Telephone #

BROOKLYN

BROOKLYN (BMD only)

645 Clinton Street
Brooklyn, NY 11231
718- 522- 4796

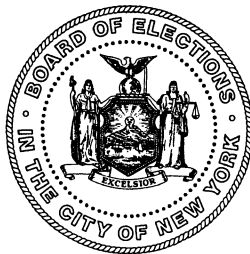
5112 Second Ave
Brooklyn, NY 11220
No Telephone #

QUEENS

66-26 Metropolitan Ave
Middle Village, NY 11379
718 - 417-2026

STATEN ISLAND

1 Edgewater Plaza
Staten Island NY 10305
718 - 876-0719



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JOHN J. WARD
FINANCE OFFICER

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

DATE: August 25, 2009
TO: Commissioners

FROM: John J. Ward
Finance Officer

RE: Comparative Expenditures

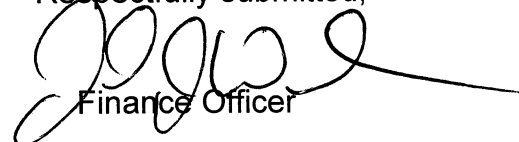
FY10	P.S. Projection through 8/21/09 Payroll:	\$ 2,644,000
FY10	P.S. Actual through 8/21/09 Payroll:	<u>\$ 3,218,277</u>
	Difference	(\$ 574,277)

Overtime pays two weeks ending 8/07/09

OVERTIME USAGE

General Office	90,980
Brooklyn	111,015
Queens	50,924
Bronx	51,446
New York	77,694
Staten Island	<u>4,663</u>
Total	\$386,722

Respectfully submitted,


Finance Officer



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STATE BOARD OF ELECTIONS

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Evelyn J. Aquila
Commissioner

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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 21, 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 20, 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 8/14/09-8/20/09

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

- Sequoia and Dominion are in the process of assigning the contract to Dominion. The documentation has been delivered to the Comptroller for approval.

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 testing has begun, and work continues to update test cases, to ensure testing accuracy and repeatability.
 - Multiple test deck training sessions for counties are scheduled for this week.
 - Daily conference calls continue with NYSTEC, SysTest and SBOE.
 - Weekly vendor conference calls continue with SBOE and NYSTEC only, participating.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: on schedule

- Acceptance testing continues.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

The public comment period on the proposed regulation closed on July 27, 2009. SBOE continues to review comments, and anticipate a vote to adopt the regulation at the board meeting on September 10, 2009.

County
KY1

August 21, 2009

Hon. Judges of the Court of Appeals
New York State Court of Appeals
20 Eagle Street
Albany, New York 12207

RECEIVED
G.O. BOARD OF ELECTIONS
IN THE COUNTY OF ALBANY
2009 AUG 21 PM 2:22

Re: Letter in Opposition for Leave Application & For Appeal as of Right
In Re Grisela Lajara v Israel Martinez, et. al.
Supreme Court, Bronx County, Index No.: 260441/09

Dear Honorable Judges:

I am of counsel to Stanley K. Schlein, attorney for the objector-petitioner-respondent Grisela Lajara (hereinafter "respondent Lajara"). I respectfully make this Letter In Opposition to the two forms of jurisdictional basis claimed by Appellant Martinez in this matter. On August 19, 2009, the Appellate Division of the Supreme Court of the State of New York, First Department, affirmed the Judgment of Hon. Robert G. Seewald, JSC, dated August 14, 2009 "for the reasons stated by Seewald, J". Two Justices dissented.

The application by appellant that he is entitled to an appeal as of right based upon the dissent by at least two Justices on a question of law should be denied for the language of the two dissenting Justices relate to alleged evidence in the record, not on any questions of law. In particular, the dissenting Justices make four references in their memorandum to evidence within the record, which is a question of fact not of law.

As to the Issue of Leave to Appeal, the dissent found Martinez presented substantial evidence that was prima facie evidence of nonresidency of respondent Lajara. Specifically, the dissent found 1) respondent Lajara failed to respond to a subpoena issued by Martinez 2) a letter addressed to respondent Lajara that was returned 3) the absence of her name on the apartment lease renewal or income certification form and 4) testimony of the managing agent and Executive Director of the sponsor of the building.

However, in his written decision below, Justice Seewald addressed each one of these items and found Martinez failed to submit sufficient proof that respondent Lajara does not reside at the address listed on her voter registration card. In fact, Justice Seewald concluded "when the Petitioner-candidate asserted that there was no apartment 7 at the building in issue, he presented a partial truth to the Court and had improperly concealed his full knowledge of the matter. In light of the above, the Court finds that the petitioner-candidate had an insufficient basis at the very start of the

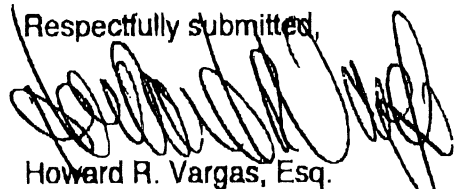
proceedings to challenge in legitimate fashion the residence address of the objector. (Judgment, Justice Seewald, p.10.)

Justice Seewald wrote "counsel for candidate Martinez also failed to demonstrate that any proper subpoena has been served upon the objector. In view of this failure of proof, this Court draws no negative inference from the objector's non-appearance at the hearing." (Judgment, Justice Seewald, p. 11; Referee's Report, p. 15-16.) As for the letter allegedly sent by candidate Martinez addressed to respondent Lajara, evidence presented to Justice Seewald found it was addressed to Lajara Grisela. (Judgment, Justice Seewald, p. 9; Referee's Report, p. 15.)

Moreover, Justice Seewald found "the witnesses from the managing agent and from the sponsor each possessed no real knowledge as to who actually resides at the building, and particularly in apartment 1B." (Judgment, Seewald, J. p. 11.) Finally, Justice Seewald concluded "It is not the function of this Court, particularly within the context of an election proceeding, to conduct an investigation as to who is officially authorized to live in the units in that building" (referring to the absence of the respondent Lajara's name of the apartment lease renewal or income certification form.) (Judgment, Justice Seewald, p. 16)

Accordingly, the dissent does not raise any issues of law for this Court to review. It only raised issues of fact, which Justice Seewald, as the trier of fact, addressed in his decision confirming in its entirety, the report of the special referee, to invalidate the petition of appellant Martinez. Since there are no questions of law nor are there any conflicts between the Departments of the Appellate Divisions that require clarification by this Court on the issues presented in this case, Appellant's applications for leave to appeal and for an appeal as of right based upon a two-Justice dissent should be denied.

Respectfully submitted,



Howard R. Vargas, Esq.
Of-Counsel to Stanley K. Schlem, Esq.
Counsel for Petitioner-Respondent
79 Meadowland Street
Delmar, NY 12054
646.529.7945

To:

Neil Grimaldi, Esq., Attorney for Appellant
Steven H. Richman, Esq., General Counsel, NYC Board of Elections

*County
NY*

Matter of Cass v Krakower
2009 NY Slip Op 06266
Decided on August 20, 2009
Appellate Division, Second Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on August 20, 2009

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT
WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2009-07690
2009-07692
(Index No. 5868/09)

[*1]In the Matter of A. William Cass, etc., petitioner- respondent,

v

Stephan L. Krakower, appellant, et al., respondents.

DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition for an opportunity to ballot by providing for a write-in candidate pursuant to Election Law § 6-164 in a primary election to be held on September 15, 2009, for the nomination of the Conservative Party as its candidate for the public office of Member of the Town Board of the Town of Poughkeepsie for Ward 5, Stephan L. Krakower appeals (1), as limited by his brief,

from so much of a final order of the Supreme Court, Dutchess County (Sproat, J.), dated August 11, 2009, as denied his motion to dismiss the petition for failure to join a necessary party and granted the petition to the extent of invalidating the petition for an opportunity to ballot, and (2) from an order of the same court dated August 13, 2009.

ORDERED that the appeal from the order dated August 13, 2009, is dismissed as abandoned, without costs or disbursements; and it is further,

ORDERED that the final order dated August 11, 2009, is reversed insofar as appealed from, on the law, without costs or disbursements, the motion of Stephan L. Krakower to dismiss the petition for failure to join a necessary party is granted, the proceeding is dismissed, and the Dutchess County Board of Elections is directed to conduct a primary election on September 15, 2009, giving members of the Conservative Party an opportunity to write in the name of a person for nomination as the candidate of the Conservative Party for the public office of Member of the Town Board of the Town of Poughkeepsie for Ward 5.

In this proceeding, inter alia, to invalidate a petition for an opportunity to ballot, the aggrieved candidate failed to name and serve the Committee to Receive Notices, as required by Election Law § 6-164. Accordingly, the Supreme Court erred in denying the appellant's motion to dismiss the petition and in invalidating the petition for an opportunity to ballot (*see Matter of Myers v Baisley*, AD3d [decided herewith]; *Matter of Anderson v Oswego County Bd. of Elections*, 113 AD2d 1019; *cf. Matter of Simon v Power*, 17 NY2d 924; *see generally Matter of Suffolk County Community Coll. v New York State Div. of Human Rights*, 61 AD3d 881, 882; *Matter of Massapequa Auto Salvage, Inc. v Donaldson*, 40 AD3d 647, 648; *but cf. Windy Ridge Farm v Assessor of Town of Shandaken*, 11 NY3d 725). [*2]

The appeal from the order dated August 13, 2009, must be dismissed as abandoned (*see Sirma v Beach*, 59 AD3d 611, 614; *Bibas v Bibas*, 58 AD3d 586), as the appellant does not seek reversal of any portion of that order in his brief.

MASTRO, J.P., LEVENTHAL, BELEN, CHAMBERS and LOTT, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court

[Return to Decision List](#)

Matter of Kutner v Nassau County Bd. of Elections
2009 NY Slip Op 06270
Decided on August 20, 2009
Appellate Division, Second Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

*Comm Mb
FEL*

Decided on August 20, 2009

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT
 STEVEN W. FISHER, J.P.
 FRED T. SANTUCCI
 RANDALL T. ENG
 L. PRISCILLA HALL
 SHERI S. ROMAN, JJ.

2009-07560
(Index No. 15423/09)

[*1]In the Matter of Stephen D. Kutner, appellant,

v

Nassau County Board of Elections, respondent, Chani Marks, et al., respondents-respondents.

DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition for an opportunity to ballot by providing for a write-in candidate pursuant to Election Law § 6-164 in a primary election to be held on September 15, 2009, for the nomination of the Independence Party as its candidate for the public office of Member of the Nassau County Legislature, 3rd Legislative District, the petitioner appeals, as limited by his brief, from so

much of a final order of the Supreme Court, Nassau County (Brown, J.), entered August 12, 2009, as, after a hearing, denied the petition to invalidate and dismissed the proceeding.

ORDERED that the final order is affirmed insofar as appealed from, without costs or disbursements.

The appellant failed to meet his burden of establishing that the signatures on the petition for an opportunity to ballot, which were witnessed by Lawrence Nedelka, a notary public, should have been invalidated on the ground that Nedelka failed to obtain a statement from each signatory attesting to the truth of the matter to which he or she had subscribed his or her name (*see* Election Law § 6-132; *Matter of Liebler v Friedman*, 54 AD3d 697; *Matter of Imre v Johnson*, 54 AD3d 427; *Matter of Brown v Suffolk County Bd. of Elections*, 264 AD2d 489; *Matter of Merrill v Adler*, 253 AD2d 505; *Matter of Zunno v Fein*, 175 AD2d 935). Nedelka testified at the hearing that he administered to each signatory an oath that was printed on an instruction sheet he carried while collecting signatures. The oath, which was offered into evidence, asks the signatory to swear or affirm, among other things, that he or she designates "the named person(s) on the petition as candidate(s) for the nomination of the party for public office." Although no particular form of oath is required (*see* CPLR 2309[b]), this oath is more appropriate for a petition to designate a named person as a candidate (*see* Election Law § 6-132[1]), rather than a petition for an opportunity to ballot, which seeks the opportunity to write in the name of a candidate in an uncontested primary (*see* Election Law § 6-164). Nevertheless, we are satisfied that the signatures were in substantial compliance with Election Law § 6-132(3) (*see Matter of Liebler v Friedman*, 54 AD3d at 697-698; *Matter of Brown v Suffolk County Bd. of Elections*, 264 AD2d at 489). Nedelka testified that when he introduced himself to each registered voter, he explained that he was carrying a petition requesting the opportunity to ballot and gave them the opportunity to review the petition before signing it. Under these circumstances, when each signatory took the oath, he or she would have clearly understood that the oath referred to the matter to which he or she had subscribed his or her [*2]name. Accordingly, the Supreme Court properly denied the petition to invalidate and dismissed the proceeding.

FISHER, J.P., SANTUCCI, ENG, HALL and ROMAN, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court

[Return to Decision List](#)

Matter of Myers v Baisley
2009 NY Slip Op 06274
Decided on August 20, 2009
Appellate Division, Second Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

County
file

Decided on August 20, 2009

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

WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2009-07701
2009-07704
(Index No. 6259/09)

[*1]In the Matter of Patricia Myers, etc., petitioner- respondent,

v

Jon Baisley, appellant, et al., respondents.

DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate two petitions for an opportunity to ballot by providing for write-in candidates pursuant to Election Law § 6-164 in a primary election to be held on September 15, 2009, for the nominations of the Conservative Party and the Independence Party as their candidates for the public office of Supervisor of the Town of Poughkeepsie, Jon Baisley appeals from (1) an order of the

Supreme Court, Dutchess County (Brands, J.), dated August 12, 2009, which denied his motion to dismiss the petition for failure to join a necessary party, and (2) a final order of the same court dated August 14, 2009, which granted the petition to the extent of invalidating the petitions for an opportunity to ballot.

ORDERED that the appeal from the order dated August 12, 2009, is dismissed, without costs or disbursements; and it is further,

ORDERED that the final order dated August 14, 2009, is reversed, on the law, without costs or disbursements, the motion of Jon Baisley to dismiss the petition for failure to join a necessary party is granted, the proceeding is dismissed, the order dated August 12, 2009, is modified accordingly, and the Dutchess County Board of Elections is directed to conduct primary elections on September 15, 2009, giving members of the Conservative Party and Independence Party an opportunity to write in the name of a person for nomination as the candidate of the Conservative Party and the Independence Party, respectively, for the public office of Supervisor of the Town of Poughkeepsie.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of the final order in the proceeding (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the intermediate order are brought up for review and have been considered on the appeal from the final order (*see* CPLR 5501[a][1]).

In this proceeding to invalidate two petitions for an opportunity to ballot, the aggrieved candidate failed to name and serve the Committee to Receive Notices, as required by Election Law § 6-164. Accordingly, the Supreme Court erred in denying the motion of Jon Baisley to dismiss the petition and in invalidating the petitions for an opportunity to ballot (*see Matter of [*2]Cass v Krakower*, AD3d [decided herewith]; *Matter of Anderson v Oswego County Bd. of Elections*, 113 AD2d 1019; *cf. Matter of Simon v Power*, 17 NY2d 924; *see generally Matter of Suffolk County Community Coll. v New York State Div. of Human Rights*, 61 AD3d 881, 882; *Matter of Massapequa Auto Salvage, Inc. v Donaldson*, 40 AD3d 647, 648; *but cf. Windy Ridge Farm v Assessor of Town of Shandaken*, 11 NY3d 725).

MASTRO, J.P., LEVENTHAL, BELEN, CHAMBERS and LOTT, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court

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County
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Matter of Peluso v Erie County Independence Party
2009 NY Slip Op 06261
Decided on August 19, 2009
Appellate Division, Fourth Department
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This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on August 19, 2009

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, GREEN, AND PINE, JJ.

970 CAE 09-01640

[*1]IN THE MATTER OF ANTHONY PELUSO, ELAINE PELUSO, ERNESTO LEONETTI AND ANTHONY J. MIGNARELLI, PETITIONERS-RESPONDENTS,

v

ERIE COUNTY INDEPENDENCE PARTY, SANDRA J. ROSENSWIE, INDIVIDUALLY AND AS ALLEGED CHAIR OF EACH OF ERIE COUNTY INDEPENDENCE PARTY COMMITTEE AND EXECUTIVE COMMITTEE OF ERIE COUNTY INDEPENDENCE PARTY COMMITTEE, ROBERT C. VACANTI, INDIVIDUALLY AND AS ALLEGED SECRETARY OF EACH OF ERIE COUNTY INDEPENDENCE PARTY COMMITTEE AND EXECUTIVE COMMITTEE OF ERIE COUNTY INDEPENDENCE PARTY COMMITTEE, C.W. STEWART, INDIVIDUALLY AND AS ALLEGED TREASURER OF EACH OF ERIE COUNTY INDEPENDENCE PARTY COMMITTEE AND EXECUTIVE COMMITTEE OF ERIE COUNTY INDEPENDENCE PARTY COMMITTEE, RICKY T. DONOVAN, SR., TAMMY L. MARINO, JOHN E. KENNEDY, JR., JOHN L. RYAN, KYLE S. BICKNELL, JOHNATHAN A. LAVELL, FORD J. BECKWITH, MARIANNE LAPORTA, DOLORES L. LIVSEY AND MICHAEL J. ABRAMAO, INDIVIDUALS NAMED ON A CERTIFICATE OF OFFICERS OF ERIE COUNTY INDEPENDENCE PARTY, INDIVIDUALLY AND AS ALLEGED OFFICERS OF ERIE COUNTY INDEPENDENCE PARTY COMMITTEE, RESPONDENTS-APPELLANTS, NEW YORK STATE COMMITTEE OF THE INDEPENDENCE PARTY, FRANK MACKAY, CHAIRMAN, AND WILLIAM BOGARDT,

**SECRETARY, RESPONDENTS-PETITIONERS-RESPONDENTS, ET AL.,
RESPONDENTS.**

Appeal from a judgment (denominated order and judgment) of the Supreme Court, Erie County (Paula L. Feroletto, J.), entered July 1, 2009 in a proceeding pursuant to, inter alia, CPLR article 78. The judgment, inter alia, granted the petitions in part and issued an injunction.

CANTOR, LUKASIK, DOLCE & PANEPINTO, BUFFALO (SEAN E. COONEY OF COUNSEL), FOR RESPONDENTS-APPELLANTS.
JOHN CIAMPOLI, ALBANY, FOR RESPONDENT-PETITIONER-RESPONDENT NEW YORK STATE COMMITTEE OF THE INDEPENDENCE PARTY.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs, the petitions are dismissed in their entirety, and the injunction is vacated. [*2]

Memorandum: Respondents-appellants (respondents) appeal from a judgment granting the injunctive relief sought by petitioners, i.e., enjoining respondent Erie County Committee of the Independence Party (County Committee) and any other interested respondent from issuing authorizations or nominations that would be in contravention of the rules of the New York State Committee of the Independence Party (State Committee). We agree with respondents that Supreme Court erred in granting an injunction (*see generally Matter of Master v Pohanka*, 44 AD3d 1050, 1053-1054). Although petitioners also seek a declaration that the County Committee's rules are invalid and contrary to the State Committee's rules, we decline to grant that relief on the ground that such a declaration would be in the nature of an advisory opinion. "The courts of New York do not issue advisory opinions for the fundamental reason that in this State [t]he giving of such opinions is not the exercise of the judicial function" (*County of Monroe v City of Rochester*, 39 AD3d 1272, 1273, quoting *Cuomo v Long Is. Light. Co.*, 71 NY2d 349, 354 [internal quotation marks omitted]). In the event that petitioners seek to challenge any authorizations or nominations issued by the County Committee in the future pursuant to Election Law § 6-120 (3) in contravention of the rules of the State Committee, they may do so by way of the procedure set forth in Election Law § 16-102. We therefore reverse the judgment, dismiss the petitions in their entirety, and vacate the injunction. In light of our determination, we do not address respondents'

remaining contentions. We note in any event that certain of those contentions are unpreserved for our review, and that all are lacking in merit.

Entered: August 19, 2009

Patricia L. Morgan

Clerk of the Court

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Matter of Dixon v Reynolds
2009 NY Slip Op 06260
Decided on August 19, 2009
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Decided on August 19, 2009

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, GREEN, AND PINE, JJ.

969 CAE 09-01604

**[*1]IN THE MATTER OF LYNNE DIXON, AGGRIEVED CANDIDATE,
PETITIONER-APPELLANT,**

v

ROBERT B. REYNOLDS, JR., MICHELE M. IANNELLO, AND THOMAS A. LOUGHRAN, CANDIDATES, SANDRA J. ROSENSWIE AND ROBERT C. VACANTI, PURPORTING TO BE THE PRESIDING OFFICER AND SECRETARY OF A MEETING OF THE EXECUTIVE COMMITTEE OF ERIE COUNTY INDEPENDENCE PARTY, AT WHICH A DESIGNATION OF CANDIDATES WAS MADE, ERIE COUNTY INDEPENDENCE PARTY, RESPONDENTS-RESPONDENTS, ET AL., RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered August 6, 2009 in a proceeding pursuant to, inter alia, Election Law article 16. The order dismissed the petition.

BOUVIER PARTNERSHIP, LLP, BUFFALO (EMILIO COLAIACOVO OF COUNSEL), FOR PETITIONER-APPELLANT.
JEROME D. SCHAD, WILLIAMSVILLE, FOR RESPONDENT-RESPONDENT

ROBERT B. REYNOLDS, JR., AND CANTOR, LUKASIK, DOLCE & PANEPINTO, BUFFALO (JEROME D. SCHAD OF COUNSEL), FOR RESPONDENTS-RESPONDENTS SANDRA J. ROSENSWIE AND ROBERT C. VACANTI, PURPORTING TO BE THE PRESIDING OFFICER AND SECRETARY OF A MEETING OF THE EXECUTIVE COMMITTEE OF ERIE COUNTY INDEPENDENCE PARTY, AT WHICH A DESIGNATION OF CANDIDATES WAS MADE, AND ERIE COUNTY INDEPENDENCE PARTY.

JEFFREY E. MARION, WILLIAMSVILLE, FOR RESPONDENTS-RESPONDENTS MICHELE M. IANNELLO AND THOMAS A LOUGHRAN, CANDIDATES.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this special proceeding seeking, inter alia, a determination that the certificates of authorization issued to respondents Robert B. Reynolds, Jr., Michele M. Iannello, and Thomas A. Loughran by the Erie County Independence Party were null and void. The certificates in question authorized those three respondents to run in the Independence Party primary for the position of County Legislator. We agree with Supreme Court that the proceeding is jurisdictionally defective based on petitioner's failure to join the New York [*2]State Independence Party (State Party) as a necessary party (*see* CPLR 1001 [a]; 1003; *Matter of Vasquez v Smith*, 224 AD2d 822, 823; *Matter of Regan v New York State Bd. of Elections*, 207 AD2d 647, *lv denied* 84 NY2d 801). The petition sought a determination interpreting the State Party's rules, and such determination could have an inequitable effect on the rights of the State Party (*see Vasquez*, 224 AD2d at 823). Additionally, petitioner failed to serve the Erie County Independence Party in accordance with the terms of the order to show cause (*see Matter of Rodriguez v Ward*, 43 AD3d 640, 641). In view of our determination, we need not address the remaining issues raised on appeal.

Entered: August 19, 2009

Patricia L. Morgan

Clerk of the Court

[Return to Decision List](#)

Matter of Masich v Ward
2009 NY Slip Op 06258
Decided on August 19, 2009
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This opinion is uncorrected and subject to revision before publication in the Official Reports.

County
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Decided on August 19, 2009

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, GREEN, AND PINE, JJ.

967 CAE 09-01642

[*1]IN THE MATTER OF CHARLES G. MASICH, MICHAEL J. ABRAMO, JOHNATHAN A. LAVELL, MONIQUE H. SCHREGEL, ERIK K. STRAUCH, KIMBERLY A. DAVIS, WALTER E. AMACHER, DYLAN G. QUINLAN AND RALPH J. ABRAMO, PETITIONERS-APPELLANTS,

v

DENNIS E. WARD AND RALPH M. MOHR, AS COMMISSIONERS OF AND CONSTITUTING THE ERIE COUNTY BOARD OF ELECTIONS, ET AL., RESPONDENTS, NEW YORK STATE INDEPENDENCE PARTY COMMITTEE, BECKY JO SUMMERS, ET AL., RESPONDENTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (Frank A. Sedita, Jr., J., for Diane Y. Devlin, J.), entered August 11, 2009 in a proceeding pursuant to Election Law article 16. The order dismissed the petition.

JEROME D. SCHAD, WILLIAMSVILLE, FOR PETITIONERS-APPELLANTS.
JOHN CIAMPOLI, ALBANY, FOR RESPONDENT-RESPONDENT NEW YORK STATE INDEPENDENCE PARTY COMMITTEE.
BOUVIER PARTNERSHIP, LLP, BUFFALO (EMILIO COLAIACOVO OF COUNSEL),

FOR RESPONDENTS-RESPONDENTS BECKY JO SUMMERS, ET AL.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Supreme Court properly dismissed the petition seeking to invalidate the certificate authorizing over 100 designating petitions for candidates in Erie County based on the failure to join 102 unnamed candidates whose names appear on the certificate of authorization issued by the New York State Independence Party Executive Committee. Because there was only a single certificate of authorization, the 102 unnamed candidates would have been inequitably affected had the court granted the relief sought in the petition, and petitioners thus were required to join them as necessary parties (*see* CPLR 1001 [a]; 1003). In view of our determination, we need not address the merits of the petition.

Entered: August 19, 2009

Patricia L. Morgan

Clerk of the Court

[Return to Decision List](#)

Matter of Cirillo v Gardiner
2009 NY Slip Op 06267
Decided on August 20, 2009
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County
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Decided on August 20, 2009

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

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2009-07707
(Index No. 27127/09)

[*1]In the Matter of Donald King Cirillo, et al., petitioners, Theresa K. Quigley, et al., petitioners-respondents,

v

Bill Gardiner, etc., appellant, et al., respondent.

DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition designating Bill Gardiner as a candidate in a primary election to be held on September 15, 2009, for the nomination of the Republican Party as its candidate for the public office of Member of the Town Council of the Town of East Hampton, Bill Gardiner appeals from a final order of the Supreme Court, Suffolk County (Weber, J.), dated August 14, 2009,

which, after a hearing, granted the petition, invalidated the designating petition, and directed the Suffolk County Board of Elections not to place his name on the ballot.

ORDERED that the final order is affirmed, without costs or disbursements.

A designating petition may be invalidated where "there is a finding that the candidate has participated in or is chargeable with knowledge of fraud in procuring signatures for a designating petition, even if there is a sufficient number of valid signatures independent of those fraudulently procured" (*Matter of Drace v Sayegh*, 43 AD3d 481, 482; see *Matter of Leonard v Pradhan*, 286 AD2d 459; *Matter of MacDougall v Board of Elections of City of N.Y.*, 133 AD2d 198).

Here, the testimony at the hearing revealed that a subscribing witness did not personally witness and identify all of the signatures to which he attested (see Election Law § 6-132[2]; *Matter of Tapper v Sampel*, 54 AD3d 435). Moreover, the record supports the Supreme Court's determination that the candidate had knowledge of the fraudulent manner in which the signatures were procured, and that he approved of such methods. Accordingly, the Supreme Court properly granted the petition, invalidated the designating petition, and directed the Suffolk County Board of Elections not to place the candidate's name on the ballot (see *Matter of Ryan v Suffolk County Bd. of Elections*, 286 AD2d 461, 462; *Matter of Layden v Gargiulo*, 77 AD2d 933, 934).

The candidate's remaining contentions are without merit or need not be reached in light of our determination.

FISHER, J.P., SANTUCCI, ENG, HALL and ROMAN, JJ., concur. [*2]

ENTER:

James Edward Pelzer

Clerk of the Court

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Matter of McDonough v Scannapieco
2009 NY Slip Op 06273
Decided on August 20, 2009
Appellate Division, Second Department
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County
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Decided on August 20, 2009

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT
 WILLIAM F. MASTRO, J.P.
 JOHN M. LEVENTHAL
 ARIEL E. BELEN
 CHERYL E. CHAMBERS
 PLUMMER E. LOTT, JJ.

2009-07705
 (Index No. 2260/09)

[*1]In the Matter of Suzanne F. McDonough, appellant,

v

Anthony G. Scannapieco, Jr., etc., et al., respondents.

DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, to validate a petition designating Suzanne F. McDonough as a candidate in a primary election to be held on September 15, 2009, for the nomination of the Independence Party as its candidate for the public office of Member of the Town Council of the Town of Carmel, the petitioner appeals from a final order of the Supreme Court, Putnam County (O'Rourke, J.), entered August 12, 2009, which denied the petition, inter alia, to validate and dismissed the proceeding.

ORDERED that the final order is affirmed, without costs or disbursements.

The Supreme Court denied the petition, inter alia, to validate the petitioner's designating petition and dismissed the proceeding on the sole ground that the petitioner failed to include a cover sheet when she filed her 10-page designating petition, although she cured the defect the following day, as permitted under the rules and regulations promulgated pursuant to the Election Law as amended by the Legislature in 1996 (*see* Election Law §§ 6-134[2], [10]; 9 NYCRR 6215.2[b], 6215.6[a], 6215.7[d]). We affirm, but on the jurisdictional ground asserted in the verified answer of the respondent Greg E. Ellner, which the Supreme Court did not address in the final order appealed from.

"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" (Election Law § 16-102[2]). To properly institute the proceeding, "[a] petitioner raising a challenge under Election Law § 16-102 must commence the proceeding and complete service on all necessary parties within [that] period" (*Matter of Wilson v Garfinkle*, 5 AD3d 409, 410; *see Matter of King v Cohen*, 293 NY 435, 439; *Matter of Kurth v Orange County Bd. of Elections*, AD3d [decided herewith]; *Matter of Davis v McIntyre*, 43 AD3d 636, 637).

Here, the deadline to file designating petitions for the September 15, 2009, primary election was July 16, 2009, and the Putnam County Board of Elections ruled on the invalidity of the designating petitions on Monday, July 27, 2009. Therefore, the last day on which the petitioner [*2] could have instituted the instant proceeding was Thursday, July 30, 2009. However, it is undisputed that the respondents were not served until after July 30, 2009. Accordingly, "the time limits set by Election Law § 16-102(2) were not satisfied and the proceeding was untimely" (*Matter of Wilson v Garfinkle*, 5 AD3d at 410; *see Matter of Kurth v Orange County Bd. of Elections*, AD3d [decided herewith]; *Matter of Davis v McIntyre*, 43 AD3d at 637). Moreover, language with regard to service contained in the order to show cause that commenced the proceeding "could not and did not extend the period of limitations within which to institute the proceeding within the meaning of the Election Law" (*Matter of Marino v Orange County Bd. of Elections*, 307 AD2d 1011, 1012; *see Matter of Kurth v Orange County Bd. of Elections*, AD3d [decided herewith]; *Matter of*

Davis v McIntyre, 43 AD3d at 637).

MASTRO, J.P., LEVENTHAL, BELEN, CHAMBERS and LOTT, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court

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Matter of Potanovic v French
2009 NY Slip Op 06275
Decided on August 20, 2009
Appellate Division, Second Department
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County
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Decided on August 20, 2009

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT
 PETER B. SKELOS, J.P.
 ANITA R. FLORIO
 JOSEPH COVELLO
 RUTH C. BALKIN
 LEONARD B. AUSTIN, JJ.

2009-07567
(Index No. 5890/09)

[*1]In the Matter of Edward Potanovic, etc., et al., petitioners-respondents,

v

Daniel French, et al., appellants, et al., respondents.

DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate certain so-called Wilson-Pakula certificates (*see* Election Law § 6-120[3]) issued by the Conservative Party Committee of the Town of Beekman authorizing certain persons who were not enrolled as members of the Conservative Party to appear as candidates on the ballot in a primary election to be held on September 15, 2009, the appeal is from a final order of the Supreme Court, Dutchess County (Brands, J.), dated August 11, 2009, which, in effect,

granted the petition, invalidated the certificates, and directed the Dutchess County Board of Elections not to place those candidates' names on the ballot.

ORDERED that the final order is affirmed, without costs or disbursements.

Election Law § 6-120(3) provides, in relevant part, as follows:

"[t]he members of the party committee representing the political subdivision of the office for which a designation or nomination is to be made, unless the rules of the party provide for another committee, in which case the members of such other committee . . . may, by a majority vote of those present at such meeting provided a quorum is present, authorize the designation or nomination of a person as candidate for any office who is not enrolled as a member of such party."

Contrary to the appellants' contention, there is no conflict between the rules and regulations of the Conservative Party Committee of Dutchess County (hereinafter the County Committee) and the rules and regulations of the Conservative Party Committee of the Town of Beekman (hereinafter the Town Committee). Rather, section 7.2, article VI of the rules and regulations of the Town Committee provides, in relevant part, that "[a] duly organized and recognized town or city party may nominate and designate a non-enrolled Conservative candidate for any town office," while section 7.2, article VI of the rules and regulations of the County Committee provides, in relevant part, that "[a]ny town or city candidate who is duly screened and nominated and . . . who is not an enrolled member of the Conservative Party must be authorized by the County Committee during a Wilson/Pakula meeting." These rules establish that the Town Committee has the right to nominate or designate a nonparty candidate for a town office, but that candidate must be authorized by the County Committee during a Wilson-Pakula meeting (*see* Election Law § 6-120[3]; *Matter of Conroy v State Comm. of the Independence Party of New York*, 10 NY3d 896, 897; *Matter of Master v Pohanka*, 10 NY3d 620, 625-626). [*2]

Here, the Town Committee nominated and designated its nonparty candidates. It thereafter filed Wilson-Pakula certificates with the Dutchess County Board of Elections (hereinafter the Board of Elections) without seeking to have the nonparty candidates authorized by the County Committee. Accordingly, the Supreme Court properly, in effect,

granted the petition, invalidated the certificates, and directed the Board of Elections not to place those candidates' names on the ballot.

SKELOS, J.P., FLORIO, COVELLO, BALKIN and AUSTIN, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court

[Return to Decision List](#)

Matter of Detres v Westchester County Bd. of Elections
2009 NY Slip Op 06268
Decided on August 20, 2009
Appellate Division, Second Department
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This opinion is uncorrected and subject to revision before publication in the Official Reports.

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Decided on August 20, 2009

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

PETER B. SKELOS, J.P.

ANITA R. FLORIO

JOSEPH COVELLO

RUTH C. BALKIN

LEONARD B. AUSTIN, JJ.

2009-07652

(Index No. 16415/09)

[*1]In the Matter of Ronald Detres, et al., appellants,

v

Westchester County Board of Elections, et al., respondents.

DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate (1) a petition designating Michelle S. Walker and Samuel L. Rivers as candidates in a primary election to be held on September 15, 2009, for the nomination of the Democratic Party as its candidates for the public office of Member of the Mount Vernon City Council, (2) a petition designating Sylvia Gadson as a candidate in a primary election to be held on September 15, 2009, for the nomination of the Democratic Party as its candidate for the public office of Member of the

Mount Vernon City Council, (3) a petition designating Roberta L. Apuzzo, Karen Watts, and Yuhanna J. Edwards as candidates in a primary election to be held on September 15, 2009, for the nomination of the Democratic Party as its candidates for the public office of Member of the Mount Vernon City Council, (4) a petition designating Roberta L. Apuzzo, Yuhanna J. Edwards, and Samuel L. Rivers as candidates in a primary election to be held on September 15, 2009, for the nomination of the Conservative Party as its candidates for the public office of Member of the Mount Vernon City Council, and (5) a petition designating Roberta L. Apuzzo and Yuhanna J. Edwards as candidates in a primary election to be held on September 15, 2009, for the nomination of the Republican Party as its candidates for the public office of Member of the Mount Vernon City Council, the petitioners appeal from a final order of the Supreme Court, Westchester County (Giacomo, J.), entered August 10, 2009, which, after a hearing, denied the petition, inter alia, to invalidate and dismissed the proceeding.

ORDERED that the final order is modified, on the law, (1) by deleting the provision thereof denying those branches of the petition which were to invalidate the petition designating Michelle S. Walker and Samuel L. Rivers as candidates in the primary election to be held on September 15, 2009, for the nomination of the Democratic Party as its candidates for the public office of Member of the Mount Vernon City Council insofar as it pertains to those candidates, and substituting therefor a provision granting those branches of the petition, and (2) by deleting the provision thereof denying that branch of the petition which was to invalidate the petition designating Sylvia Gadson as a candidate in the primary election to be held on September 15, 2009, for the nomination of the Democratic Party as its candidate for the public office of Member of the Mount Vernon City Council and substituting therefor a provision granting that branch of the petition; as so modified, the final order is affirmed, without costs or disbursements, and the Westchester County Board of Elections is directed to remove the names of Michelle S. Walker, Samuel L. Rivers, and Sylvia Gadson as candidates in the primary election to be held on September 15, 2009, for the [*2]nomination of the Democratic Party as its candidates for the public office of Member of the Mount Vernon City Council from the appropriate ballots.

The Clerk of the City of Mount Vernon certified that four City Council seats were to be filled at the upcoming primary election: three full-term seats expiring on December 31, 2013, and one unexpired-term seat expiring on December 31, 2011. It is uncontested that the

petition designating the respondents Michelle S. Walker and Samuel L. Rivers, and the petition designating the respondent Sylvia Gadson, respectively, as candidates in the primary election to be held on September 15, 2009, for the nomination of the Democratic Party as its candidate for the public office of Member of the Mount Vernon City Council failed to specify the term of office for which each candidate was running. The remaining designating petitions at issue on this appeal all distinguished the candidates running for full-term seats from those running for the unexpired-term seat.

Contrary to the conclusion of the Supreme Court, a "liberal" reading of Election Law § 6-134(1) does not abrogate the statutory requirement that "if two or more offices having the same title are to be filled for different terms, the terms of office shall be included as part of the title of the office" (Election Law § 6-134[1]). Although substantial compliance, in the absence of fraud or confusion, may justify the validation of a designating petition that is otherwise defective with respect to its form (*see Matter of Magelaner v Park*, 32 AD3d 487, 488; *Matter of Gaffney v Weinberg*, 286 AD2d 457), the Westchester County Board of Elections "is not empowered to authorize, implicitly or explicitly, non-compliance with the strictures set forth by the Legislature in section 6-134" (*Matter of Smith v Mahoney*, 60 NY2d 596, 597; *see Matter of Hutson v Rodriguez*, 54 NY2d 772, 774; *Matter of Brosnan v Black*, 104 AD2d 469, 470-471).

In the absence of substantial compliance and for the reasons stated in our decision and order on the companion appeal (*see Matter of Williams v Westchester County Bd. of Elections*, AD3d [decided herewith]), the Supreme Court erred in denying those branches of the petition which were to invalidate the petition designating Michelle S. Walker and Samuel L. Rivers, insofar as it pertains to those candidates, and the petition designating Sylvia Gadson, as candidates in the primary election to be held on September 15, 2009, for the nomination of the Democratic Party as its candidates for the public office of Member of the Mount Vernon City Council (*see Election Law § 6-134[1]*; *Matter of Bullock v Bornstein*, 25 NY2d 812, 814; *Matter of King v McNab*, 14 AD2d 808, 809). However, the Supreme Court properly denied those branches of the petition which were to invalidate the remaining designating petitions inasmuch as those petitions were "sufficiently informative to describe the office for which [each of the candidates] sought candidacy," thereby substantially complying with the dictates of Election Law § 6-134(1) (*Matter of Marcoccia v Garfinkle*, 307 AD2d 1010, 1011 [internal quotation marks omitted]; *see Matter of Gaffney v Weinberg*,

286 AD2d at 457; *Matter of Capitano v Kelly*, 242 AD2d 343, 344).

The respondents' remaining contention is without merit.

SKELOS, J.P., FLORIO, COVELLO, BALKIN and AUSTIN, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court

[Return to Decision List](#)

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Matter of Williams v Westchester County Bd. of Elections
2009 NY Slip Op 06277
Decided on August 20, 2009
Appellate Division, Second Department
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Decided on August 20, 2009

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT
 PETER B. SKELOS, J.P.
 ANITA R. FLORIO
 JOSEPH COVELLO
 RUTH C. BALKIN
 LEONARD B. AUSTIN, JJ.

2009-07646
(Index No. 16416/09)

[*1]In the Matter of Lyndon D. Williams, et al., petitioners, Eileen M. Justino, et al., appellants,

v

Westchester County Board of Elections, et al., respondents.

DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, to validate a petition designating Eileen M. Justino, Jennifer A. Sampson, Debra A. Stern, and Collie N. Edwers as candidates in a primary election to be held on September 15, 2009, for the nomination of the Democratic Party as its candidates for the public office of Member of the Mount Vernon City Council, Eileen M. Justino, Jennifer A. Sampson, Debra A. Stern, and Collie N. Edwers

appeal from a final order of the Supreme Court, Westchester County (Giacomo, J.), entered August 10, 2009, which, after a hearing, denied the petition, inter alia, to validate and dismissed the proceeding.

ORDERED that the final order is affirmed, without costs or disbursements.

A designating petition must include the title of the office for which a candidate is running (*see* Election Law § 6-132[1]; *Matter of Smith v Mahoney*, 60 NY2d 596, 597; *Matter of Packer v Board of Elections of City of N.Y.*, 207 AD2d 513, 514). Election Law § 6-134 provides, in relevant part, that "[i]f two or more offices having the same title are to be filled for different terms, the terms of office shall be included as part of the title of the office" (Election Law § 6-134[1]; *see Matter of Gaffney v Weinberg*, 286 AD2d 457, 457; *Matter of Capitano v Kelly*, 242 AD2d 343, 344).

"While substantial compliance is acceptable as to details of form, there must be strict compliance with statutory commands as to matters of prescribed content" (*Matter of Hutson v Rodriguez*, 54 NY2d 772, 774; *see Matter of Smith v Mahoney*, 60 NY2d at 597; *Matter of Rhodes v Salerno*, 57 NY2d 885, 887; *Matter of Justice v Gamache*, 45 AD3d 508, 511). When such prescribed content is mandated by a statute that is "clear and unambiguous on its face . . . the failure to conform with its requirements constitutes a fundamental flaw in the petition, which cannot be cured by the application of Election Law § 6-134(10)" (*Matter of Moskaluk v Simpkins*, 54 AD3d 533, 535-536; *see Matter of Hutson v Rodriguez*, 54 NY2d at 774).

By its own terms, Election Law § 6-134(1) does not require the inclusion of an office's term in every instance, and a candidate's designating petition may, given particular facts, be "sufficiently informative to describe the office for which he sought candidacy" (*Matter of Marcoccia v Garfinkle*, 307 AD2d 1010, 1011 [internal quotation marks omitted]; *see Matter of [*2]Gaffney v Weinberg*, 286 AD2d 457; *Matter of Capitano v Kelly*, 242 AD2d at 344). However, we are mindful that voters and signers alike may take into account whether a candidate seeks a full term or the balance of an unexpired term (*see Matter of Weiner v McCord*, 264 AD2d 864, 865-866; *Nocca v Moczydlowski*, 154 AD2d 636, 636), and "where two identical offices are to be filled but for different terms — a nominating petition which fails to state for which one of the two offices the candidate has been nominated, is fatally

defective" (*Matter of King v McNab*, 14 AD2d 808, 809, *affd* 10 NY2d 887; *see Matter of Bullock v Bornstein*, 25 NY2d 812, 814, *affg* 32 AD2d 793, 794).

The Clerk of the City of Mount Vernon certified that four Council seats were to be filled at the upcoming primary election: three full-term seats expiring on December 31, 2013, and one unexpired-term seat expiring on December 31, 2011. It is uncontested that the appellants' designating petition omitted the term of office for which each candidate was running. Accordingly, the Supreme Court properly denied the petition, *inter alia*, to validate and dismissed the proceeding (*see* Election Law § 6-134[1]; *Matter of Bullock v Bornstein*, 25 NY2d at 814; *Matter of King v McNab*, 14 AD2d at 809).

The appellants' remaining contentions are without merit.

SKELOS, J.P., FLORIO, COVELLO, BALKIN and AUSTIN, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court

[Return to Decision List](#)

Matter of Kurth v Orange County Bd. of Elections
2009 NY Slip Op 06269
Decided on August 20, 2009
Appellate Division, Second Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Counts
F42

Decided on August 20, 2009

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

PETER B. SKELOS, J.P.

ANITA R. FLORIO

JOSEPH COVELLO

RUTH C. BALKIN

LEONARD B. AUSTIN, JJ.

2009-07494

(Index No. 8541/09)

[*1]In the Matter of Lloyd M. Kurth, appellant,

v

Orange County Board of Elections, et al., respondents.

DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, to validate a petition designating Lloyd M. Kurth as a candidate in a primary election to be held on September 15, 2009, for the nomination of the Democratic Party as its candidate for the public office of Superintendent of Highways of the Town of Goshen, the petitioner appeals from a final order of the Supreme Court, Orange County (Owen, J.), entered August 10, 2009, which dismissed the proceeding as untimely.

ORDERED that the final order is affirmed, without costs or disbursements.

"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" (Election Law § 16-102[2]). To properly institute the proceeding, "[a] petitioner raising a challenge under Election Law § 16-102 must commence the proceeding and complete service on all necessary parties within [that] period" (*Matter of Wilson v Garfinkle*, 5 AD3d 409, 410; *see Matter of King v Cohen*, 293 NY 435, 439; *Matter of McDonough v Scannapieco*, AD3d [decided herewith]; *Matter of Davis v McIntyre*, 43 AD3d 636, 637).

The last day to file designating petitions was July 16, 2009 (*see* Election Law § 6-158 [1]), and the Orange County Board of Elections ruled on July 17, 2009, that the petitioner's designating petition was invalid. Thus, the last day on which the petitioner could have timely instituted the instant proceeding was July 30, 2009 (*see* Election Law § 16-102[2]).

It is undisputed that the petitioner filed the order to show cause and petition on July 30, 2009, but did not serve the respondents on or before that date. Thus, the time limit set by Election Law § 16-102(2) for instituting a proceeding was not satisfied, and the proceeding was untimely (*see Matter of McDonough v Scannapieco*, AD3d [decided herewith]; *Matter of Wilson v Garfinkle*, 5 AD3d at 410; *Matter of Marino v Orange County Bd. of Elections*, 307 AD2d 1011, 1012; *see also Matter of Keane v Clark*, 43 AD3d 639, 640; *Matter of Davis v McIntyre*, 43 AD3d at 636-637; *Matter of Riley v Democratic Party of Owasco*, 21 AD3d at 709-710).

Although the order to show cause directed the petitioner to personally serve the respondents at or before 2:00 P.M. on August 3, 2009, that provision of the order to show cause could not, and did not, extend the period of time within which to institute the proceeding (*see Matter [*2] of McDonough v Scannapieco*, AD3d [decided herewith]; *Matter of Marino v Orange County Bd. of Elections*, 307 AD2d at 1012; *Matter of Eckart v Edelstein*, 185 AD2d 955; *see also Matter of Davis v McIntyre*, 43 AD3d at 637). Accordingly, the Supreme Court properly dismissed the proceeding as untimely.

In light of our determination, we need not reach the petitioner's remaining contentions.

SKELOS, J.P., FLORIO, COVELLO, BALKIN and AUSTIN, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court

[Return to Decision List](#)

County
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Matter of Testa v DeVaul
2009 NY Slip Op 06276
Decided on August 20, 2009
Appellate Division, Second Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on August 20, 2009

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT
WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2009-07416
(Index No. 16771/09)

[*1]In the Matter of John G. Testa, et al., appellants,

v

Thomas R. DeVaul II, et al., respondents, Domenic Volpe, respondent-respondent.

DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate petitions designating Domenic Volpe as a candidate in a primary election to be held on September 15, 2009, for the nomination of the Democratic and Working Families Parties as their candidate for the public office of Member of the Westchester County Legislature for the 1st Legislative District, the petitioners appeal, as limited by their brief, from so much of a final order of the Supreme Court, Westchester County (Loehr, J.), dated August 7, 2009, as

denied those branches of the petition which were to invalidate the designating petitions, to disqualify Domenic Volpe as a candidate, and to strike his name from the ballot.

ORDERED that the final order is affirmed insofar as appealed from, without costs or disbursements.

The petitioners allege that Domenic Volpe (hereinafter Volpe), the candidate for the nomination of the Democratic and Working Families Parties as their candidate for the public office of Member of the Westchester County Legislature for the 1st Legislative District, obtained signatures for the designating petition of Thomas R. DeVaul II, a member of the Independence Party (hereinafter the DeVaul petition), in order to force an Independence Party primary election between DeVaul and the petitioner John G. Testa. The petitioners further allege that Volpe directed his son, Nicholas Volpe (hereinafter Nicholas), an enrolled member of the Independence Party, to falsely swear as a witness to qualify the signatures that Volpe purportedly obtained for the DeVaul petition, even though Nicholas did not actually witness those signatures. The DeVaul petition was invalidated by the Westchester County Board of Elections (hereinafter the Board). At a hearing before the Supreme Court, DeVaul indicated that he would not challenge the Board's determination and withdrew from the race. There is no allegation of fraud with respect to Volpe's designating petition.

The Supreme Court correctly determined that the petitioners failed to meet their burden of establishing, by clear and convincing evidence, that Volpe participated in, or is chargeable with knowledge of, any fraud with respect to the DeVaul petition (*see Matter of Perez v Galarza*, 21 AD3d 508; *Matter of McRae v Jennings*, 307 AD2d 1012; *Matter of Ragusa v Roper*, 286 AD2d at 517). At the hearing, the petitioners presented the testimony of four individuals who signed the DeVaul petition in Volpe's presence. Based on this testimony, it cannot be said that Volpe [*2]fraudulently induced the four witnesses to sign the DeVaul petition, as DeVaul's name was clearly printed on the petition and there was no evidence that Volpe made any material misrepresentations of fact. In addition, there was no evidence that Volpe induced his son Nicholas to affix his signature as a subscribing witness to those four signatures (*cf. Matter of Bynoe v Board of Elections of City of N.Y.*, 164 AD2d 929), or that Volpe exercised such control over Nicholas as to justify charging him with knowledge of the fraudulent acts allegedly committed by Nicholas. Furthermore, the Supreme Court, which saw and heard the witnesses, found that the petitioners failed to

demonstrate by clear and convincing evidence that Nicholas was not present when the subject signatories executed the DeVaul petition. Accordingly, the Supreme Court properly determined that the petitioners failed to meet their burden of demonstrating that the petitions designating Volpe as a candidate should be invalidated, that Volpe should be disqualified as a candidate, or that Volpe's name should be stricken from the ballot.

The petitioners' remaining contentions do not warrant reversal.

MASTRO, J.P., LEVENTHAL, BELEN, CHAMBERS and LOTT, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court

[Return to Decision List](#)

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Matter of Dalton v Wayne County Bd. of Elections
2009 NY Slip Op 06259
Decided on August 19, 2009
Appellate Division, Fourth Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on August 19, 2009

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, GREEN, AND PINE, JJ.

968 CAE 09-01647

[*1]IN THE MATTER OF DAVID DALTON, PETITIONER-APPELLANT,

v

WAYNE COUNTY BOARD OF ELECTIONS, DANIEL A. OLSON AND BARRY C. VIRTIS, RESPONDENTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Wayne County (John J. Ark, J.), entered August 11, 2009 in a proceeding pursuant to Election Law article 16. The order dismissed the petition.

GATES & ADAMS, P.C., ROCHESTER (CHRISTIAN M. NADLER OF COUNSEL), FOR PETITIONER-APPELLANT.

DANIEL M. WYNER, COUNTY ATTORNEY, LYONS (DANIEL C. CONNORS OF COUNSEL), FOR RESPONDENT-RESPONDENT WAYNE COUNTY BOARD OF ELECTIONS.

ANTHONY J. VILLANI, P.C., LYONS (ANTHONY J. VILLANI OF COUNSEL), FOR RESPONDENT-RESPONDENT DANIEL A. OLSON.

DOUGLAS M. JABLONSKI, WOLCOTT, FOR RESPONDENT-RESPONDENT BARRY C. VIRTIS.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the petition is granted, the designating petitions are validated, and respondent Wayne County Board of Elections is directed to place petitioner's name on the ballot as a candidate for election to the office of Sheriff of Wayne County for the Republican primary to be held September 15, 2009.

Memorandum: Petitioner commenced this special proceeding pursuant to Election Law § 16-102 seeking an order validating his designating petitions and directing respondent Wayne County Board of Elections to place his name on the ballot as a candidate for election to the office of Sheriff of Wayne County for the Republican primary. Supreme Court erred in dismissing the petition based on its determination that 67 signatures collected by two subscribing witnesses were invalid because the subscribing witnesses listed the incorrect town of residence in the "Witness identification information" section of the "STATEMENT OF WITNESS." Election Law § 6-132 (2) provides in relevant part that "[t]here shall be appended at the bottom of each sheet [of a designating petition] a signed statement of a witness who is a duly qualified voter of the state and an enrolled voter of the same political party as the voters qualified to sign the [*2]petition" The sample form set forth in that subdivision, entitled "STATEMENT OF WITNESS," requires the subscribing witness to list his or her residence address in the first paragraph of the form. The "STATEMENT OF WITNESS" section of the sample form entitled "Witness identification information" contains blank spaces for "Town or City" and "County," and sets forth that "[t]he following information must be completed prior to filing with the board of elections in order for this petition sheet to be valid."

Here, two subscribing witnesses, a husband and wife, correctly listed their complete address in the first paragraph of the "STATEMENT OF WITNESS" section on each of seven sheets, but incorrectly listed the Town of Wolcott as their town of residence in the blank space for "Town or City." Both subscribing witnesses filed affidavits in support of the petition, respectively stating that, in completing the designating petition sheets, each believed that the rented house in which they were residing was located in the Town of Wolcott but thereafter learned that the house was actually located in the Town of Butler.

We conclude that the court erred in dismissing the petition, relying on *Matter of Frome*

v Board of Elections of Nassau County (57 NY2d 741), and we therefore reverse.

Frome is distinguishable from this case because it involved the omission of the town of residence from the "STATEMENT OF WITNESS," not the inclusion of an incorrect town of residence (*see id.*). We instead conclude that this case is on all fours with, e.g., our decision in *Matter of Powers v Kozlowski* (54 AD3d 540, 541, *lv denied* 11 NY3d 701), wherein we wrote that, "[a]lthough the inclusion of the incorrect town or city of residence in each Witness identification information' section in question was indeed a violation of Election Law § 6-132 (2), we note that the complete address of each subscribing witness was listed in the first paragraph of the STATEMENT OF WITNESS.'" We thus conclude that "[w]here, as here, the Election Law violation does not involve the substantive requirements of witness eligibility' and there is no implication of fraud, resort to strict construction should be avoided if it would lead to injustice in the electoral process or the public perception of it" (*Matter of McManus v Relin*, 286 AD2d 855, 856, *lv denied* 96 NY2d 718; *see Powers*, 54 AD3d at 541; *Matter of Pulver v Allen*, 242 AD2d 398, 400, *lv denied* 90 NY2d 805).

Entered: August 19, 2009

Patricia L. Morgan

Clerk of the Court

[Return to Decision List](#)

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EDWARD H. LEINER
Justice

Comby
412

PART 19

MATTER OF THE APPLICATION OF
BRANDON BRICE et al.
- v -
DENICE JOHNS et al.

INDEX NO. 111289/09
MOTION DATE AUG 11 2009
MOTION SEQ. NO. 001
MOTION CAL. NO. 14

The following papers, numbered 1 to _____ were read on this motion to/for VALIDATE/INVALIDATE

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

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GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 AUG 18 PM 4:37

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

otherwise held in abeyance by the court is herein resolved and the report and recommendation of the Special Referee dated August 12, 2009, within this proceeding to Validate and to Invalidate the parties' respective Petitions, is herein confirmed and the plaintiffs' application to withdraw the instant petition and request to be permitted to voluntarily discontinue this proceeding without prejudice are granted in accordance with the plaintiffs' application and the stipulation of the parties as agreed to on the record before the Special Referee on August 12, 2009. This constitutes the decision and order of the court.

Dated: AUG 13 2009

EDWARD H. LEINER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - IAS PART 86

COPY

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IN THE MATTER OF THE APPLICATION OF
BRANDON BRICE and LUCILE MIDDLETON,
Plaintiffs,

INDEX NO. 111289/09

-against-

MOTION SEQ. #002

DENICE JOHNS, DANIEL F. GOLLIO and THE
THE BOARD OF ELECTIONS IN THE CITY OF
NEW YORK,

**REFEREE'S REPORT
AND RECOMMENDATION**

Defendants.

-----X

TO THE SUPREME COURT - NEW YORK COUNTY : IAS PART 19

By oral direction and on record order of the Honorable Edward H. Lehner on August 12, 2009, the factual issues raised in this proceeding, under motion sequence number 001, for an order validating the designating petitions of the plaintiffs and invalidating and declaring null and void the designating petitions of the defendants for election as Republican Party candidates for various Republican Party positions in the 70th Assembly District of and for the County and City of New York, in the Republican Party Primary Election to be held September 15, 2009, were referred for assignment to a Special Referee to hear and report with recommendations.

This matter, under motion calendar number 14 on the special election motion calendar of August 11, 2009, and

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GENERAL COUNSEL
BO. OF ELECTIONS
IN THE CITY OF NEW YORK

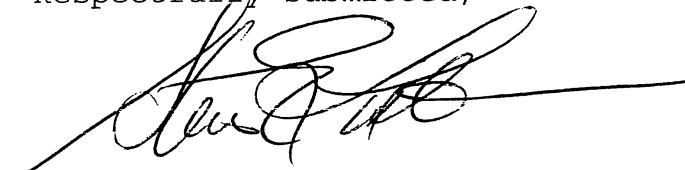
adjourned to this date, was assigned to the undersigned Special Referee on August 12, 2009. The plaintiffs and the defendants have each appeared individually *pro se* and the Board of Elections has appeared by counsel of record.

At a conference on August 12, 2009, with the undersigned Special Referee, the plaintiffs and the defendants indicated that this matter was settled and that the plaintiffs' instant underlying application was essentially moot. The plaintiffs' requested leave to withdraw the Petition to Validate and Invalidate and to voluntarily discontinue this proceeding without prejudice. The defendants and the Board of Elections' counsel raised no objection and consented to such requested relief.

Accordingly, I hereby report that this matter has been settled and disposed of by the withdrawal of the Petition to Validate and Invalidate and the voluntary discontinuance of this proceeding without prejudice by plaintiffs before the Special Referee on August 12, 2009. I recommend that the court confirm this report permitting the withdrawal of the Petition and the voluntary discontinuance of this proceeding without prejudice, and issue a short form order for same.

DATED: **AUG 12 2009**

Respectfully submitted,



STEVEN E. LIEBMAN
Special Referee

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GENERAL COUNSEL
22. OF ELECTIONS
IN THE CITY OF NEW YORK

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).

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.

In the Matter of the Application of JOHN P. SMYTH as Objector and
DIERDRE A. FEERICK as Aggrieved Candidate,
Petitioners-Respondents,
-against-
DAVID J. ROSASCO
Respondent-Appellant,
-and-
the Board of Elections of the City of New York,
Respondent.

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

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

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

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

Appeal

Paper Appealed From (check one only):

- Amended Decree
- Amended Judgment
- Amended Order
- Decision
- Decree
- Determination
- Finding
- Interlocutory Decree
- Interlocutory Judgment
- Judgment
- Order
- Order & Judgment
- Partial Decree
- Resettled Decree
- Resettled Judgment
- Resettled Order
- Ruling
- Other (specify):

Court: Supreme	County: Queens
Dated: August 13, 2009	Entered: August 14, 2009
Judge (name in full): Bernice D. Siegel	Index No.: 19998/09
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input checked="" type="checkbox"/> Non-Jury

Prior Unperfected Appeal 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: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	Date Filed:
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. The appeal is from a judgment granting a petition for an order declaring invalid the Designating Petition of the 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.

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.

1. The specific objections of the Petitioners were not timely served.
2. The specific objections of the Petitioners were an invalid attempt to assert specific objections that were required to have been presented at the Board of Elections.
3. The number of valid signatures in the candidate-respondent's petition exceeded the required nine hundred (900) signatures.

Issues Continued:

4. The trial court erred in admitting the Supplemental Specifications of the Aggrieved Candidate
5. The trial court erred in admitting a clerk's report of the Board of Elections that was not signed by both the Chief Clerk and the Deputy Chief Clerk of the Board.
6. The trial court erred in refusing to admit affidavits that showed that registered Democratic voters had moved their residences and their signatures were improperly disregarded as "NR" not registered.
7. The trial court erred in holding that the candidate-respondent's first affirmative defense in his Answer to the Petition was not timely and therefore he could not argue that signatures that had been held to be invalid were in fact valid signatures of voters.

Use Form B for Additional Appeal 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	John P. Smyth	Petitioner	Respondent
2	Dierdre A. Feerick	Petitioner	Respondent
3	David J. Rosasco	Respondent	Appellant
4	the Board of Elections in the City of	Respondent	
5	New York		
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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: Stephen H. Weiner, Esq.

Address: 750 Third Avenue, Ninth Floor

City: New York State: NY Zip: 10017 Telephone No.: 212-566-4669

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):

3																			
---	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Attorney/Firm Name: Frank A. Bolz, III, Esq.

Address: 95-25 Queens Boulevard, 11th Floor

City: Rego Park State: NY Zip: 11374 Telephone No.: 718-459-9000

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	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):

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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):

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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):

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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 Request for Appellate Division Intervention (Form A, this document); (2) any required Additional Appeal Information Forms (Form B); (3) any required Additional Party and Attorney Information Forms (Form C); (4) the notice of appeal or order granting leave to appeal; (5) a copy of the paper or papers from which the appeal or appeals covered in the notice of appeal or order granting leave to appeal is or are taken; and (6) a copy of the decision or decisions of the court of original instance, if any.

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

-----X
In the Matter of the Application of
JOHN P. SMYTH as Objector and
DIERDRE A. FEERICK as Aggrieved Candidate

Petitioners,

Index No. 19998/09

-against-

DAVID J. ROSASCO

NOTICE OF APPEAL

-and-

the Board of Elections of the City of New York,

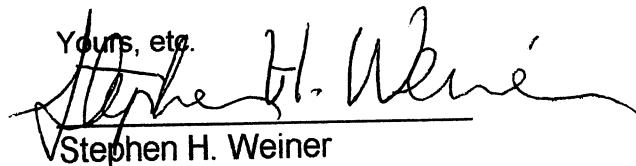
Respondents,

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
and which bears the identification numbers of:
QN'09 00851

-----X
PLEASE TAKE NOTICE THAT the Respondent David J. Rosasco hereby appeals to the
Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
from an Order and Decision and a Judgment of the Supreme Court, Queens County (Hon.
Bernice D. Siegel), dated August 13, 2009 and entered on August 14, 2009. This appeal is
taken from each and every part of the Order and Decision and Judgment that the Petition is
granted.

Dated: New York, New York
August 18, 2009

Yours, etc.



Stephen H. Weiner
Law Office of Stephen H. Weiner
Attorney for the Respondent
David J. Rosasco
750 Third Avenue, Ninth Floor
New York, New York 10017
(212) 566-4669

2009 AUG 18 PM 3:06

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

To:

Frank A. Bolz III, Esq.
Attorney for the Petitioner
95-25 Queens Boulevard, 11th Floor
Rego Park, New York 11374
(718) 459-9000

Board of Elections in the City of New York
42 Broadway
New York, New York

Clerk of the Court
Supreme Court of the State of New York
Queens County

ORIGINAL

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, BERNICE D. SIEGAL
Justice

Election PART I

-----X
In the Matter of the Application of
JOHN P. SMYTH as Objector and
DIERDRE A. FEERICK as Aggrieved
Candidate,

Index Number:19998/2009

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 number (900)

QUEENS COUNTY CLERK
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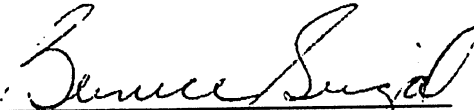
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GENERAL COUNSEL
BD OF ELECTIONS
IN THE CITY OF NEW YORK
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and respondent failed to rehabilitate any invalid signatures.

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.



Clerk

2009 AUG 14 AM 11:14
FILED
QUEENS COUNTY CLERK
RECORDED

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF QUEENS : CIVIL TERM : PART I

3 -----X

4 JOHN P. SMYTH as Objector and
5 DEIRDRE A. FEERICK as Aggrieved Candidate,

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Petitioners,

Index No.
19998/09

-against-

DAVID J. ROSASCO and THE BOARD OF ELECTIONS
OF THE CITY OF NEW YORK,

Respondents.

-----X

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

B E F O R E:

HONORABLE BERNICE D. SIEGAL,
Justice, Supreme Court

ORIGINAL

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

SWEENEY, GALLO, REICH & BOLZ, L.L.P.

Attorneys for Petitioners
95-25 Queens Boulevard - Suite 626
Rego Park, New York 11374

BY: MICHAEL H. REICH, ESQ.
GERARD SWEENEY, ESQ.

STEPHEN H. WEINER, ESQ.
Attorney for Respondents
750 Third Avenue - 9th Floor
New York, New York 10017

NICOLE C. ROBINSON, CSR
Senior Court Reporter

PROCEEDINGS

1 THE COURT: Petitioner John P. Smyth as
2 objector and Deirdre Feerick as aggrieved candidate
3 commenced the within special election proceeding by
4 order to show cause against David J. Rosasco and the
5 Board of Elections to invalidate the designating
6 petition of the respondent Rosasco as democratic
7 candidate, the public office of city council member of
8 the 26th Council District.

9 Petitioner Smyth timely filed objections to
10 the petitions of the respondent and in response thereto
11 the Board in its clerk's report found that the
12 candidate's petition had only 882 valid signatures where
13 900 signatures are required. The candidate then timely
14 filed objections to the clerk's report and an amended
15 clerk's report was issued pursuant to the hearing on
16 August 4th correcting its finding so that the total
17 number of valid signatures were found to be 902.

18 Supplemental objections which in addition to
19 the original objections and specifications are in fact
20 the subject of this petition were served upon the Board
21 and by overnight mail upon the respondent candidate on
22 August 6, 2009. Whereupon the staff on August 7, 2009
23 at the Queens Board of Elections began the process of
24 reviewing the objections. An amended supplemental
25 clerk's report was issued on August 7, 2009 finding the

PROCEEDINGS

1 total number of valid signatures were now only 789.

2 However, the amended supplemental clerk's
3 report was signed only by the chief clerk Barbara
4 Conacchio and not the deputy chief clerk as is the
5 custom at the Board of Elections throwing into question
6 the validity of such amended supplemental clerk's
7 report. Nonetheless, the Court admitted the amended
8 supplemental clerk's report subject to the legal
9 arguments and testimony adduced at trial.

10 It is noted that the special proceeding herein
11 is timely commenced pursuant to statute and prior to the
12 filing of the supplemental objections to the Board.
13 Issue is joined by service and filing of the verified
14 answer with an affirmative defense requesting
15 reconsideration of the Board's overruling respondent's
16 objection and "that additional signatures referred in
17 the objections be deemed properly included," and that
18 respondent has the right to submit "supplemental
19 specification of objections" that were not presented at
20 the 8/4/09 hearing.

21 As an initial matter, respondent moves to
22 dismiss the petition upon the grounds that in essence
23 the Court does not have jurisdiction over supplemental
24 objections that were never served by the aggrieved
25 candidate upon the Board of Elections for review in

PROCEEDINGS

1 accordance with the statute. This motion fails.

2 Pursuant to Election Law 161021 because Deirdre Feerick
3 is an aggrieved candidate, she was not required to file
4 objections and specifications prior to the commencement
5 of the proceedings. (Magee versus Camp, 253AD2d 573, 3d
6 Department 1998, Deberry versus Marshant, 196 AD2d 608,
7 2d Department 1993. As these adopted the objections and
8 specification by reference of the citizen objector, the
9 invalidity of petition signatures complained of in the
10 proceeding below by Smyth are likewise properly before
11 the Court as is the amended clerk's report finding that
12 the designating petition had 902 valid signatures.

13 Without reaching questions of law as to
14 whether the supplemental objections served on August 7,
15 2009 are properly before the Court, the Court finds as
16 fully set forth below that the total number of valid
17 signatures are no more than 899 due to clerical errors
18 made at the Board. As to the amended clerk's report,
19 evidence was adduced at trial that the Board made a
20 mathematical error on page 70 of the specification to
21 objections wherein page 70 erroneously stated that there
22 were 13 signatures, but the agreed objections as stated
23 were 12 and not ten as noted in the tally. And,
24 therefore, the total number of valid signatures should
25 have been one and not three (page 61, line 14 of the

PROCEEDINGS

1 transcript dated August 11, 2009) bringing the total
2 signatures to 900.

3 Further, the Court rules that the signature of
4 Robert Conway in volume 851, page 41, line nine signed
5 on June 25, 2009 was counted as a plus one on
6 petitioner's exhibit as it was originally noted as
7 illegible, see Exhibit 2, and then determined not to be
8 illegible. However, the signature of Robert Conway was
9 previously validated in volume 116, page 59, line ten,
10 signed on August 22, 2009 for the aggrieved candidate.

11 Ms. Conacchio agreed that the plus one was
12 then incorrect and should be subtracted bringing the
13 corrected total of valid signatures to 899 below the
14 required 900. Respondent further complains that this
15 proceeding is unfair because of the short notice of the
16 supplemental objections served on August 7, 2009, four
17 days before the hearing on the within proceeding.

18 No guidance is provided as to the specificity
19 required in the petition of the aggrieved candidate nor
20 has either party provided the Court with any rules which
21 may pertain to this issue. The Court, however, notes
22 that the rules for the special election part for Queens
23 County has no requirement as to when specification of
24 objections or Bill of Particulars by an aggrieved
25 candidate to invalidate a designating petition should be

PROCEEDINGS

1 served upon the adversaries and filed with the Court
2 (but cf Kings County rules for special election wherein
3 the specifications or Bill of Particulars of an
4 aggrieved candidate for this year must be served and
5 filed by August 3, 2009.)

6 Petitioner argues that the Court should find
7 that the supplemental objections are similar to the Bill
8 of Particulars in this proceeding and properly before
9 the Court. The Court finds that the supplemental
10 objections are properly before the Court and the
11 respondent is not prejudiced by the timing in which they
12 were served. The respondent received the supplemental
13 objections early in the day on Friday, August 7, 2009
14 which allowed for a full four days to review and prepare
15 for argument in and trial.

16 Admittedly, the respondent did not address the
17 supplemental objections during that time. As the Court
18 has found that these supplemental objections are
19 properly before it, the Court notes that the parties
20 have agreed by written stipulation incorporated as
21 Court's Exhibit 1 that although candidate Rosasco did
22 not waive his objections to the supplemental
23 specifications in their entirety and continues to
24 request that they not be considered by the Court and
25 whereas the petitioner maintains that the supplemental

PROCEEDINGS

1 specifications should be considered in their entirety,
2 and if the Court considers the supplemental
3 specifications, then one, at least 33 signatures in the
4 candidate's petition that are the subject of the
5 objection (SAP) in the supplemental specifications are
6 signatures of voters who in fact signed another petition
7 for the same office on an earlier date.

8 Two, at least six other signatures in the
9 candidate's petition that are the subject of objections
10 and NR, NE or DUP in the supplemental specifications are
11 the subject of the objections that should be treated (as
12 stated). Accordingly, the parties have agreed that upon
13 the Court's finding that the supplemental specifications
14 are properly before it for consideration, that at least
15 39 signatures should be invalidated in addition to the
16 three errors by the Court thereby reducing even more the
17 number of valid signatures for the designating petition.

18 The Court notes that because of the
19 mathematical result, it need not go line by line to
20 further find the validity or invalidity of the
21 supplemental specifications listed by the aggrieved
22 candidate as the valid number of signatures is well
23 below the 900 requirement.

24 Finally, the Court must address respondent's
25 argument as to whether or not his affirmative defense

PROCEEDINGS

1 properly puts before the Court his specification of
2 objections. Petitioner argues that respondent was
3 required as a matter of law to file a petition or a
4 cross-petition in order to be granted that affirmative
5 relief. Respondent relies on the Appellate Division
6 case *Halloway versus Blakely*, 77AD2d Department 932 1980
7 in which the Court held that the affirmative defenses
8 that signatures previously held invalid should be
9 considered even though it was served after the statutory
10 period to commence a proceeding to validate or
11 invalidate a designating petition.

12 In *Halloway*, the Court thereby permitted an
13 affirmative defense rather than a specific proceeding.
14 They found that because of the rejection of the
15 candidate's designating petitions happened after the
16 14-day period, it was impossible for the candidate to
17 timely file a petition and was forced to resort to an
18 answer in response. Thus, as the Court of Appeals held
19 in a previous matter, strict compliance with the
20 statutory period in that regard would be unjust and the
21 Appellate Division held in *Halloway* that the answer
22 which was served within four days of the commencement of
23 the proceeding to be timely and those signatures which
24 had been declared invalid by the Board of Elections
25 would be reviewed.

PROCEEDINGS

1 The petitioner argues that the Court should
2 look to Krueger versus Richards (59 New York 2d 680 and
3 follow its lead. The Court finds that Krueger is
4 inapposite to the case at bar because in that matter,
5 responding candidate had failed to file specific
6 objections at the Board of Elections and permitting the
7 candidate to raise those specific objections so late in
8 the game would have been manifestly unfair to the
9 petitioner and that's not what we have in this case.

10 The question respondent puts forward to the
11 Court is whether the failure to file a cross-petition
12 deprives the Court of jurisdiction in this matter.

13 Finally, the Court notes that after the
14 Halloway decision and its progeny, the legislature took
15 notice and amended Section 16-102 to remedy the
16 situation when a candidate's petition is found invalid
17 by the Board and it is after the statutory period for
18 which a party may commence a special proceeding. The
19 legislature built in an additional three days for the
20 candidate objectant to file a special proceeding after
21 the determination of invalidity.

22 Accordingly, given the relief that 16-102
23 provides for the aggrieved candidate whose petitions
24 have been invalidated to commence a proceeding, the
25 Court holds that even though there was no unfair

PROCEEDINGS

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surprise in this matter, that the respondent candidate should have commenced a petition or cross-petition after it was found that the petition was invalid.

Even if the Court were to have considered the affirmative defense of the candidate, the Court finds that the candidate failed to produce at trial any witnesses or documentary evidence in admissible form to rehabilitate any of the invalid signatures. Respondent attempted to produce a number of affidavits purportedly signed on behalf of individuals whose signatures were declared invalid, but such submission was subject to an objection which the Court sustained on the grounds of hearsay. Accordingly, the foregoing constitutes the decision and order and judgment of the Court.

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL MINUTES TAKEN OF THIS PROCEEDING.

Nicole C. Robinson
NICOLE C. ROBINSON, CSR
Senior Court Reporter

Index No. 19998

Year 2009

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

=====

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,

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

and which bears the identification numbers of:
QN'09 00851

=====

NOTICE OF APPEAL

=====

Stephen H. Weiner
Office Address & Tel. No.:
750 Third Avenue, 9th Floor
New York, New York 10017
(212) 566-4669

=====

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed documents are not frivolous.

Dated:..... Signature

Print Signor's Name

Service of a copy of the within is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

that the within is a (certified) true copy of a
NOTICE OF ENTRY entered in the office of the clerk of the with named Court on 20 .

that an Order of which the within is a true copy will be presented for settlement to the Hon. _____ M.
_____, one of the Judges of the within named Court, at

NOTICE OF SETTLEMENT

90:3:06
APR 18 2009
RECEIVED
GENERAL COUNSEL
BO. OF ELECTIONS
IN THE CITY OF NEW YORK

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

August 14, 2009

*Com mtg
Fyp*

Board of Elections City of New York
32 Broadway
7th Floor
New York, NY 10004

A file has been opened in the case of:

TITLE: Matter of Leroy v Board of Elections
COURT: Supreme COUNTY: Queens PAPER: Order
DATED: 08/11/2009 INDEX NO.: 21141/09

This case has been assigned the following number on the docket of
this court:

2009-07528

ALL PAPERS AND CORRESPONDENCE RELATING TO THIS MATTER MUST
HEREAFTER BEAR THIS CASE NUMBER.

James Edward Pelzer
Clerk

2009 AUG 18 PM 3: 05

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GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

County
P42

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
FY12

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2009 AUG 17 P 3:53 B

DUTCHESS COUNTY
BOARD OF ELECTIONS

At a Term of the Supreme Court of
the State of New York, held in and
for the County of Dutchess, at the
Supreme Court Courthouse thereof,
on the 17th day of August, 2009,

PRESENT

_____ x
In the Matter of the Application of

**FRAN KNAPP, COMMISSIONER,
DUTCHES COUNTY BOARD OF ELECTIONS**

Petitioner

For an Order Pursuant to
Article 78 of the Civil Practice Law and Rules

INDEX NO. **2009** 6579

-against-

**ORDER TO SHOW
CAUSE**

**DAVID GAMACHE, COMMISSIONER
DUTCHESS COUNTY BOARD OF ELECTIONS**

FILING FEES
PAID

-Respondent-

R# 44785 DATE 8/17/09 ©

Upon the annexed verified petition of the Petitioner, with exhibits, and upon all
the proceedings hereto and herein;

Let the Respondent named herein above Show Cause before the Court at the IAS
Term thereof to be held at the Supreme Court Courthouse, 10 Market Street,
Poughkeepsie, New York, Dutchess County, State of New York, on the 21st day of
August, 2009 at 9:30 a.m. ^{before HON. JAMES V. BRANDS, J.S.C.} of that day or as soon thereafter as council can be heard, why
an order should be made and entered herein pursuant to sections 3-212, 3-216, 16-100,
16-102, 16-208, 16-116 of the Election Law

1. Compelling Respondent to Rule on the General and Specific objections filed for the Primary elections to be held September 15th, 2009 and the General election to be held November 3rd, 2009 on or before August 29th 2009 in the Court or such other place as the Court determines;

2. Awarding Petitioner such further relief including Attorney's fees as the Court may deem just and proper in the premises; and it is further;

ORDERED, that the Respondent DUTCHESS COUNTY BOARD OF ELECTIONS be and is hereby ordered and directed to produce upon the Hearing of this Order to Show Cause and on all adjournments thereof, the aforesaid opportunity to ballot petitions, together with any objections and specifications relating to the aforesaid opportunity of ballot petitions, all Determinations in the matter of all objections to ballot petitions filed with the Board of Elections, any written notification of a determination of non-compliance together with proof of service therein, any writing purporting to cure or correct said determination of non-compliance, the permanent personal voter registration poll records of voters as may be required, and the worksheets, records and reports of Clerks of the Board of Elections made on such objections and specifications for examinations by this Court, and

SUFFICIENT CAUSE APPEARING THEREOF, leave is hereby granted to the Petitioner to submit, upon the return of this Order to Show Cause and any adjournments thereof, and the arguments thereof, such additional exhibits, and other proof as may be necessary, and it is

ORDERED, that proof of service may be filed with the Court on the return date specified herein, and it is

ORDERED, that this Court finds venue properly placed in DUTCHESS County, and any relate proceedings commenced by the Respondents hereto shall be made returnable in DUTCHESS County and,

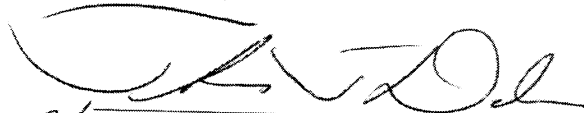
SUFFICIENT CAUSE APPEARING THEREOF, it is further

ORDERED, that service of a copy of this order, together with a copy of the papers upon which it is granted, on the Respondent DUTCHESS COUNTY BOARD OF ELECTIONS, and the Commissioners thereof be made by leaving a copy of said order and papers at the Office of the said BOARD OF ELECTIONS, or by delivering same to any one of the Commissioners, Deputy Commissioners, the County Attorney's Office, or authorized employees of the said Board, on or before the 18th of August, 2009, ~~or alternatively, at the options of the petitioners same may be served by enclosing said papers in a post paid wrapper addressed to Respondent BOARD OF ELECTIONS and deposited with a depository of the United States Postal Service via EXPRESS and that such service shall be deemed due, timely, good and sufficient service thereof, and such service shall constitute sufficient notice hereof.~~

DATED: AUGUST 17 2009,

Raymond, NEW YORK
Raymond

ENTER



AT Justice of the Supreme Court

Hon Thomas J. Dolan

* signed as Duty Judge

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

_____ x
In the Matter of the Application of
**FRAN KNAPP, COMMISSIONER,
DUTCHESS COUNTY BOARD OF ELECTIONS**

Petitioner

For an Order Pursuant to
Article 78 of the Civil Practice Law and Rules

INDEX NO.

-against-

VERIFIED
PETITION

**DAVID GAMACHE, COMMISSIONER,
DUTCHESS COUNTY BOARD OF ELECTIONS
DUTCHESS COUNTY BOARD OF ELECTIONS**

-Respondent-

_____ x
TO THE SUPREME COURT OF THE STATE OF NEW YORK:
COUNTY OF DUTCHESS:

Your Petitioner, by her attorney, Jonathan B. Altschuler, Esq, for a Verified
Petition, respectfully shows to this Court and alleges:

1. That at all times hereinafter mentioned, **Fran Knapp**, petitioner was and is
Commissioner of the Dutchess County Board of Elections and claims standing to bring
this action under the Election Law
2. That at all times hereinafter mentioned, **David A. Gamache**, respondent
was and is a Commissioner of the Dutchess County Board of Elections
3. That at all times hereinafter mentioned, the Respondent **DUTCHESS COUNTY
BOARD OF ELECTIONS** was and is charged with the responsibility of the supervision
of the conduct of official elections held in **DUTCHESS COUNTY**, including the duties
of receiving and filing opportunity to ballot petitions for public office and party positions

in political subdivisions in DUTCHESS COUNTY, including the review and determination of objections and specifications of objections to such opportunity to ballot petitions, notification of a determination of non-compliance, maintaining the official voter registration list and official maps for all election districts located within the subject political subdivision, and the preparation of official Primary Election and General Election ballots for use throughout DUTCHESS COUNTY. The above captioned Commissioners constitute the Board.

4. That on or about July 2009, there were filed with the Respondent Board of Elections certain papers constituting fifty nine (59) General objections and Specific objections to petitions for the September 15th, 2009 Primary Elections and the November 3rd General Elections for the Conservative Party, Democratic Party, Independence Party, Republican Party, and Working Families Party. Copy of Schedule Candidates, Offices, Party Line, Objector, General Objection Dates, Specific Objection Filed and Rulings of Petitioner and Respondent attached as Exhibit "A"

5. That pursuant to sections 3-212, 3-216, 16-100, 16-102, 16-208, 16-116 of the Election Law it is the responsibility of Petitioner and Respondent as Election Commissioners to rule and make determinations on objections filed with the DUTCHESS COUNTY BOARD OF ELECTIONS

6. Pursuant to Election Law Sections 3-212.02 requires: "All actions of the board shall require a majority vote of the commissioners prescribed by law for such board."

7. Petitioner ruled on fifty four (54) objections.

8. Respondent ruled on only five (5) objections and has refused, in derogation of his duties as a commissioner of the DUTCHESS COUNTY BOARD OF ELECTIONS so

that the rulings by Petitioner have no validity. Copy of notice to all objectors by petitioner attaches as Exhibit "B"

9. Respondent, though requested by Petitioner, has given no reason or explanation for his failure to rule on the objections

10. For the reason that Respondent has failed to rule on the validity of fifty four (54) objections filed with the DUTCHESS COUNTY BOARD OF ELECTIONS, the objections has not been ruled on by the DUTCHESS COUNTY BOARD OF ELECTIONS

11. This is an Article 78 proceeding to compel the Respondent to rule on the objections filed with the DUTCHESS COUNTY BOARD OF ELECTIONS on or before AUGUST 29th, 2009 so that the Primary and General elections may be held in DUTCHESS County in 2009.

12. That your Petitioner request leave and reserve the right to submit upon the argument and hearing of this application, evidence by the way of affidavits, testimony, and documentary proof to substantiate and support this application.

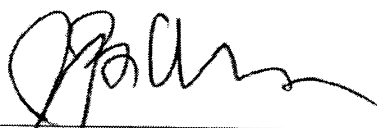
13. Petitioner has no other remedy or relief at law or in equity other than applied for herein.

14. No previous application by Petitioner has been made for the relief sought herein or for the Order to Show Cause hereunto annexed, or for any similar relief.

15. Venue is proper in DUTCHESS County. Petitioner hereby designate venue as DUTCHESS County for this and any related proceedings.

WHEREFORE, your Petitioner respectfully pray for the relief requested in the Order to Show Cause and for a final Order granting the relief prayed for in said Order.

DATED: Poughkeepsie, New York
August 17th, 2009



JONATHAN B. ALTSCHULER
JONATHAN BOBROW ALTSCHULER, P.C.
Attorney for Petitioner
521 Fifth Avenue, Suite 1700
New York, New York 10175
(212) 292-4222

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

_____ x
In the Matter of the Application of
FRAN KNAPP, COMMISSIONER,
DUTCHESS COUNTY BOARD OF ELECTIONS

Petitioner

For an Order Pursuant to
Article 78 of the Civil Practice Law and Rules

INDEX NO.

-against-

VERIFICATION

DAVID GAMACHE, COMMISSIONER
DUTCHESS COUNTY BOARD OF ELECTIONS

-Respondent-

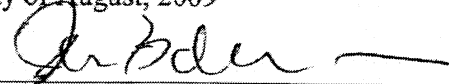
_____ x
State of New York)
): ss
County of Dutchess)

I, the undersigned, being duly sworn, depose and say:

I am the petitioner in this action. I have read the foregoing verified petition and know the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief. As to those matters I believe them to be true.


FRAN KNAPP

Sworn to be before this 17
Day of August, 2009

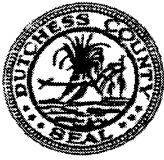


NOTARY PUBLIC
JONATHAN B. ALTSCHULER
Notary Public, State of New York
No. 02AL6087699
Qualified in Dutchess County
Commission Expires 03/24/2011

Candidate	Office	Party Line	Objector	General Objection Date	Specific Objection Filed	Fran Ruled	Dave Ruled
OTB	Wappinger Supervisor	CON	Colsey, Jennifer	7/27/2009	7/29/2009	8/4/2009	n
OTB	Beacon City Council 1st Ward	CON	Forman, John	7/27/2009	7/31/2009	n	n
Balsley, John	T. Pok. Supervisor	CON	Gephard, Robert	7/20/2009	7/27/2009	7/27/2009	n
Frye, Justin	CLEG 14	CON	Gephard, Robert	7/27/2009	8/3/2009	8/4/2009	n
Incoronato, Joseph	CLEG 15	CON	Goldberg, Sandra	7/20/2009	7/23/2009	7/24/2009	n
MacAvery, Alison	CLEG 16	CON	Higgins, Roger	7/20/2009	7/24/2009	7/28/2009	n
Liffland, Robert	Pawling Village Mayor	CON	Hoffman, Theresa	7/16/2009	7/21/2009	n	n
Krakower, Stephen	T. Pok. Council 5th Ward	CON	Hubbell, Robert	7/16/2009	7/17/2009	8/5/2009	n
OTB	T. Pok. Council 5th Ward	CON	Keller-Coffey, Richard	7/20/2009	7/27/2009	7/27/2009	n
Eagleton, Sean	T. Pok. Council 2nd Ward	CON	Lentz, John	7/27/2009	8/3/2009	8/4/2009	n
French, Daniel	Beekman Supervisor/Auth	CON	Levine, Richard	7/20/2009	7/27/2009	7/31/2009	n
Frye, Justin	CLEG 14	CON	Potanic, Edward	7/22/2009	7/28/2009	7/31/2009	n
OTB	Stanford Supervisor	CON	Sheperd, Fran	7/21/2009	7/23/2009	7/24/2009	n
Surman, Kaye	Dover Town Supervisor	CON	Stern, Virginia	7/27/2009	7/31/2009	8/4/2009	n
Perri-Oneil, Lorraine	Dover Town Council	CON	Sumner, Elisa	7/20/2009	7/27/2009	8/5/2009	n
Surman, Kathleen	Dover Town Council	CON	Sumner, Elisa	7/20/2009	7/27/2009	7/31/2009	n
Yeno, Gina Marie	Dover Tax Collector	CON	Sumner, Elisa	7/20/2009	7/27/2009	7/31/2009	n
Zulauf, Barbara	Beekman Supervisor/Auth	CON	Sumner, Elisa	7/20/2009	7/27/2009	7/31/2009	n
French, Daniel	Beekman Supervisor	CON	Usher, Thom	7/23/2009	7/29/2009	8/4/2009	n
Pastl, Sara	Beacon Council 4th Ward	CON	Zulauf, Barbara	7/17/2009	7/23/2009	8/4/2009	n
Riemer, Darlene	Amenia Town Council	DEM	Bopp, Maryann	7/16/2009	7/22/2009	7/23/2009	n
Fredericks, Marlene	Beacon Council at Large	DEM	Carroll, William	7/16/2009	7/21/2009	7/22/2009	8/7/2009
Mansfield, George	Beacon Council at Large	DEM	Deuterman, Kristina	7/16/2009	7/21/2009	7/22/2009	n
Landisi, Jerry	Beacon Council 1st Ward	DEM	Deuterman, Kristina	7/16/2009	7/21/2009	7/22/2009	n
Ray, Ronald	CLEG 18	DEM	Forman, Andrew	7/16/2009	7/22/2009	7/23/2009	n
Lashua, Carl V	Beacon Council 3rd Ward	DEM	Forman, John	7/16/2009	7/22/2009	7/22/2009	n
Harding, Sally	Pleasant Valley Sup	DEM	Garland, David A.	7/16/2009	7/22/2009	7/23/2009	n
Kelly, Charlie	Beacon Council 2nd Ward	DEM	McNair, J.F.	7/17/2009	7/22/2009	7/23/2009	n
Cass, William	T. Pok. Council 5th Ward	DEM	Novotny, Judy	7/16/2009	7/22/2009	7/27/2009	n
Kelly, Charlie	Beacon Council 2nd Ward	DEM	Salem, Susan	7/20/2009	7/22/2009	7/23/2009	n
MacAvery, Alison	CLEG 16	IND	Seagler, Mark	7/15/2009	7/27/2009	7/27/2009	n
MacAvery, Alison	CLEG 16 auth	IND	Brachfeld, Gena	7/16/2009	7/21/2009	7/22/2009	n
OTB	Hyde Park Clerk	IND	Brachfeld, Gena	7/16/2009	7/22/2009	7/23/2009	n
OTB	Beacon City Council 1st Ward	IND	Glearwater, Robert	7/27/2009	7/31/2009	8/4/2009	n
OTB	Beacon City Council 2nd Ward	IND	Forman, John	7/27/2009	7/31/2009	8/4/2009	n
OTB	CLEG 18	IND	Furco, Anthony	7/27/2009	7/31/2009	8/5/2009	n
OTB	CLEG 1	IND	Furco, Anthony	7/27/2009	7/31/2009	n	n
OTB	T. Pok. Supervisor	IND	Gephard, Robert	7/23/2009	7/30/2009	8/5/2009	n
Mccabe, William	CLEG 13	IND	Gephard, Robert	7/27/2009	8/3/2009	8/4/2009	n
OTB	Stanford Council	IND	Hanson, Pamela	7/16/2009	7/22/2009	7/23/2009	n
Soma, Somalah	T. Pok. Council 1st Ward	IND	Hanton, Carol	7/27/2009	7/29/2009	7/31/2009	n
Casale, Randy	Beacon Council 3rd Ward	IND	Hexel, Jeffrey	7/20/2009	7/27/2009	7/28/2009	n
OTB	CLEG 16	IND	Lashua, Carl V	7/16/2009	7/22/2009	8/4/2009	n
OTB	CLEG 17	IND	MacAvery, Jeff	7/29/2009	7/30/2009	8/4/2009	n
OTB	Town Pok 1st Ward	IND	Miccio, James	7/27/2009	8/3/2009	8/4/2009	n
		IND	Roth, Lindsey	7/23/2009	7/27/2009	8/5/2009	n

EXHIBIT A

Candidate	Office	Party Line	Objector	General Objection Date	Specific Objection Filed	Fran Ruled	Dave Ruled
OTB	CLEG 24	IND	Sumner, Elisa	7/29/2009	7/30/2009	8/3/2009	n
OTB	Dover Council	IND	Sumner, Elisa	7/29/2009	7/30/2009	7/31/2009	8/3/2009
OTB	Dover Tax Collector	IND	Sumner, Elisa	7/29/2009	7/30/2009	8/3/2009	8/3/2009
OTB	T Pok. Receiver of Taxes	IND	Trent, Richard	7/27/2009	8/3/2009	8/5/2009	n
Paoloni, Joseph	Wapp Council 4th Ward	IND	Viscounti, June	7/16/2009	7/22/2009	7/23/2009	n
Paoloni, Joseph	Wapp Council 4th Ward/AUTH	IND	Viscounti, June	7/16/2009	7/22/2009	7/23/2009	n
French, Daniel	Beekman Supervisor	IND	Zulauf, Barbara	7/17/2009	7/23/2009	8/4/2009	n
Jaromin, Emma	Cnty Comm Rep Amenia	REP	Chamberlin, Mike	7/21/2009	7/23/2009	8/7/2009	7/24/2009
Rebillard, Jeanne	Cnty Comm Rep Amenia	REP	Chamberlin, Mike	7/21/2009	7/23/2009	8/7/2009	7/24/2009
King, Michael	Cnty Comm Rep	REP	Davanzo, Rosalice	7/16/2009	7/16/2009	?	?
Frye, Justin	CLEG 14	REP	Goldberg, Sandra	7/16/2009	7/22/2009	8/4/2009	n
Cerrino, Rick	CLEG 5	WOR	Hexel, Jeffrey	7/20/2009	7/27/2009	7/27/2009	n
French, Daniel	Beekman Supervisor	WOR	Zulauf, Barbara	7/17/2009	7/23/2009	8/4/2009	n



DUTCHESS COUNTY
BOARD OF ELECTIONS
47 Cannon Street
Poughkeepsie, NY 12601-3270
(845) 486-2473 (845) 486-3768 (fax)
www.dutchesselections.com

DEMOCRATIC
COMMISSIONER
Frances A. Knapp

To all objectors

**I have ruled on your specific objection filed
with the Board of Elections.**

**I am enclosing my ruling for your information.
However, since Commissioner Gamache
has not ruled, the ruling is of no value to you as a
candidate.**

**Commissioner Gamache has not given me a reason for
not ruling.**

Fran Knapp
Fran Knapp
Democratic Commissioner

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

_____ x
In the Matter of the Application of
FRAN KNAPP, COMMISSIONER,
DUTCHESS COUNTY BOARD OF ELECTIONS

Petitioner

For an Order Pursuant to
Article 78 of the Civil Practice Law and Rules

INDEX NO.

-against-

DAVID GAMACHE, COMMISSIONER
DUTCHESS COUNTY BOARD OF ELECTIONS

-Respondent-

_____ x

ORDER TO SHOW CAUSE,
VERIFIED PETITION AND
EXHIBITS



Signature (Rule 130 - 1.1-a)

Jonathan B. Altschuler

JONATHAN B. ALTSCHULER
JONATHAN BOBROW ALTSCHULER, P.C.
Attorney for Petitioner
521 Fifth Avenue, Suite 1700
New York, New York 10175
(212) 292-4222

Candidate	Office	Party	Line	Objecter	General Objection Date	Specific Objection Filed	Fran Ruled	Have Ruled
OTB	Wappinger Supervisor	CON		Colsey, Jennifer	7/27/2009	7/29/2009	8/4/2009	n
OTB	Beacon City Council 1st Ward	CON		Forman, John	7/27/2009	7/31/2009	n	n
Baisley, John	T. Pok. Supervisor	CON		Gephard, Robert	7/27/2009	7/27/2009	n	n
OTB	T. Pok. Supervisor	CON		Gephard, Robert	7/27/2009	8/3/2009	8/4/2009	n
Frye, Justin	CLEG 14	CON		Goldberg, Sandra	7/27/2009	7/24/2009	7/28/2009	n
Incoronato, Joseph	CLEG 15	CON		Higgins, Roger	7/20/2009	7/24/2009	7/28/2009	n
MacAvery, Allison	CLEG 16	CON		Hoffman, Theresa	7/16/2009	7/21/2009	n	n
Liffland, Robert	Pawling Village Mayor	CON		Hubbell, Robert	7/16/2009	7/17/2009	8/5/2009	n
Krakower, Stephen	T. Pok. Council 5th Ward	CON		Keller-Coffey, Richard	7/20/2009	7/27/2009	7/27/2009	n
OTB	T. Pok. Council 5th Ward	CON		Lentz, John	7/27/2009	8/3/2009	8/4/2009	n
Eagleton, Sean	T. Pok. Council 2nd Ward	CON		Levine, Richard	7/20/2009	7/27/2009	7/31/2009	n
French, Daniel	Beekman Supervisor/Auth	CON		Potanic, Edward	7/22/2009	7/28/2009	7/24/2009	n
Frye, Justin	CLEG 14	CON		Sheperd, Fran	7/21/2009	7/23/2009	7/24/2009	n
OTB	Stanford Supervisor	CON		Stern, Virginia	7/27/2009	7/31/2009	8/4/2009	n
Surman, Kaye	Dover Town Supervisor	CON		Summer, Elisa	7/20/2009	7/27/2009	8/5/2009	n
Perri-Onelli, Lorraine	Dover Town Council	CON		Summer, Elisa	7/20/2009	7/27/2009	8/5/2009	n
Surman, Kathleen	Dover Town Council	CON		Summer, Elisa	7/20/2009	7/27/2009	8/5/2009	n
Yeno, Gina Marie	Dover Tax Collector	CON		Summer, Elisa	7/20/2009	7/27/2009	7/31/2009	n
Zulauf, Barbara	Beekman Supervisor/Auth	CON		Summer, Elisa	7/20/2009	7/27/2009	7/31/2009	n
French, Daniel	Beekman Supervisor	CON		Usher, Thom	7/23/2009	7/27/2009	7/31/2009	n
Pasti, Sara	Beacon Council 4th Ward	CON		Zulauf, Barbara	7/17/2009	7/29/2009	8/4/2009	n
Riemer, Darlene	Amelia Town Council	DEM		Bopp, Maryann	7/16/2009	7/23/2009	8/4/2009	n
Fredericks, Marlene	Beacon Council at Large	DEM		Carroll, William	7/21/2009	7/22/2009	7/23/2009	n
Mansfield, George	Beacon Council at Large	DEM		Deuteran, Kristina	7/16/2009	7/22/2009	7/22/2009	8/7/2009
Landisi, Jerry	Beacon Council 1st Ward	DEM		Deuteran, Kristina	7/16/2009	7/22/2009	7/22/2009	n
Ray, Ronald	CLEG 18	DEM		Forman, Andrew	7/16/2009	7/22/2009	7/23/2009	n
Lashua, Carl V	Beacon Council 3rd Ward	DEM		Forman, John	7/16/2009	7/22/2009	7/23/2009	n
Harding, Sally	Pleasant Valley Sup	DEM		Gariand, David A.	7/16/2009	7/22/2009	7/22/2009	n
Kelly, Charlie	Beacon Council 2nd Ward	DEM		McNair, J.F.	7/17/2009	7/27/2009	7/23/2009	n
Cass, William	T. Pok. Council 5th Ward	DEM		Novotny, Judy	7/16/2009	7/22/2009	7/23/2009	n
Kelly, Charlie	Beacon Council 2nd Ward	DEM		Salem, Susan	7/20/2009	7/22/2009	7/23/2009	n
MacAvery, Allison	CLEG 16	IND		Seegler, Mark	7/15/2009	7/21/2009	7/22/2009	n
MacAvery, Allison	CLEG 16 auth	IND		Brachfeld, Gena	7/16/2009	7/22/2009	7/22/2009	n
OTB	Hyde Park Clerk	IND		Brachfeld, Gena	7/16/2009	7/22/2009	7/23/2009	n
OTB	Beacon City Council 1st Ward	IND		Clearwater, Robert	7/27/2009	7/31/2009	8/4/2009	n
OTB	Beacon City Council 2nd Ward	IND		Forman, John	7/27/2009	7/31/2009	8/4/2009	n
OTB	CLEG 18	IND		Furco, Anthony	7/27/2009	7/31/2009	8/5/2009	n
OTB	CLEG 1	IND		Furco, Anthony	7/27/2009	7/31/2009	n	n
OTB	T. Pok. Supervisor	IND		Gephard, Robert	7/23/2009	7/30/2009	8/5/2009	n
McCabe, William	CLEG 13	IND		Gephard, Robert	7/27/2009	8/3/2009	8/4/2009	n
Soma, Somatah	Stanford Council	IND		Gleason, Pamela	7/16/2009	7/22/2009	7/23/2009	n
Casale, Randy	T. Pok. Council 1st Ward	IND		Hanlon, Carol	7/27/2009	7/29/2009	7/31/2009	n
OTB	Beacon Council 3rd Ward	IND		Hexel, Jeffrey	7/20/2009	7/27/2009	7/28/2009	n
OTB	CLEG 16	IND		Lashua, Carl V	7/16/2009	7/22/2009	8/4/2009	n
OTB	CLEG 17	IND		MacAvery, Jeff	7/29/2009	7/30/2009	8/4/2009	n
OTB	Town Pok 1st Ward	IND		Miccio, James	7/27/2009	8/3/2009	8/4/2009	n
		IND		Roth, Lindsey	7/23/2009	7/27/2009	8/5/2009	n

EXHIBIT A

ORIGINAL

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

County
FY1

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



LEE A. MAYERSOHN
J.S.C.

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

*Cominsky
 Fy2*

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

FOR CERTIFICATES FILED ON:

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
 Must Be Received By:***

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– **FRIDAY, SEPTEMBER 4, 2009 AT 2 PM.**

*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.

Revised & Issued By: The Board of Elections in the City of New York on August 18, 2009

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**REVISED 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– **FRIDAY, SEPTEMBER 11, 2009 at 2 PM.**

*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.*

Revised & Issued By: The Board of Elections in the City of New York on August 18, 2009

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 19

-----X
In the Matter of the Application of
ALAN J. GERSON,

PETITIONER,

HEARING

for an Order pursuant to the Election
Law of the State of New York, declaring
valid petition designating Petitioner as
a Candidate for the Democratic nomination
for the Public Office of Council Member
from the 1st City Council District, Borough
of New York, City of New York and directing
the said Board of Elections to print and
place the name 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,

RESPONDENT.

Index No. 09-110759

71 Thomas Street
New York, New York
August 12, 2009

B E F O R E:

HONORABLE EDWARD H. LEHNER
Justice

FILED

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

(Next Page)

AUG 18 2009

NEW YORK
COUNTY CLERK'S OFFICE

1
2
3 APPEARANCES:
4
5

6 KANTOR, DAVIDOFF, WOLFE,
7 MANDELKER, TWOMEY & GALLANTY, P.C.
Attorneys for Petitioner
8 51 East 42nd Street
New York, New York 10017
9 BY: LAWRENCE A. MANDELKER, ESQ.

10
11 DUNNINGTON, BARTHOLOW & MILLER, LLLP
Attorneys for Peter Gleason
12 1359 Broadway
New York, New York 10018
13 BY: RAYMOND J. DOWD, ESQ.

14
15 GAFFIN & MAYO, P.C.
16 Attorneys for Alan Gerson
225 Broadway
17 New York, New York 10007
BY: DUDLEY GAFFIN, ESQ.
18

19 BOARD OF ELECTIONS
CITY OF NEW YORK
20 32 Broadway
New York, New York 10004
21 BY: STEVEN H. RICHMAN, ESQ.

22 NEW YORK CITY LAW DEPARTMENT
23 100 Church Street
New York, New York 10007
24 BY: STEPHEN KITZINGER, ESQ.

25 JOHN PHELPS, CSR, RPR,
26 SENIOR COURT REPORTER

Proceedings

1
2 that's --

3 MR. DOWD: First, he signed onto it, he
4 testified to it and he's still instructing his
5 lawyer to claim that fraudulent volume. He's an
6 attorney, a grown man, he's embraced this
7 position.

8 THE COURT: I think I've heard the
9 arguments. The City doesn't want to say anything
10 further?

11 All right. The Court heard the
12 arguments, read the transcript and I've cited the
13 law before and I've cited the case of Drace above
14 that says, "Designated petition will only be
15 invalidated on the grounds of fraud if there is a
16 finding that the entire designated petition is
17 permeated with fraud."

18 Mr. Dowd has acknowledged that's not so.
19 That Court went on to say that a designated
20 petition may also be invalid when there's a
21 finding the candidate participated in
22 acknowledgement of fraud in procuring signatures
23 for designated petition, even if there are a
24 sufficient number of valid signatures independent
25 of that.

26 And the Court and I cited the further

Proceedings

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2 case of Robinson from last year, Appellate
3 Division, the fraud must be proved by clear and
4 convincing evidence, and then when they're not
5 found to be clear and convincing, to have been a
6 result of fraud only to invalidating signatures
7 should be stricken.

8 I don't find from the evidence I've read
9 from the reading of the transcript or anything
10 that was presented at the hearing that Mr. Gerson
11 participated in in any manner the alleged fraud
12 and it wasn't fraud at all. It was an error and
13 whether these seven pages, seven pages or the two
14 pages that Ms. Abramowitz acknowledged not having
15 initialed the change, that's not sufficient to in
16 any way invalidate this petition by finding fraud
17 or to attribute that fraud to Mr. Gerson.

18 Accordingly, the Court finds that the
19 petition is not permeated by fraud, nor did
20 Mr. Gerson participate in fraud. Regarding the
21 rule on the cover sheets, we all know 136, I
22 believe, ten of the Election Law provides a
23 substantial compliance and under the, under what
24 I've heard from the Board of Elections, their
25 only objection is that he had two chances to
26 submit a cover sheet.

Proceedings

1
2 And there's nothing to show that's
3 defective in the second cover sheet. It's merely
4 the, merely that is was two cover sheets. Well,
5 the Referee found the first cover sheet was a
6 nullity and that there really was only one cover
7 sheet but I'm -- if that were wrong, there's no
8 reason the Court in applying the substantial
9 compliance test should not find that the, that a
10 candidate should have the right to correct an
11 error, which petitioner acknowledged is not done
12 for any benefit, and I think he acknowledges it's
13 even a printer's error. There's no reason why
14 the Court should strike the candidate's candidacy
15 under these circumstances, where merely because
16 it was a second bite at the apple. If the apple
17 was proper, if the petition, the cover sheet was
18 proper, which the Board apparently acknowledges
19 it was, as a second amended one, then there's no
20 defect in the cover sheet and even if there were
21 a defect in the cover sheet, there has been
22 substantial compliance, but there's no error so I
23 don't think you even have to get to substantial
24 compliance.

25 But if he wasn't entitled to two shots
26 at the apple, then there was substantial

Proceedings

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2 compliance by allowing a second amended cover
3 sheet.

4 In the case of Siems, S-I-E-M-S versus
5 Lite, L-I-T-E, 3A7 AD 2d 1016, the Court said
6 there's no justification for invalidating
7 designating petition under the rules referring to
8 the election rules of the Board which ought to be
9 liberally construed when there's substantial
10 compliance and there's no evidence of confusion
11 either by potential voters or the Board of
12 Elections, and they were dealing there with a
13 cover sheet and there are other cases that have
14 come to similar conclusions. Let's see, this is
15 the Referee cited this case going way back to
16 1995 before the amendments, L-E-F-E-V-E-R --
17 versus F-R-O-M-S-O-N versus L E F E V E R at
18 112AD 2d 264, which is affirmed by the Court of
19 Appeals where inconsequently violation of
20 technical rule is violated by which a candidate
21 has nothing to gain and the violation creates no
22 difficulty in reviewing the petition for its
23 validity and accuracy and which presents no
24 potential for fraud and prejudice, then the
25 violation must be deemed inconsequential and the
26 petitioner should be satisfied to have complied

Proceedings

1
2 with the requirements of the Election Law.

3 That is something that the courts issued
4 even before we put in, the legislature put in
5 substantial compliance.

6 So the Court finds that after hearing
7 the arguments and reviewing the petition and the
8 hearing and the report of the referee that the
9 report of the referee should be confirmed that
10 the Board of Elections should place Mr. Alan J.
11 Gerson on the ballot for the primary election to
12 be held on September 15th as a candidate for City
13 Council and Council member of the First Manic
14 Council New York. The foregoing constitutes the
15 judgment of the court. Anything else technically
16 that needs to be added?

17 MR. MANDELKER: No, your Honor. Is
18 there going to be a written order?

19 THE COURT: This is it. The written
20 order would say the decision is, the motion is
21 granted. Put decision on record this day. The
22 Court, when you get the transcript, will so order
23 it for appellate purposes.

24 MR. DOWD: Thank you.

25 MR. MANDELKER: Thank you. We need to
26 serve the Board of Elections, so they know to --

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Proceedings

THE COURT: The foregoing decision constitutes the decision of the Court.

(Whereupon, at this time, the proceedings were concluded.)

C E R T I F I C A T E

I do hereby certify that the foregoing taken at the time and place aforesaid, is a true and correct transcription of my shorthand notes.

John Phelps

JOHN PHELPS, CSR, RPR, CRR

SO ORDERED

Edward H. Lehner

Edward H. Lehner
J.S.C.

FILED

AUG 18 2009

AUG 18 2009

NEW YORK
COUNTY CLERK'S OFFICE

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Short Form Order/Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE VALERIE BRATHWAITE NELSON ELECTION PART J
Justice

-----x
In the Matter of the Application of

Index No.: 21060/09

MARQUEZ CLAXTON

Motion

Dated: 8/17/09

Petitioner,

as designated for the public office
of Member of the New York City Counsel
from the 31st Council New York City
Council District, County of Queens,
City and State of New York

Cal. No.: 1

Petitioner,

-against-

YVONNE MITCHELL, JULIET BARTON, and
RICHARD MURPHY,

Objectors-Respondents,

Commissioners of Elections of the Board
of Elections in the City of New York
constituting the Board of Elections in
the City of New York,

Respondents,

for an order declaring valid the
designating petition which designated
the petitioner for the public office of
Member of the New York City Counsel from
the 31st New York City Council District,
County of Queens, City of New York, in
the Democratic Primary Election to be
held on September 15, 2009

-----x

The following papers numbered 1 to 4 read on this
application by petitioner to validate the designating petition of
Marquez Claxton.

Papers
Numbered

Order to Show Cause, Petition, Exhibits, Affidavits... 1 - 4

Upon the foregoing papers and after a hearing, oral argument and due deliberation, the application is decided as follows:

In this special election proceeding an order is sought declaring valid the petition designating the petitioner as a candidate for the public office of member of the New York City Council District, from the 31st New York City Council District, County of Queens, City of New York, to be voted upon in the Democratic Primary Election to be held on September 15, 2009. On August 11, 2009, counsel for the parties appeared before the Court and consented to an adjournment of the hearing for the purpose of providing the parties with an opportunity to appear at the New York City Board of Elections (hereinafter also referred to as "the Board") to review various documents relating to the designating petition.

After appearing at the Board and extensively reviewing the petition all counsel returned to the Court for the continuation of the hearing herein. During the hearing counsel stipulated as follows: Petitioner submitted 2,340 signatures on the petition filed; the Board found 1,445 of those signatures invalid; the Board found 895 of those signatures valid; and a potential candidate must obtain 900 signatures to be placed on the ballot.

Based upon the aforementioned stipulation, petitioner must establish that five additional signatures are valid if the petitioner is to be placed on the ballot for the election. As noted above, the Board determined that 1,445 of the signatures submitted by petitioner were invalid. Of these 1,445 signatures, the Board determined that 291 of such signatures were invalid due to illegible signatures. Petitioner objects to the Board's finding of illegible signatures with respect to the signatures of the following fourteen individuals:

Clainda Stuart	Marie Michel
Jacqueline Jaome	Allan Monroe
Kwame Obeng	Cleveland Vanier
Pamela Brown	Wanda Lowe
Gwendolyn Jackson	Sara Martinez
Edwin D. Solomon	Melissa Martinez
Chukwuemeka Ude	John Wells

During the hearing, petitioner adduced evidence in the form of

affidavits from each of the aforementioned fourteen individuals. Thirteen of these affidavits were admitted into evidence without objection, as petitioner's exhibit 1. One affidavit, bearing the name of Wanda Lowe, was admitted into evidence as part of petitioner's exhibit 1, over the objection of counsel for respondents. Each of the affidavits attests that "... I signed the designating petition of ... [petitioner]..." The Court finds that with the exception of the affidavit bearing the name of Wanda Lowe, petitioner exhibit 1 is sufficient credible evidence to satisfy petitioner's burden of proof. (See, Matter of Jaffee v. Kelly, 32 AD 3d 485 (2006)).

Although counsel for respondents indicated that he intended to challenge the aforementioned affidavits he failed to adduce any testimony or other admissible evidence in support of said position. Additionally, the record does not reflect any challenge to the veracity of the affidavits or any claim of fraud or forgery. Further, during the hearing, counsel for respondents withdrew the challenge to the affidavit of Kwame Obeng and stipulated that the petition signature of said individual is legible.

Counsel for respondents moved to strike the affidavits of Marie Michel, Jacqueline Jaome, Allan Monrose and Wanda Lowe based solely upon his assertion that the notary stamp number appearing thereon is incorrect. However, counsel for respondents failed to offer any admissible evidence to support said assertion. Initially, the Court notes that counsel for respondents previously stipulated into evidence three of the subject affidavits. Additionally, the Court notes that even assuming the notary incorrectly affixed the official number upon said affidavits counsel for respondents has not demonstrated that such would affect the validity of the affidavit. Under these circumstances, the motion to strike said affidavits is denied.

During the hearing, the Court reserved decision with respect to petitioner's additional application for a determination by the Court concerning the alleged signatures of Norberta Cruz and Agnes Carter and the application of respondents for a determination by the Court concerning the alleged signature that appears on petition sheet 79, line 10. The Board determined that the signatures of Cruz and Carter are not legible and that the signature appearing on petition sheet 79, line 10, is legible. It is noted that the parties entered into certain evidentiary stipulations concerning these signatures and concerning certain documents from the Board of Elections. Upon review of the record, the Court finds the said evidentiary stipulations defective. Therefore, the Court declines to substantively review the Board's documents and places no reliance on petitioner's exhibits 2 and 3, respondent's exhibit A

and any other exhibits relating thereto. Accordingly, the applications with respect to Norberta Cruz, Agnes Carter and the signature appearing on petition sheet 79, line 10 are denied. The determinations made by the Board with respect to said signatures are not disturbed by the Court's decision herein.

Accordingly, based upon all the facts and circumstances herein, the application is granted to the extent that the following thirteen signatures¹ are determined by the Court to be valid:


Clainda Stuart	Marie Michel
Jacqueline Jaome	Allan Monroe
Kwame Obeng ²	Cleveland Vanier
Pamela Brown	Sara Martinez
Gwendolyn Jackson	Melissa Martinez
Edwin D. Solomon	John Wells
Chukwuemeka Ude	

The application is denied in all other respects.

ORDERED AND ADJUDGED that the designating petition filed with the Board of Elections of the City of New York to designate the above named petitioner as a candidate for the public office of member of the New York City Council District, from the 31st New York City Council District, County of Queens, City of New York, to be voted upon in the Democratic Primary Election to be held on September 15, 2009 and bearing the identification number QN0900442 is valid solely to the extent set forth above.

ORDERED and ADJUDGED that the Board of Elections of the City of New York is directed to place the name of the above named petitioner on the appropriate ballot for the Democratic Primary Election to be held on September 15, 2009.

Dated: August 17, 2009


.....
VALERIE BRATHWAITE NELSON, J.S.C.

¹As previously noted, the Court finds that petitioner has not sustained his burden with respect to Wanda Lowe. The determination of illegibility by the Board concerning this alleged signature is therefore not disturbed by the Court's decision herein.

²As noted, counsel for respondents stipulated that the filed petition signature of Kwame Obeng is legible.

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Short Form Judgment

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD Election Matters, Part F
Justice

-----X

In the Matter of the Application of
ISAAC SASSON,

Index No: 20317/09
Petition Date: 8/11/09
Petition Cal. No: 6

Petitioners- Candidate,

-against-

BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Respondent-Board,

- and -

PETER GEORGONDOPOULIS, GENO CHOU, EMIL
SKANDUL, CHI PU PENG, JESUS B. SOSA,
ARLENE FLEISHMAN,

Respondent-Objectors,

for an order pursuant to the Election Law declaring valid the
petition designating the aforesaid petitioner as candidate
for the public office of Member of the City Council from the
20th Councilmanic District, City of New York, in the
Democratic Primary to be held on September 15, 2009,
ordering the Respondent Board to place the name of said
petitioner upon the primary ballot to be used in said primary
election.

-----X

The following papers numbered 1 to 3 read on this petition for a judgment declaring valid,
proper and legally effective, the designating petition which names the petitioner herein as candidate
for the public office of Member of the City Council, 20th Councilmanic District, in the Democratic
primary to be held on September 15, 2009; and ordering the Respondent Board to place the name
of said petitioner upon the primary ballot to be used in sad primary election.

PAPERS
NUMBERED

Order to Show Cause-Petition-Exhibits.....

1 - 3

Upon the foregoing papers, it is hereby ordered that the petition is disposed of as follows:

This is a special proceedings in which petitioner Isaac Sasson ("petitioner"), by Order to Show Cause, seeks a judgment declaring valid, proper and legally effective, the designating petition which names him as a candidate for the public office of Member of the City Council, 20th Councilmanic District, in the Democratic primary to be held on September 15, 2009; and ordering the Respondent Board to place the name of said petitioner upon the primary ballot to be used in said primary election. As no answer to the petition, which was properly and timely served, was interposed, it hereby

ORDERED AND ADJUDGED, that the designating petition naming Isaac Sasson as a candidate for the public office of Member of the City Council, 20th Councilmanic District, in the Democratic primary to be held on September 15, 2009, is valid, proper and legally effective; and it is further

ORDERED AND ADJUDGED, that respondent Board of Elections in the City of New York shall place the name of Isaac Sasson on the official ballot as candidate for the public office of Member of the City Council, 20th Councilmanic District, in the Democratic primary to be held on September 15, 2009.

Dated: August 17, 2009


.....
J.S.C.

ENTER

County
FY2

Supreme Court of the State of New York
County of Kings:

ROBERT MASTER, STEPHEN T LOVIN	Petitioner(s)
- against -	
CHARLES DAVIS, MICHAEL M. BOYER, JOSEPH D. IOVINE and BOARD OF ELECTIONS	Respondent(s)

SPECIAL ELECTION PART
Index No. 7 000 32/09
Calendar No. 34
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
	COUNCIL	33rd

Upon the foregoing papers in this proceeding brought pursuant to Article 16 of the Election Law to declare the opportunity to ballot petition purporting to nominate/designate the above named persons for the above-mentioned office in the Primary Election to be held on September 15, 2009 ~~AUTHORIZE AN OPPORTUNITY TO WRITE IN AN UNDESIGNATED CANDIDATE~~

AND upon this matter having been referred to _____, Special Referee to hear and report.

AND upon the hearing before said Special Referee and the report having been rendered, and upon oral argument,

UPON THE RULINGS AND DECISIONS RENDRED ON VARIOUS MOTIONS AND

AND the candidate having been found to have valid signatures,

FOR THE REASONS STATED IN OPEN COURT ON THE RECORD
THE report of the Special Referee is confirmed;

AND the petition herein is GRANTED

AND IT IS ORDERED that the respondent Board of Elections in the City of New York shall ^{NOT AUTHORIZE OR PROVIDE AN OPPORTUNITY TO WRITE IN} the ballot for the aforesaid Primary Election the name(s) of the above-mentioned named candidates. ^{AN UNDESIGNATED CANDIDATE ON}

ENTER, _____ 33rd

KINGS COUNTY CLERK

J. S. C.

2009 AUG 11 PM 2:30

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FILED

NANCY T. SUNSHINE
Clerk

J.S.C.

DATED: AUGUST 10, 2009

- Proceedings -

1 THE COURT: Okay. So I assume that your
2 argument is that an opportunity to ballot everyone in
3 the world has to be named, and he specifically stated
4 that I would not seek that, and, therefore, you didn't
5 have a duty to name him, because he stated he wasn't
6 interested in that office?

7 MR. MASLOW: That's correct, your Honor.

8 THE COURT: Okay.

9 MR. MASLOW: And my argument is,
10 nonetheless, they should have named all the people who
11 filed designating petitions, including Mr.
12 Diamondstone, and the other is this as opportunity to
13 ballot.

14 THE COURT: I got it. Okay. So we have
15 basically rulings to be made on two issues, one on the
16 blunderbuss issue, okay, and one on the other issue.

17 As far as the blunderbuss issue, my ruling is
18 going to be that being it is specifically stated in the
19 petition that, and stated in it that the contention that
20 some of the signatures were for candidates, they signed
21 already for other candidates, okay, and we quoted a case
22 where the respondent was D'Apice which that case seemed
23 like none of them, at least from what I heard, were
24 specified with enough, so that you would understand in
25 throughout the blunderbuss. I'm not going to dismiss

- Proceedings -

1 the petition for that basis.

2 As far as the question as to whether or not
3 that he served all necessary parties, I'm finding that
4 the fact that, you know, technically everyone would
5 become a necessary party, and, therefore, I'm not going
6 to take it to the point, additionally the fact that he
7 doesn't want to, I don't know if that is relevant, is
8 necessary for my opinion, I'm finding that he wasn't, no
9 one is a necessary party, because everyone is a
10 necessary party, and, therefore, no one is a necessary
11 party in the opportunity to ballot, besides the
12 committee, and so, therefore, since Mr. Maslow has
13 already conceded that eight of the signatures are
14 invalid because they already signed for Mr. Levin --

15 MR. MASLOW: I'm not conceding they are
16 invalid.

17 THE COURT: Counsel, it is clear, from my
18 context, he has already conceded, and rightfully he is
19 correcting me, except that I speak in broad terms, he is
20 conceding that they signed previous petitions.

21 And he is also conceding that based on the
22 current case law, and the Appellate Division, Second
23 Department, based on the Appellate Division, Third
24 Department, that that would rule out signing again, ever
25 in an opportunity to ballot situation. Therefore, I'm

- Proceedings -

1 ruling that the invalidating petition is granted and the
2 opportunity to ballot is removed from the ballot.

3 MR. MASLOW: And, your Honor, may I
4 respectfully request a ruling on my motion to dismiss,
5 because the verified petition did not individualize the
6 signatures challenged on a line-by-line basis.

7 THE COURT: Okay, on that issue I'm also
8 ruling against that, in the sense that the invalidating
9 petition should not be dismissed based on that, because
10 in the cases that you're citing, it's the Board of
11 Elections had invalidated, and, therefore, had already
12 gone through a whole process and, therefore, what we're
13 stating is that the process that we went through, what
14 was wrong with that process, okay, and, therefore, the
15 case law that you cite states that it should be alleged
16 with particularity in the complaint. However, if there
17 was not a process, it remains like any other petition or
18 any other complaint, in which it doesn't have to be
19 specified with particularity, okay, and, therefore, I'm
20 ruling if you made a motion to dismiss the invalidating
21 based on that, I am denying that. I am stating that I
22 am not going to dismiss based on the fact it didn't say
23 which individual signatures are invalid or alleged to be
24 invalid.

25 MR. GENOVESI: The Bill of Particulars is also

- Proceedings -

1 part of the Court record in this case, is it not,
2 Judge?

3 THE COURT: I would assume that everything is
4 part of the court record, but if you want to make it
5 part of the court record.

6 MR. MASLOW: I assume, Judge, you're also
7 ruling against my motion to strike paragraph one of the
8 Bill of Particulars, which identified the signatures?
9 Because my argument was it is not a substitute for the
10 verified petition.

11 THE COURT: Give me a second.

12 MR. GENOVESI: What did you just say?

13 THE COURT: What he's saying is, he's saying
14 that in other words you're claiming here it is, in other
15 words he is arguing that you can't cure that --

16 MR. MASLOW: Uh-huh.

17 THE COURT: -- by putting it in your Bill of
18 Particulars, so, therefore, okay, the question is number
19 one, do you need it in the Bill of Particulars? Okay.

20 So he would argue that even if you agree that
21 you need it in the Bill of Particulars, okay, and he
22 agrees that it is in the Bill of Particulars, however,
23 he is stating that it is needed in the complaint. So in
24 order for me to have a full record, and Mr. Maslow again
25 is correct, that he's stating that I am accepting that

- Proceedings -

1 Bill of Particulars, the first paragraph, instead of
2 having it in the complaint as is necessary, based on th
3 case law, if it's invalidated in the Board of Elections
4 and it is an aggrieved candidate and party chairman,
5 that it has to be specifically alleged in the complaint
6 okay?

7 MR. MASLOW: Yes, Judge.

8 THE COURT: Thank you.


9 That constitutes the decision and order of the
10 Court.

11 Off the record.

12 (Whereupon, proceedings were concluded.)
13
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18 I, Barry Eskenazi, Senior Court Reporter, do hereby
19 certify that the foregoing is a true and correct
20 transcript.

21

..... 

22

Barry Eskenazi

23

Senior Court Reporter

24

25

County
FY 2

United States District Court
Eastern District of New York

FAROUK SAMAROO

SUMMONS IN A CIVIL CASE

v.

CASE NUMBER:

09 3561

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,

MATSUMOTO, J.
BLOOM, M.J.

TO: (Name and address of defendant)

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

PRO SE: FAROUK SAMAROO

104-20 Jamaica Avenue

Richmond Hill, NY 11418

RECEIVED
G.O. BO. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 AUG 18 A 9:38

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

ROBERT C. HEINEMANN

CLERK

August 17, 2009

DATE

(BY) DEPUTY CLERK

Count
P42

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

FAROUK SAMAROO,

Plaintiffs,

- against -

CV 09-3561 (KAM)(LB)

GOVERNOR DAVID A. PATERSON, in his official
capacity, 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

**STATEMENT OF THE BOARD OF
ELECTIONS IN THE CITY OF NEW YORK
CONCERNING PLAINTIFFS' APPLICATION
FOR INTERIM INJUNCTIVE RELIEF**

The Board of Elections in the City of New York (the "Board"), through its attorney Michael A. Cardozo, Corporation Counsel of the City of New York, in response to the Order to Show Cause dated August 17, 2009, states as follows:

1. The Board takes no position on the merits of this proceeding.
2. The Board respectfully requests that no interim injunctive relief be granted, but that the matter be fully and finally resolved at the earliest possible date.
3. The Board is currently preparing to conduct both the September 15 Primary Election for many local offices and party positions (the "Primary Election") as well as the Special Election for the Public Office of Member of the Assembly from the 38th Assembly District (the "Special Election").

4. To conduct the Special Election the Board intends to use a separate and distinct voting method and poll books from those being used to conduct the Primary Election. The Board will have to print all types of ballots for this election.

5. In addition, the Board will be utilizing ballot marking devices (“BMDs”) to allow, among others, those with disabilities to cast their votes at the poll sites using ordinary paper ballots.

6. BMDs require a significant amount of programming and testing as they have to be programmed to provide both audio and visual cues in English, Spanish, and Chinese.

7. Based upon the foregoing, the Board opposes any interim injunctive relief that would restrain it from fulfilling its lawful duties to prepare for both the September 15 Primary Election and the September 15 Special Election.

8. In addition, the Board has acted in accordance with all applicable laws in fulfilling its duties both in reviewing the petitions filed for the now cancelled Primary Election to fill the vacancy in the public office of Member of the Assembly for the 38th Assembly District and for the scheduled Special Election.

9. The Board is in receipt of a Proclamation issued on August 14, 2009, by the Governor of the State of New York ordering it to conduct the Special Election. Based upon the Board’s understanding of applicable law, *see Alessi v. Pataki*, 21 A.D. 3d 1141 (3d Dep’t 2005), the Governor’s Proclamation served to cancel the previously scheduled Primary Election for this office and replaced it with a Special Election. The Board is acting in accordance with this understanding.

10. To the extent that the Court is inclined to grant any interim injunctive relief in favor of the plaintiff, the Board respectfully requests that plaintiff be required to post a

bond sufficient to reimburse the Board for any costs that it may incur as a result of the interim relief if he does not ultimately prevail. The Board will provide an estimate of such costs upon request.

For the foregoing reasons, the Board respectfully requests that the Court render a final decision on the merits of this proceeding as expeditiously as possible.

Dated: New York, New York
August 18, 2009

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant Board of
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By: s/Stephen Kitzinger
Stephen Kitzinger
Assistant Corporation Counsel

Com mb
Py 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

FAROUK SAMAROO, :

Plaintiff, :

- against - :

GOVERNOR DAVID A. PATERSON, in his :

official capacity; 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

Case No. 09 Civ. 3561
Judge Matsumoto
Original filed by ECF

**MEMORANDUM OF LAW OF DEFENDANTS PATTERSON
AND CUOMO IN OPPOSITION TO PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Defendants
Paterson and Cuomo
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New York, New York 10271
(212) 416-6557

Daniel Schulze
Assistant Attorney General
of Counsel

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PRELIMINARY STATEMENT

Plaintiff, Farouk Samaroo, alleges that he was one of four candidates seeking to run in a Democratic party primary election for the office of Member of the New York State Assembly for the 38th Assembly District, County of Queens. The office became vacant in June, 2009, when Assemblyman Seminerio resigned his seat.

On August 14, 2009, defendant Governor Paterson issued a Proclamation pursuant to Public Officer's Law Section 42(3) setting a special election for September 15, 2009 to fill the vacant seat in the Assembly. Pursuant to the New York Election Law, the Executive Committee of the Queens Democratic party will select the Democratic candidate to run in the September 15, 2009 special election. Plaintiff alleges that he will not be the candidate chosen by the party committee. Plaintiff now moves for a preliminary injunction that would require cancellation of the September 15, 2009 special election, and require the Democratic party, a non-party to this lawsuit, to rescind or withhold its nomination under the process established by law, and instead to hold a primary to select a candidate for the vacant office.¹

Plaintiff fails to satisfy any of the elements necessary to obtain this extraordinary relief. He was and is free to seek the Democratic nomination through the procedures established by the Party and the Election Law, can seek to run in the special election whether or not he obtains the

¹ Plaintiff has sued the Attorney General based on the legal misapprehension that the Attorney General is a necessary party to any case which includes a challenge to the constitutionality of a state statute. Cplt. ¶ 8. However, this is not a basis for naming the Attorney General as a party to the suit. Although the Attorney General is authorized to defend the constitutionality of challenged state statutes, see N.Y. Exec. Law § 71, and to defend actions in which the State is "interested," see Exec. Law § 63(1), he does not do so as an adverse party. See e.g., Ulrich v. Mane, 383 F. Supp.2d 405, 410 (E.D.N.Y. 2005). While Elec. Law § 71 requires that the Attorney General be notified of actions challenging the constitutionality of state statutes, it does not constrain the Attorney General to defend any challenge; it is within the Attorney General's sole discretion to decide whether to intervene in any particular action. There is no basis in law for naming the Attorney General as a party defendant in this case.

Democratic Party's nomination, and will not suffer irreparable injury in the absence of a preliminary injunction. Indeed, the balance of hardships tip decidedly against the plaintiff here - an Order canceling the Governor's Proclamation, enjoining the special election, nullifying the party's nomination and mandating the scheduling of a primary and general election would throw the State's election process into chaos.

Plaintiff also has no likelihood of success on the merits. The Governor's Proclamation calling for a special election was authorized by an unambiguous State statute governing the filling of vacancies in State offices. Plaintiff offers no plausible basis for his conclusory allegation that the Proclamation was issued simply to prevent an Indian-American from running for office.

Most basically, plaintiff offers no reason why this federal court should intervene to stop a local election for a State office being held pursuant to a State Statute and a duly-issued Governor's Proclamation, and being conducted pursuant to long-established State procedures. The State courts hold that when it is determined that the Governor has acted within his authority in calling a special election, the judicial inquiry is at an end. This court should similarly respect the judgment of the Legislature and the Governor, and decline to issue the requested injunction to halt the special election.

ARGUMENT

PLAINTIFF HAS NOT SHOWN THAT HE IS ENTITLED TO A PRELIMINARY INJUNCTION.

A preliminary injunction is an "extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Moore v. Consol. Edison Co. of N.Y. Inc., 409 F.3d 506, 510 (2d Cir. 2005) (citations omitted); see also JSG Trading

Corp. v. Tray-Wrap, Inc., 917 F.2d 75, 80 (2d Cir. 1990). The general standard to obtain a preliminary injunction requires that a party must establish: (1) irreparable harm in the absence of the injunction and (2) either “(a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the movant’s favor.” Faiveley Transp. Malmo AB v. Wabtec Corp., 559 F.3d 110, 116 (2d Cir. 2009) (citation omitted); Time Warner Cable v. Bloomberg L.P., 118 F.3d 917, 923 (2d Cir. 1997). A party seeking a preliminary injunction must, first and foremost, demonstrate irreparable harm in the absence of the injunction before any other requirements for the issuance of a preliminary injunction will be considered. See Faiveley, 559 F.3d at 118 (“[a] showing of irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction.”); County of Nassau v. Leavitt, 524 F.3d 408, 414 (2d Cir. 2008); see also Jayaraj v. Scappini, 66 F. 3d 36, 38-39 (2d Cir. 1995) (where plaintiff failed to establish irreparable injury, “there is no need to reach the second portion of the preliminary injunction analysis.”).

Moreover, “[w]hen a plaintiff seeks an injunction staying governmental action ‘taken in the public interest pursuant to a statutory or regulatory scheme,’” an injunction “will issue only if the plaintiff can show irreparable injury and meet ‘the more rigorous likelihood-of-success standard.’” Fair Hous. in Huntington Comm. Inc. v. Town of Huntington, 316 F.3d 357, 365 (2d Cir. 2003) (citation omitted); Beal v. Stern, 184 F.3d 117, 122 (2d Cir. 1999); Ward v. New York, 291 F. Supp. 2d 188, 196 (W.D.N.Y. 2003). “That is, plaintiffs must establish a clear or substantial likelihood of success on the merits.” Leavitt, 524 F.3d at 414 (quoting Sussman v. Crawford, 488 F.3d 136, 140 (2d Cir. 2007))

Similarly, a plaintiff who seeks an injunction “alter[ing], rather than maintain[ing], the status quo,” must meet the more rigorous standard of demonstrating a “clear” or “substantial” showing of a likelihood of success on the merits. Tom Doherty Assocs., Inc. v. Saban Entm't, Inc., 60 F.3d 27, 33-34 (2d Cir. 1995). See also Hoblock v. Albany County Bd. of Elections, 422 F.3d 77, 97 (2d Cir. 2005).

A. Plaintiff Has Failed to Demonstrate Irreparable Injury If a Preliminary Injunction is Denied

Plaintiff essentially claims that he will suffer irreparable harm because Governor Patterson’s Proclamation setting a special election for the vacated Assembly seat denies plaintiff the opportunity to be the Democratic nominee for that seat because the Proclamation has the effect of canceling the Democratic Party’s primary and authorizing the Democratic Party Executive Committee to select the Democratic nominee to run in the special election. See N.Y. Elec. L. §§ 6-114, 6-116, 6-158(6). See also N.Y. Pub. Off. L. § 42(1)(providing that an office filled in a special election will not also be the subject of a general election in the same year). This claim is completely meritless.

First, plaintiff was, and is, free to seek the nomination of the Democratic Party for the special election through the procedures established by Party for this purpose. If he is not chosen, he may file objections to the Party’s decision. See N.Y. Elec. L. §§ 6-154. If his objections are rejected, he is free to pursue them further in State court. See N.Y. Elec. L. § 16-102.² There is no reason to believe that he had any greater chance of obtaining the nomination through the contested primary than the Proclamation effectively canceled.

² Plaintiff offers no allegation regarding the steps he took after the Proclamation in this regard, or whether any of these procedures still remain available to him. Regardless, any “injury” from failure to pursue these possibilities would be entirely of his own making.

Second, and even more basically, whether or not plaintiff obtains the Democratic Party's nomination, he remains free to run in the special election for the vacant Assembly seat as an independent nominee. See N.Y. Elec. L. §§ 6-138. This fact alone, conspicuously absent from plaintiff's complaint and motion papers, precludes entry of the requested injunction.

Accordingly, plaintiff has failed to establish the crucial element of irreparable harm, and his motion for a preliminary injunction should be denied on this ground alone.

B. Plaintiff Has Failed to Demonstrate Likelihood of Success on the Merits

In any event, should this Court find that the plaintiff has demonstrated an irreparable injury absent a preliminary injunction, plaintiff's application should nonetheless be denied because he has not demonstrated a likelihood of success on the merits of his claims. See Fair Hous. in Huntington Comm. Inc., 316 F.3d at 365 (“[w]hen a plaintiff seeks an injunction staying governmental action ‘taken in the public interest pursuant to a statutory or regulatory scheme,’” an injunction “will issue only if the plaintiff can show irreparable injury and meet ‘the more rigorous likelihood-of-success standard.’”).

Because a State's actions taken pursuant to State legislation developed through a presumptively reasoned democratic process is entitled to a higher degree of deference and should not be enjoined lightly, a party seeking to enjoin implementation of a statute enacted by the State's duly elected legislature carries an especially high burden – it must show a substantial likelihood of success on the merits, such that it is considerably more likely to succeed than fail. Ward, 291 F. Supp. 2d at 196; Harrison and Burrowes Bridge Constructors, Inc. v. Cuomo, 743 F. Supp. 977, 995 (N.D.N.Y. 1990).

Here, plaintiff does not make the requisite showing. First, his claims are premised on the faulty allegation that Governor Paterson acted contrary to New York Law, and, specifically, contrary to Section 42 of the New York State Public Officers Law, when he issued his Proclamation. (Complaint, ¶ 18-20, 24). In fact, Governor Peterson's proclamation was properly issued in strict compliance with and pursuant to N.Y. Public Officers Law § 42(3), which provides, in relevant part, that "[u]pon the occurrence of a vacancy in any elective office which cannot be filled by appointment for a period extending to or beyond the next general election at which a person may be elected thereto, the governor may in his discretion make proclamation of a special election to fill such office, specifying the district or county in which the election is to be held, and the day thereof, which shall be not less than thirty nor more than forty days from the date of the proclamation."³ It is similarly clear that the fact that a primary had been previously scheduled is irrelevant; the Governor has discretion to call a special election whether or not a primary has been scheduled because such scheduling is "an act that is ministerial in nature and does not reflect any independent authority. On the contrary, the plain language of Public Officers Law § 42 demonstrates that the Governor may exercise his discretion to call for a special election, the nature of which precludes a primary." Matter of Alessi v. Pataki, 21 A.D.3d 1141, 1142 (N.Y. App. Div., 2d Dep't 2005).

Plaintiff's allegation that Public Officers Law § 42(3) was unconstitutionally applied to him also fails. Federal constitutional claims similar to those asserted here were rejected by a unanimous Supreme Court in N.Y. State Bd. of Elections v. Lopez Torres, 552 U.S. 196 (2008). In that case, the plaintiffs argued that New York's procedure for nominating judicial candidates through a

³ Pursuant to the New York Constitution, the office of Member of Assembly is an elected office which cannot be filled through appointment. N.Y. Const. Art. III, Sec. 2, 8.

convention of delegates rather than a general primary election was unconstitutional because, in essence, it did not give such judicial candidates a realistic possibility of winning. The Court rejected this argument, stating:

[W]e have ... permitted States to set their faces against 'party bosses' by requiring party-candidate selection through processes more favorable to insurgents, such as primaries. But to say that the State can require this is a far cry from saying that the Constitution demands it. None of our cases establishes an individual's constitutional right to have a 'fair shot' at winning the party's nomination. And with good reason. What constitutes a 'fair shot' is a reasonable enough question for legislative judgment, which we will accept so long as it does not too much infringe upon the party's associational rights. But it is hardly a manageable constitutional question for judges – especially for judges in our legal system, where traditional electoral practice gives no hint of even the existence, much less the content, of a constitutional requirement for a 'fair shot' at party nomination. Party conventions, with their attendant "smoke-filled rooms" and domination by party leaders, have long been an accepted manner of selecting party candidates. "National party conventions prior to 1972 were generally under the control of state party leaders" who determined the votes of state delegates. Selection by convention has never been thought unconstitutional, even when the delegates were not selected by primary but by party caucuses.

Id. at 799 (citations omitted).

_____ Judge Garaufis of this district followed Lopez Torres to reject similar constitutional challenges to New York Election Law § 6-132(2), which provides that candidates collecting signatures on a designating petition must utilize only subscribing witnesses who are registered members of that candidate's party. In particular relevance to the present case, the court rejected plaintiff's arguments premised upon the claim that, because the statute purportedly rendered them unable to obtain the Democratic nomination, they were denied the opportunity to meaningfully participate in the election, holding:

Candidate Plaintiffs can participate in the political process by seeking to petition to appear directly on the general election ballot, rather than participating in the Democratic Party primary. N.Y. Election Law §§ 6-138, 6-140, & 6-142. Thus, given

the rationale set forth in Lopez Torres concerning competitiveness in the Democratic Party nominating process, the court cannot conclude that the Subscribing-Witness Rule at issue here unconstitutionally denies Plaintiffs an opportunity to participate in the electoral process.

Maslow v. Bd. of Elections, 2008 U.S. Dist. LEXIS 41293 at **28-29 (E.D.N.Y. May 23, 2008).

____ Similarly, the New York Court of Appeals rejected federal and state constitutional challenges to New York's term limits law all but identical to those asserted here, stating that "[w]hile it is true that some voters may not be able to vote for the candidates of their choice, their fundamental rights of voting, speech, and association do not confer upon them an absolute right to support a specific candidate." Matter of Roth v Cuevas, 603 N.Y.S.2d 962, 971 (N.Y. Sup. Ct. 1993), aff'd, 603 N.Y.S.2d 736 (N. Y. App. Div., 1st Dep't), aff'd 82 N.Y.2d 791 (1993)(quoting Stiles v Blunt, 912 F2d 260, 266 (8th Cir 1990)).

In addition, the claim plaintiff asserts relating to his race is premised upon nothing more than the factually-unsupported conclusory allegations that the Governor issued his Proclamation to prevent the election of Indian-Americans, and that the Proclamation – somehow – prevents all "minority" voters from participating in the election process. (Complaint, Third Cause of Action). Such conclusory allegations would not be accepted as true even on a motion to dismiss, see Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009); they certainly offer no evidentiary support for a preliminary injunction.

In any event, this claim is belied by the fact that, as described above, minority candidates, including plaintiff himself, remain free to seek the Democratic nomination or participate as independent candidates in the special election. Even assuming arguendo that a showing had been made that the Democratic Party engaged in invidious discrimination against minorities when

selecting their candidate, and there is no basis whatsoever to support this calumny, the Governor and Attorney General are not alleged to have had any involvement in the selection process.

Finally, prudential considerations counsel strongly against judicial interference with an imminent election and issuance of the requested injunction – or, indeed, entertainment of the present claims. See Lopez Torres, 552 U.S. at 799 (“it is hardly a manageable constitutional question for judges – especially for judges in our legal system, where traditional electoral practice gives no hint of even the existence, much less the content, of a constitutional requirement for a ‘fair shot’ at party nomination”). This is particularly true in the present case, in which this federal Court is being asked to enjoin an imminent State election for a State office premised upon an allegation that the State’s Governor did not comply with State law in calling the special election.

The New York state courts have held that “[w]hether a special election of the character of the one under consideration shall be held, and if so when, involves a matter of executive discretion with which the courts have no right or power to interfere [J]udicial review ... is limited to whether the State Constitution or the Legislature has empowered the Governor to act, and does not include the manner in which the Governor chooses to discharge that authority.” Matter of Alessi, 801 N.Y.S.2d at 1143. This court should similarly respect the judgment of the Legislature and the Governor, and decline to issue the requested injunction to halt the State’s special election.

C. Plaintiff Has Failed to Demonstrate that the Balance of Equities Weighs in His Favor.

Even were this Court to find that the plaintiff would both suffer irreparable harm and have demonstrated a clear or substantial likelihood of success on the merits, plaintiff’s motion for a preliminary injunction should still be denied he does not show that the balance of the equities tip

decidedly in his favor. Faiveley, 559 F.3d at 117. To the contrary, the balance of harms tips decidedly against issuance of a preliminary injunction one month before the State's special election. The candidates, Parties and Election Commission would be left largely in the dark regarding how to proceed if interim relief is granted. And if, as likely, defendants eventually prevail on the merits, there would be no time left to organize and hold the previously-enjoined special election.

CONCLUSION

For the reasons stated above, defendants Paterson and Cuomo respectfully request that this Court deny the plaintiff's Motion for a Preliminary Injunction.

Dated: New York, New York
August 19, 2009

Respectfully submitted,

ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Defendants Paterson and
Cuomo
120 Broadway
New York, New York 10271

By: /s/ _____
Daniel Schulze
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 416-6557

CERTIFICATE OF SERVICE

DANIEL SCHULZE, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows: that on August 19, 2009, he served the Memorandum of Law of Defendants Patterson and Cuomo in Opposition to Plaintiff's Motion for a Preliminary Injunction on the plaintiff and co-defendant by having it electronically filed via ECF, by faxing a copy to plaintiff at the fax number and forth on his papers, (718) 482-7097 and by emailing a copy to plaintiff at the email address set forth on his papers, FaroukSamaroo@aol.com, with a hard copy mailed to the following address for plaintiff:

Farouk Samaroo
104-20 Jamaica Avenue
Richmond Hill, NY 11418

/s/ _____
Daniel Schulze
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 416-6557

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCMPART

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

CURTIS BROOKS

Index No. 260459/2009

-against-

Hon. ROBERT G. SEGWARD

BOARD OF ELECTIONS

Justice.

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Application is decided in accordance with the attached
memorandum decision.

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 8 / 13 / 09

Hon. _____
J.S.C.

ROBERT G. SEGWARD

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX**

In the Matter of the Application of

**Curtis Brooks, as the aggrieved candidate
for the public office of Borough President
from Bronx County, New York City,**

Petitioner,

Index No. 260459/2009

-against-

**Frederic M. Umane, Julie Dent, Jose Miguel Arajuo,
Juan Carlos Polanco, James J. Sampel, Nancy Mottola-
Schacher, Naomi C. Silie, J. P. Sipp, Gregory C. Soumas,
and Judith D. Stupp, being the Commissioners of the
Board of Election in the City of New York,**

-and-

Jeffrey Dinowitz,

Respondents,

**For an Order declaring VALID the nomination Petitions of
Curtis Brooks with respondent Board of Election in the
City of New York designating the petitioner as candidate
for the office of Borough President of Bronx County, New
York City, Primary Election to be held on September 15,
2009.**

HON. ROBERT G. SEEWALD:

In this primary election proceeding, petitioner Curtis Brooks seeks to validate the designating petition filed on his behalf as a candidate for the public office of Borough President, Bronx County, in the Democratic Party primary to be held on September 15, 2009. The Special Referee has filed his report, and this Court has heard oral argument by the petitioner *pro se* and by counsel for the respondent objector. For the reasons set forth

below, the report of the Referee is hereby confirmed.

The records of the Board of Elections reveal that a certificate of declination had been filed as to the designation of the petitioner as a candidate for the office of Borough President, County of the Bronx, in the Democratic Party primary election to be held on September 15, 2009. This declination was dated July 17, 2009, and was acknowledged on that date by Richard Soto as a commissioner of deeds. Based upon such declination, the Board's records indicated that the designation of Mr. Brooks was "off by declination." In view of this declination, no specifications of objections were filed against the designating petition of petitioner Brooks.

Thereafter, petitioner Brooks commenced this proceeding, seeking to validate the designating petition filed on his behalf. The Court notes that in his verified petition, Mr. Brooks made no mention whatsoever of the matter of his declination. In his bill of particulars submitted to the Referee and to opposing counsel on August 6, 2009, petitioner Brooks contended that the objector had failed to file required specifications of objections against his designating petition. He added that the Board of Elections had improperly failed to notify him of the filing of the declination, and that this failure had denied him recourse to challenge the declination, thereby violating his civil rights. The petitioner, in the bill of particulars, continued that, upon his inquiry, the individual who notarized the declination is not registered as a notary with the proper agency and is thus not qualified to notarize any documents. He also asserted that the declination of his

candidacy had been filed without his knowledge or consent.

At the hearing before the Special Referee, petitioner Brooks acknowledged that his signature does indeed appear on the certificate of declination. Mr. Brooks stated that when he had signed the declination certificate, it was his understanding that this document would be filed only if certain, unspecified, conditions had been met. He asserted that he had not authorized the filing of the certificate of declination. The petitioner conceded that he had not subsequently filed any requests with the Board of Elections seeking to withdraw the certificate of declination, but had rather filed the proceeding now before this Court.

Also at the hearing before the Referee, petitioner Brooks again asserted that, based upon his investigation, he had learned that Richard Soto, whom he referred to as the notary on the certificate of declination, was not authorized or qualified to act as a notary public. The petitioner failed to submit any documentation to support this claim, however. The petitioner, at the hearing, further declined to call Mr. Soto as a witness, although he had stated his intention to do so in his bill of particulars. In fact, there were no witnesses called on petitioner's behalf.

Pursuant to §6-146(1) of the Election Law, a person designated as a candidate for public office may, in a certificate signed and acknowledged by that person, decline the designation. Upon receiving a timely declination, the Board of Elections, pursuant to §6-146(2), is required to notify the committee authorized to fill that vacancy of the

candidate's declination. There is no provision of the Election Law which requires the Board to provide notice of the filing of the declination certificate to the person who had signed that certificate. In the absence of such a requirement, the petitioner's claim that the Board's failure to provide him with such notice constituted a deprivation of his civil rights is found to be lacking in merit.

The Court will then consider the issue of the alleged invalidity of the notarization by Richard Soto. In the first instance, the Court notes that in the acknowledgment of the declination, Richard Soto is listed as a commissioner of deeds, not a notary, with his certificate filed in Bronx County, and his commission expiring on July 1, 2010. At the oral argument before this Court, petitioner recognized that Mr. Soto had signed as a commissioner of deeds, rather than a notary, but asserted that his term as such commissioner had lapsed and had not been renewed. However, petitioner Brooks failed to present any evidentiary proof, before the Special Referee or this Court, to support his claim as to Mr. Soto's lack of qualification to notarize signatures. In any event, there is a presumption of regularity associated with notarized documents (*Mays v. City of New York*, 208 AD2d 444 [1st Dept. 1994]). In addition, §142-a of the Executive Law provides that the expiration of the term of a notary or commissioner of deeds, or the ineligibility of the notary or commissioner to be appointed or commissioned as such, shall not invalidate the notary or commissioner's official certificates and other acts, including the administering of oaths (See also *Parks v. Leahey & Johnson, P.C.*, 81 NY2d 161

[1993]). Therefore, the Court finds that the petitioner's contention as to the invalidity of the notary is insufficient to warrant a finding that the certificate of declination is null and void.

During the Referee's hearing and in oral argument before this Court, the petitioner has failed to articulate a proper basis for the granting of the relief requested. The petitioner conceded that he had signed the certificate of declination. Upon the filing of this declination, the Board of Elections marked the petitioner off the ballot, and, accordingly, specifications of objections were not filed. It is not within the parameters of a judicial proceeding brought pursuant to §16-102 of the Election Law to conduct an inquiry as to the circumstances under which this certificate of declination was filed. If the Court were to permit the petitioner to withdraw or invalidate his own declination, the rights of third parties, who rightfully relied upon that declination, would be severely prejudiced. Therefore, this Court rules that the petitioner is estopped from impeaching the validity of his own certificate (*Goldblatt v. Heffernan*, 65 NYS2d 823 [Sup. Ct., Queens County, 1946], *affd* 271 App Div 791 [2d Dept. 1946]).

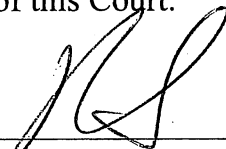
Although brought under Article 16 of the Election Law, this Court, pursuant to §103(c) of the CPLR, could convert this proceeding to a CPLR Article 78 proceeding, against the Board of Elections, if any avenue of relief available to the petitioner could be discerned. This Court concurs with the finding of the Referee that the petitioner was unable to articulate any basis for the granting of the requested relief, even within the

context of an Article 78 proceeding. In any event, the petitioner admittedly failed to seek any redress from the Board as to his declination, but proceeded instead directly to Court. Accordingly, an Article 78 proceeding would not be properly brought, as the petitioner has failed to exhaust administrative remedies.

In light of the above, the Referee's report is hereby confirmed; the petition to validate the designating petition filed on behalf of Curtis Brooks is denied; and this proceeding is dismissed.

This constitutes the decision and judgment of this Court.

Dated: August 13, 2009



J. S. C.

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCM PART

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

_____ X

ISRAEL MARTINEZ

Index No. 260457/2009

-against-

Hon. ROBERT G. SEEWALD

FREDRIC M. UMIAT

Justice.

_____ X

The following papers numbered 1 to _____ Read on this motion,
 Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

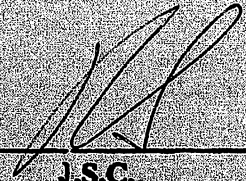
	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Application is decided in accordance with the attached
 memorandum decision.

Motion is Respectfully Referred to:
 Justice _____
 Dated: _____

Dated: 8/14/09

Hon. 
 J.S.C.

ROBERT G. SEEWALD

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCMPARY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

GRISELA LASPARKA

Index No. 260441/2009

-against-

Hon. ROBERT G. SEEMALD

ISRAEL MARTINEZ

Justice.

The following papers numbered 1 to _____ Read on this motion.
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Application is decided in accordance with the attached memorandum decision.

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 8.14.09

Hon. _____
J.S.C.

ROBERT G. SEEMALD

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX**

**In the Matter of the Application of
Israel Martinez, as the aggrieved candidate for the
public office of Council Member from the 17th
Council District, Bronx County,**

Petitioner,

-against-

Index No. 260454/09

**Frederic M. Umane, Julie Dent, Jose Miguel Araujo,
Juan Carlos Polance, James J. Sampel, Nancy Mottola-
Schacher, Naomi C. Silie, J. P. Sipp, Gregory C. Soumas,
and Judith D. Stupp, being the Commissioners of the
Board of Election in the City of New York,**

-and-

**Grisela Laraja, Objector, and any other not made public
by the Board of Elections in the City of New York,**

Respondents,

**For an Order declaring VALID the nomination
Petitions of Israel Martinez Filed with respondent
Board of Election in the City of New York designating
the petitioner as candidate for the office of Council
Member, 17th District of Bronx County, Election to
be held on September 15, 2009.**

**In the Matter of the Application of
Grisela Lajara, As Objector,**

Petitioner,

-against-

Index No. 260441/09

**Israel Martinez as candidate for Council Member
From the 17th Council District and Egidio Sementilli as
the candidate's Contact person; AND**

**Frederic M. Umane, Julie Dent, Jose Miguel Araujo, Juan
Carlos Polanco, James J. Sampel, Nancy Mottola-Schacher,**

**Naomi C. Silie, J. P. Sipp, Gregory C. Soumas, and
Judith D. Stupp, Being the Commissioners of the Board of
Elections, In the City of New York,**

Respondents,

**For an order invalidating and declaring null and void
certain designating petitions filed with the Board of
Elections purporting to designate the within named
Candidates for Public Office and/or Party Positions
from Bronx County to be voted upon in the Democratic
Primary Election to be held on September 15, 2009 and
enjoining the New York City Board of Elections from
placing the Respondent candidates' name on the
official ballot and voting machines for said Democratic
Primary Election.**

HON. ROBERT G. SEEWALD:

In the primary election proceedings now before this Court, Israel Martinez seeks to validate the designating petition filed on his behalf as a candidate for the public office of Member of the City Council from the 17th Councilmanic District in the Democratic Primary to be held on September 15, 2009. In the companion proceeding, objector Grisela Lajara seeks to invalidate the designating petition filed on behalf of Mr. Martinez. The Special Referee has filed his report, and the Court has heard oral argument by counsel for the parties.

The Referee's Report indicates that candidate Martinez had filed 2,031 signatures on his designating petitions. After the review by the Board of Elections of the specification of objections, a total of 1,119 signatures were found to be invalid, with 912 remaining valid signatures. Left for review and determination by the Court were 16

alleged forgeries and 316 alleged dissimilar signatures. The number of valid signatures required for placement on the ballot is 900.

I. Line-by-Line Determinations

An extensive line-by-line review of the Martinez designating petition was conducted by the Special Referees in these matters. Based upon a reading of the Referee's report, it is clear that this review had been severely hampered by the failure of the petitioner-candidate to submit a proper and timely bill of particulars in accordance with the Election Rules of this Court. The Referee reported that the candidate delayed in filing his bill and had submitted three or four separate, and deficient, versions before filing a final bill, which was somewhat in compliance, on the final day of the hearing. This Court notes that petitioner Martinez is an experienced candidate and frequent party to judicial proceedings in election matters in the Supreme Court. The constant pattern of delay in the submission of his bill of particulars is simply inexcusable. The candidate is cautioned that such obstructive and dilatory tactics will not be tolerated in future proceedings.

After the line-by-line considerations on both the invalidating and the validating proceedings, the Referee found that the Martinez designating petition had 812 valid remaining signatures. The Court now confirms the Referee's findings and recommendations as to these rulings.

In reaching the above determinations, the Referee was presented with disputed

issues as to certain subscribing witnesses. These issues will be discussed below.

Discrepancy in Address of Subscribing Witnesses

Certain sheets of the designating petition had been invalidated on the basis that the address listed for the subscribing witness was not the address listed on that individual's voter registration record. It was the position of the candidate's counsel that the addresses listed were, in fact, the actual addresses of the subscribing witnesses at the time the statements of witness had been completed. It was thus argued that the statements, in listing current addresses, were in compliance with §6-132(2) of the Election Law which provides that the statement of witness must recite the following words: "I now reside at (residence address)."

The Court finds the above argument to be lacking in merit. This Court is mindful of cases which have sustained the validity of a statement of witness which set forth an address for the witness which differed from the individual's registration record. (See, for example, *In re McManus*, 286 AD2d 855 (4th Dept. 2001), lv den 96 NY2d 718 [2001].) In *McManus*, the subscribing witness had been in the process of moving during the period in which signatures were being obtained, and the witness had provided his new address on some sheets of the designating petition as a current address, before he had actually moved. The Appellate Division upheld the validity of those sheets with an incorrect address, on the basis that there was no implication of fraud.

This Court notes that *McManus* and cases with similar holdings, in which the

validity of a petition sheet was upheld despite a discrepancy with the individual's address on the registration records, are distinguishable from the matters now before this Court. In that line of cases, the individuals in question either appeared to testify, or some form of evidentiary proof was submitted, to establish the reasons for the discrepancies in the addresses. As to the Martinez designating petitions, there was no admissible proof and no testimony to establish the contentions made by counsel as to the subscribing witnesses current addresses. An assertion by counsel does not constitute admissible evidence (*McGuire v. Gamache*, 5 NY3d 444 [2005]).

In view of the failure of the petitioner-candidate to offer any proof for the consideration of the Court on the issue of the incorrect addresses, the Court upholds the rulings of the Referee invalidating those sheets.

Alterations in the Subscribing Witness Statements of the Candidate

Upon the review of the sheets of the designating petition which had been witnessed by candidate Israel Martinez, the Referee was presented with numerous instances of uninitialed alterations in his statement of witness. The majority of these alterations related to the altered first name of the candidate. His first name, Israel, was, on various sheets, first misspelled as "Isreal" and was then changed, without an initialing. Counsel for the petitioner-candidate argues that this was simply a mere correction and not an alteration. The Referee found these sheets to be invalid, in view of an uninitialed alteration. The Referee also found a variety of other, uninitialed, alterations in the

candidate's statements of witness to be invalid.

Upon review of the Referee's report and after consideration of the oral arguments presented, this Court confirms the Referee's findings and rulings on these uninitialed alterations. Again, no competent proof or testimony was presented to the Referee or to this Court in support of the petitioner-candidate's contentions. Surely the candidate himself could be held to a minimum standard of correctly spelling his own first name in the statement of witness. The alterations in question lead to an inference that another person filled in this information in the statement of witness. Pursuant to §6-134(9) of the Election Law, a person other than the subscribing witness may insert the information required by the statement of witness, provided that all the subscribing witness information is inserted either before the witness signs the statement or in the presence of the subscribing witness.

Although the Election Law thus permits another individual to insert information, including the printed name of the witness, in the statement of witness, this Court rules that any alteration in that statement must either be initialed or explained by testimony or other competent proof. Indeed, §6-134(10) states that the provisions of that section shall be liberally construed, not inconsistent with substantial compliance with that section and the prevention of fraud. The Court of Appeals in *McGuire v. Gamache, supra*, reiterated that the statement of witness has long been recognized as "essential to the integrity of the petition process." The Court continued that it has consistently held that alteration of that

statement which is unexplained and uninitialed will result in the invalidation of that sheet, even if the alterations “resulted in the manifestation of correct information.” In the matters now before this Court, it is not an onerous burden on the petitioner-candidate to require some reasonable explanation for the alterations in issue. Indeed, the candidate was present throughout the vast majority of the hearing and could easily have testified on his own behalf.

II. Symbol Sheet

Counsel for the candidate asserts that the specifications of objections as filed by the respondent-objector are defective for the failure to file a symbol sheet, or a sheet of abbreviations, to indicate the specific nature of the objection being raised. It was established that the objector had not filed a separate symbol sheet with the specifications.

Pursuant to §6-154(2) of the Election Law, the Board of Elections is empowered to make rules in reference to objections and specifications of objections to a designating petition. In accordance with this statute, the Board of Elections in the City of New York promulgated designating petition rules for the September 2009 Primary Election. Rule H6 sets forth some 36 abbreviations which are found acceptable by the Board to assert specific objections. This rule further states: “Objectors may use other abbreviations or symbols as long as they are clearly defined in the specification.”

There is no provision in the above rule which requires a separate symbol or abbreviation sheet if the objectors are simply utilizing the list of abbreviations deemed

acceptable by the Board. As noted above, the objector had not filed a separate symbol or abbreviation sheet. However, there has been no proof submitted by the petitioner-candidate that the objector had used any symbols or abbreviations which were not on the list promulgated by the Board. In light of the above, the Court finds the petitioner-candidate's argument on this issue to be lacking in merit, and insufficient to warrant the nullification of the specifications of objections.

III. Challenge to the Work Product of the Candidate

Counsel for the petitioner to invalidate moved to strike the entire work product of the candidate in his capacity as subscribing witness, based upon the number of dissimilar signatures which had been ruled invalid on his sheets. In oral argument, counsel indicated that 23 instances of dissimilar signatures had been found on those sheets. In the absence of any testimony as to this issue, the Court finds no adequate basis for the invalidation of all designating sheets witnessed by candidate Martinez.

IV. Challenge to the Address of the Objector

The petitioner-candidate has asserted a challenge to the standing of Grisela Lajara to act as an objector as he claims that Ms. Lajara does not reside at the address listed on her registration record. The petitioner-candidate argues that if the objector does not reside at that address, the specifications of objections would be rendered null and void, thereby resulting in his designating petition standing uncontested and with sufficient signatures to secure placement of his name on the Primary ballot. The Referee heard

testimony from several witnesses on this issue and concluded that the candidate had not offered sufficient evidence to rebut the presumption of residence established by the voter registration record of the objector. The Court confirms the Referee's report as to this issue, for the reasons set forth below.

The registration record for the objector, Grisela Lajara, lists her address as 415 East 154th Street, apartment 7, Bronx, New York. This record dates back to 1993. Counsel for candidate Martinez asserted that there is no apartment number 7 at this address, and presented an envelope, addressed to Lajara, Grisela, at that address, at apartment 7, which had been mailed and then returned, marked "returned to sender" by the Postal Service. A representative from the managing agent for the building at 415 East 154th Street was called by counsel for the candidate. This witness testified that he was familiar with this building and stated that there was no apartment number 7. This witness indicated that he has not seen Grisela Lajara and that her name does not appear on the tenant income certification for that apartment 1B. The lease renewal for apartment 1B is in the name of Guillerma Lajara. He conceded that he does not know how many tenants live in this building and could not provide the names of any tenants who reside there.

Counsel for the objector called a representative from the sponsor for the building under an HPD program. This witness explained that the building had undergone extensive renovations which had been completed in 2008. She noted that after completion the numbers for the apartments had been re-designated, and the previous

apartment 7 was designated as apartment 1B. The witness stated that the Lajaras are listed on the lease, but that her office does not maintain any occupancy records.

Counsel for candidate Martinez had asked the Referee to direct the production of the objector Lajara so that her testimony could be taken on the issue of her residence. The Referee declined this request, as he found that the petitioner-candidate had failed to make a sufficient showing to warrant such a direction. Counsel for candidate Martinez then purportedly made attempts to serve subpoenas to effectuate the appearance of the objector. It is evident that proper proof of service of such attempted services was never submitted to the Referee.

Upon review of the Referee's Report and the affidavits of service of the order to show cause in the proceeding to validate, the Court has learned that the petitioner in that case made attempted service upon objector Lajara at both apartments 7 and 1B at 415 East 154th Street. It is clear then, that at the very start of this proceeding, the petitioner-candidate was aware of the connection between the previously numbered apartment 7 and the current designation of 1B. Accordingly, when the Petitioner-candidate asserted that there was no apartment 7 at the building in issue, he presented a partial truth to the Court and had improperly concealed his full knowledge of the matter.

In light of the above, the Court finds that the petitioner-candidate had an insufficient basis at the very start of the proceedings to challenge in legitimate fashion the residence address of the objector. In election matters, the party who challenges the

residency of a candidate has the burden of proof to establish that claim by clear and convincing evidence (*Hosley, Jr. v. Curry*, 85 NY2d 447 [1995]). This Court finds the challenge to the residency of a candidate to be analogous to the situation in these matters, where the residency of an objector is in issue. The Court finds that candidate Martinez has failed to meet that burden. The registration record maintained by the Board of Elections is entitled to a presumption of regularity. The candidate failed to submit sufficient proof to establish that Ms. Lajara does not reside at the address listed thereon. The witnesses from the managing agent and from the sponsor each possessed no real knowledge as to who actually resides at that building, and particularly in apartment 1B. While the name of Grisela Lajara does not appear on the records maintained by the managing agent or the sponsor, it is not the function of this Court, particularly within the context of an election proceeding, to conduct an investigation as to who is officially authorized to live in the units in that building.

The counsel for candidate Martinez also failed to demonstrate that any proper subpoena had been served upon the objector. In view of this failure of proof, this Court draws no negative inference from the objector's non-appearance at the hearing.

V. Summary

The Referee's Report is hereby confirmed in its entirety. The Martinez designating petition is found to have 812 remaining valid signatures, which is insufficient for placement of his name on the ballot in the Primary election. The Court has denied the

challenge by the candidate to the standing of the objector. Accordingly, the petition to validate is denied, and that proceeding is dismissed. The petition to invalidate is granted, and the Board of Elections is hereby directed to remove the name of Israel Martinez from the ballot in the Primary election to be held on September 15, 2009.

This constitutes the decision and judgment of this Court.

Dated: August 14, 2009



J. S. C.

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCM PART

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

_____ X

ANNETTE C. DEJESUS

Index No. 260445/2009

-against-

Hon. ROBERT G. SEENALD

JOSE A. PADILLA, JR.,

Justice.

_____ X

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____


	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Application is decided in accordance with the attached
memorandum decision.

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 8,13,09

Hon. 
J.S.C.
ROBERT G. SEENALD

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCMPART

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

JOSE A. PADILLA JR.

Index No. 260485/2009

-against-

Hon. ROBERT G. SEENWALD

FREDERIC M. UMANE

Justice.

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____


	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Application is decided in accordance with the attached
memorandum decision.

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 8/13/09

Hon. 
J.S.C.

ROBERT G. SEENWALD

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX: Election Matters Part

In the Matter of the Application of **Annette C. DeJesus,**
as Objector,

Index No:260445-09

Petitioner,

-against-

Jose A. Padilla, Jr. as Candidate for **Council Member**
from the **15th Council District** and Miriam A. Bermudez as
the candidate's Contact Person, and

Frederic M. Umane, et als, being the Commissioners of the
Board of Elections in the City of New York,

Respondents,

For an order **INVALIDATING** and declaring null and void certain designating petitions
filed with the Board of Elections purporting to designate the within named Candidates for
Public Office and/or Party Positions from Bronx County to be voted upon in the Democratic
Primary Election to be held on **September 15, 2009** and enjoining the New York City Board
of Elections from placing the Respondent candidates' name on the official ballot and voting
machines for said Democratic Primary Election.

and

In the Matter of the Application of **Jose A. Padilla, Jr.**
as an **aggrieved candidate** for the public office of
Member of the N.Y.C. Council - **15th Council District,**
Bronx County, N.Y.,

Index No:260485-09

Petitioner

-against-

Frederic M. Umane, et als, being the Commissioners of the
Board of Elections in the City of New York, and
Annette C. DeJesus and Stanley K. Schlein,
Attorney fo the Objector,

Respondents.

For an Order declaring **VALID** the nomination Petitions of Jose A. Padilla, Jr. filed with the
respondent Board of Elections in the City of New York designating the petitioner as Candidate
for the office of City Council Member for the **15th Council District** and Candidate for Judicial Delegate
for the **79th Assembly District** both in Bronx County in the City of New York. The Primary Election
to be held on Tuesday, September 15th, 2009.

Hon. Robert G. Seewald:

In this primary election proceeding, Petitioner to Validate, Jose A. Padilla, Jr., seeks to validate his designating petition as a Democratic candidate for Member of the City Council from the 15th Council District, for the Democratic Party Primary to be held on September 15, 2009. The Respondent-objector, Annette C. DeJesus, by her counsel, Stanley K. Schlein, Esq., filed a Petition to Invalidate said designating petition.

The Referee filed her Report and the Court heard oral argument by Petitioner, *pro se*, and Counsel for the Respondent.

The Petitioner-candidate contended that his Petition to Validate should not be dismissed for lack of jurisdiction. He stated that an attempt was made to serve the objector and that she was evading service.

With respect to the merits of his Petition to Validate, the candidate argued that the Board of Elections should have identified the failure to properly serve the candidate with Specifications of Objections as there was a lack of use of the middle initial "A". He further contended that the number of signatures was incorrectly stated on the Specifications of Objections in that his designating petition cover sheet stated one number, the Specifications of Objections stated another number, and the Clerk's Report from the Board of Elections stated a third number.

In response, Counsel for the objector argued that, for the first time, the candidate was alleging that the objector was evading service and that this argument had not been presented before the Referee.

In addition, Counsel for the Respondent-objector contended that the Petitioner is guilty of laches and that an equitable resolution is not available to him. The candidate

waited until the afternoon of the last day on which to file his Petition to Validate to commence his proceeding when he had known of an adverse determination three days earlier.

With respect to the candidate's contention that the Specifications of Objections were defective because the candidate's middle initial was missing therefrom, Counsel labeled that argument "absurd." Respondent-objector pointed out that the candidate's buff card does not list the name set forth on the designating petition and instead lists the name "Joseph". It was also not rebutted that the candidate received all of the mail and notices sent to him with respect to the candidate's designating petition.

Oral argument presented no new facts and raised no legal arguments not previously addressed and considered by the Referee. Her Report explored the facts presented, relevant caselaw, and applicable legal principles in reaching her recommendations.

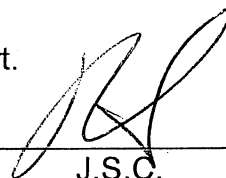
The finding of the Referee that the Court lacks jurisdiction with respect to the Petition to Validate, as a consequence of the Petitioner-candidate's failure to effectuate service in accordance with the Order to Show Cause, is confirmed. In addition, the finding of the Referee that even were this Court to consider the Petition to Validate on the merits, it must be denied as the candidate has furthered no valid basis upon which to vacate the determination of the Board of Elections, is also confirmed.

Accordingly, the **Petition to Validate is denied and dismissed**. Concomitantly, the **Petition to Invalidate is denied as moot**.

This constitutes the Decision and Judgment of the Court.

Dated:

8/13/09



J.S.C.

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCMPART

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

-----X
CORDELIA GILFORD
-against-
MARK ESCOFFERY-BEY
-----X

Index No. 260450/2009
Hon. ROBERT G. SEWARD
Justice.

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Application is decided in accordance with the attached
memorandum decision.

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 8.14.09

Hon. _____
J.S.C.
ROBERT G. SEWARD

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCMPART

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

-----X
MARK ESCOFFERY-BEY

Index No. 260465/2009

-against-

Hon. ROBERT G. SEWARD

NYC BOARD OF ELECTIONS

Justice.

-----X

The following papers numbered 1 to _____ Read on this motion.

Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Application is decided in accordance with the attached memorandum decision.

Motion is Respectfully Referred to:

Justice: _____

Dated: _____

Dated: 8/14/09

Hon. _____

J.S.C.

ROBERT G. SEWARD

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX: ELECTION MATTERS PART**

In the Matter of the Application of Cordelia Gilford,
as Objector,

Index No:260450-09

Petitioner,

-against-

DECISION AND JUDGMENT

Mark Escoffery-Bey as Candidate for Council Member
from the 16th Council District and Mark Escoffrey-Bey as
the candidate's Contact Person, and

Frederic M. Umame, et als, being the Commissioners of the
Board of Elections in the City of New York,

Respondents,

For an order INVALIDATING and declaring null and void
certain designating petitions filed with the Board of
Elections purporting to designate the within named
Candidates for Public Office and/or Party Positions from
Bronx County to be voted upon in the Democratic
Primary Election to be held on September 15, 2009 and
enjoining the New York City Board of Elections from
placing the Respondent candidates' name on the official
ballot and voting machines for said Democratic Primary
Election.

In the Matter of the Application of Mark Escoffery-Bey,
as candidate for the Democratic nomination for the
Public Office of City Council Member of the
City of New York, Bronx County, 16th District,

Index No:260465-09

Petitioner,

-against-

Cordelia Gilford, Objector,

Respondent,

For an Order Pursuant to Article 16 of the Election Law
to Declare the Validity of a Designating Petition to
designate Petitioner as a candidate in the Democratic
Party Primary Election to be held September 15, 2009.

HON. ROBERT G. SEEWALD:

In the primary election proceeding brought under Index No.260450/09,
petitioner, Cordelia Gilford, seeks to invalidate the designating petition filed on behalf of

Mark Escoffery-Bey, a candidate for Council Member from the 16th Council District, in the Democratic Party primary to be held on September 15, 2009. In the proceeding bearing Index No. 260465/09, petitioner, Mark-Escoffery-Bey, moves to validate his designating petition. These two proceedings are consolidated for the purposes of this decision. The Special Referee has filed her report and the Court has heard oral argument.

After conducting a consolidated hearing of these two matters which included numerous line-by-line determinations and the calling of seven witnesses by the petitioner to invalidate, the Special Referee recommended the invalidation of 389 signatures from the candidate's designating petition, 8 on the ground of forgery, 377 on the ground that the signatures contained on the designating petition were dissimilar to the signature for that individual contained in the voter registration records and 4 on the ground that the signer was not duly registered/enrolled. With respect to the petition to validate, the Special Referee recommended the validation of seven signatures which the Board of Elections had previously ruled invalid. After subtracting the net number of signatures invalidated (382) from the number of valid signatures contained in the Clerk's Report (1170), the candidate was left with 788 valid signatures. The Special Referee recommended that the petition to invalidate be granted on the ground that the candidate lacked a sufficient number of valid signatures for placement on the ballot (900 for Member of City Council) and recommended that the petition to validate be denied.

At oral argument, counsel for the petitioner to invalidate recommended adoption of the Special Referee's report and urged the court to make a further finding of permeation of fraud based on the Special Referee's finding that 1/3 of the 1170

signatures found valid in the clerk's report were dissimilar to the signatures contained in the voter registration records and that witness testimony established 8 signatures to be forged.

Counsel for the candidate argued that the Special Referee erred in failing to reinstate the 106 signatures contained in 12 petition sheets on the ground that the Board of Elections erroneously invalidated these 12 petition sheets in their entirety. It is the candidate's position that each of these 12 petition sheets contained an understatement of the signature count by the subscribing witness, and, pursuant to Election Law 6-134(11), a petition sheet may not be invalidated solely on the basis of such an understatement.

This argument is without merit. Counsel's argument for the candidate pertaining to the 12 petition sheets was made for the first time on closing arguments. The petitioner to invalidate had filed challenges to 103 of these 106 signatures in her specifications of objections. Despite ample time to raise this argument and the availability of several Special Referees to evaluate any challenge by either party with respect to these 12 petition sheets, the candidate failed to address this issue until the close of the hearing. As a result, the petitioner to invalidate was denied the opportunity to litigate any issues relating to the 103 challenged signatures on these 12 pages. The candidate was properly estopped from seeking restoration of these signatures on the ground of untimeliness. In addition, the Special Referee properly declined to restore 30 signatures in which the address of the signer on the petition differed from the address of that individual contained in the voter registration records.

Counsel for the candidate also raised an issue at oral argument which had


not been previously raised before the Special Referee. Counsel for the candidate argued that the specifications of objections filed in this matter were invalid on the ground that one or two objection abbreviations utilized in the specifications of objections were different from the objection abbreviations promulgated by the Board of Elections. This argument is rejected as lacking specificity, untimely and without merit.

Accordingly, the Report of the Special Referee is confirmed. The petition to invalidate the designating petition of Mark Escoffery-Bey for the public office of Member of City Council for the 16th Council District is granted on the ground that the candidate lacks a sufficient number of valid signatures for placement on the ballot. While the evidence presented before the Special Referee suggests irregularities in the petition gathering process, as the petition to invalidate has been granted on other grounds, the Court need not address the claims of permeation of fraud. The Board of Elections is directed to remove from the ballot the name of Mark Escoffery-Bey as a candidate for the public office of Member of City Council for the 16th Council District in the Democratic Party Primary to be held on September 15, 2009.

The petition to validate is denied and the proceeding is dismissed.

This constitutes the decision and judgment of the Court.

Dated: August 14, 2009



ROBERT G. SEEWALD
J.S.C.

NEW YORK SUPREME COURT ---- COUNTY OF BRONX

PART OSCM Part 4

Cordelia Gifford
- against -
The Board of Elections

INDEX NUMBER 260444/2009

Present:

HON. Robert G. Seewald
Justice.

The following papers numbered 1 to _____ Read on this motion, _____

	<u>PAPERS NUMBERED</u>
No _____ on Calendar of _____	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits _____	
Replying Affidavit and Exhibits _____	
_____ Affidavit _____	
Pleadings - Exhibit _____	
Stipulation - Referee's Report - Minutes _____	
Filed Papers _____	

Upon the foregoing papers this

Application is decided in accordance with the attached memorandum decision.

Motion is Respectfully Referred to
Justice _____
Dated _____

Dated 8/14 20 09

Robert G. Seewald
J.S.C.

Check one: Final Disposition

Non-final Disposition

NEW YORK SUPREME COURT ---- COUNTY OF BRONX

PART 4

INDEX NUMBER 260458/2009

Present:

HON. Robert G. Seewald
Justice.

Daryl L. Johnson
- against -
Board of Elections

The following papers numbered 1 to _____ Read on this motion, _____

	PAPERS NUMBERED
No _____ on Calendar of _____	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits _____	
Replying Affidavit and Exhibits _____	
_____ Affidavit _____	
Pleadings - Exhibit _____	
Stipulation - Referee's Report - Minutes _____	
Filed Papers _____	

Upon the foregoing papers this

Application is decided in accordance with the attached memorandum decision.

Motion is Respectfully Referred to
Justice _____
Dated _____

Dated 8/14 20 09

Check one: Final Disposition

Robert G. Seewald J.S.C.
 Non-final Disposition
158968

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX**

**In the Matter of the Application of Cordelia Gilford and
Marie Brooks, As Objectors,**

Petitioners,

-against-

Index No. 260444-09

**Daryl L. Johnson as candidate for Council Member from
the 16th Council District and Daryl L. Johnson as the
candidate's Contact Person; AND**

**Frederic M. Umane, Julie Dent, Jose Miguel Araujo,
Juan Carlos Polanco, James J. Sampel, Nancy
Mottola-Schacher, Naomi C. Silie, J. P. Sipp,
Gregory C. Soumas, and Judith D. Stupp,
Being the Commissioners of the Board of Elections
in the City of New York,**

Respondents,

**For an order invalidating and declaring null and void
certain designating petitions filed with the Board of
Elections purporting to designate the within named
Candidates for Public Office and/or Party Positions from
Bronx County to be voted upon in the Democratic
Primary Election to be held on September 15, 2009 and
enjoining the New York City Board of Elections from
placing the Respondent candidates' name on the official
ballot and voting machines for said Democratic Primary
Election.**

In the Matter of the Application of

DARYL L. JOHNSON,

Petitioner-Candidate,

-against-

Index No. 260458-09

BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Respondent-Board,

and

CORDELIA GILFORD and MARIE BROOKS,

Respondent-Objectors,

For an order pursuant to the Election Law declaring valid the petitions designating the aforesaid petitioner as candidate for the public office of Member of the City Council from the 16th Councilmanic District, City of New York, in the Democratic Primary to be held on September 15, 2009, ordering the Respondent Board to place the name of said petitioner upon the ballot to be used in said primary election.

HON. ROBERT G. SEEWALD:

In the primary election proceedings now before this Court, Daryl L. Johnson seeks to validate the designating petition filed on his behalf as candidate for the public office of Member of the City Council from the 16th Councilmanic District in the Democratic Primary to be held on September 15, 2009. In the companion proceeding, objectors Cordelia Gilford and Marie Brooks seek to invalidate the designating petition filed on behalf of Mr. Johnson. The Special Referee has filed his report, and the Court has heard oral argument by counsel for the parties.

The Referee's report indicates that candidate Johnson had filed approximately 1,949 signatures on his designating petitions. After the review by the Board of Elections of the specifications of objections, a total of 1,275 signatures were found to be invalid. This left a balance of 674 valid signatures. A total of 900 valid signatures is necessary for placement of Mr. Johnson's name on the ballot as a candidate for City Council.

I. Issue of the Initial Withdrawal

On August 5, 2009, counsel for the candidate contacted the Referee by telephone and stated that the validating proceeding was being withdrawn. Counsel for the objectors was also notified of this withdrawal, by the candidate's counsel. This withdrawal was reflected on the record before the Referee at the Bronx Board of Elections on August 5, 2009, at the commencement of the hearing in these matters. At that time, counsel for the objectors was present, but the candidate's counsel was not in attendance, despite having been notified of the date and time for the commencement of the hearing. In view of the stated withdrawal, counsel for the objectors stated that the invalidating proceeding was being withdrawn, and he requested that both the validating and invalidating proceedings be dismissed with prejudice.

On August 7, 2009, counsel for candidate Johnson requested that the Referee re-open the proceedings in order to afford him an opportunity to present two new arguments to the Court. The Referee consulted with this Court, and the determination was made to re-open the hearing for that limited purpose. The Referee then notified counsel for the objectors that the hearing would be re-opened on August 10th.

The hearing on the proceeding to validate was re-opened before the Referee at the Bronx Board of Elections on August 10, 2009. The Referee reports that counsel for the objectors strenuously opposed the re-opening of the hearing, in light of the prior withdrawal expressed by the attorney for candidate Johnson. The hearing on the

validating proceeding then commenced over objection.

At oral argument before this Court, counsel for the objectors again voiced his strong opposition to the re-opening of the validating proceeding, despite the earlier withdrawal. The Court is troubled by the conduct of the candidate's counsel in, essentially, renegeing on his earlier representation that the matter was being withdrawn. Such method of practice can easily work to the detriment of opposing parties and to frustrate the Court's efficient management of a congested election matters calendar. In this case, given the confluence of rather extraordinary and unique circumstances, including the request to present new arguments, the drastic time constraints of this year's hearing schedule, and the failure of the stipulation to meet the requirements of CPLR 2104, this Court reluctantly granted the request to re-open, in order for the merits of the case to be heard.

The Court finds that the objectors and their counsel were obviously prejudiced by the re-opening, to the extent that they were confronted anew with a matter believed to have been concluded. However, this Court also finds there was no undue prejudice to those opposing parties, nor were they surprised by the re-opening. Counsel for the objectors was provided with timely notice by the Referee that the validating proceeding would be heard on August 10th. Counsel thus had ample time to prepare for that hearing. Furthermore, if the Referee had found any merit to the arguments advanced by the petitioner on the validating proceeding, then the petitioner-objectors would have been

permitted to re-open their invalidating proceeding, with an opportunity to present their case in full.

As noted above, this Court is cognizant that the earlier stated withdrawal by counsel for the petitioner-candidate did not technically meet the requirements of CPLR 2104, as the stipulation was not in writing and had not been stated by counsel on the record in open court. Nonetheless, the conduct of counsel for the candidate clearly borders on sharp practice. This Court is disturbed by such conduct, and counsel is forewarned that such practice will not be tolerated in future proceedings.

II. Arguments Advanced by Petitioner to Validate

On the proceeding to validate, the petitioner-candidate relied on two arguments, each relating to the specifications of objections filed by the respondent-objectors. The first argument related to the issue of a symbol sheet in the presentation of the specific objections by the respondents. The second issue concerned a misstatement of the number of signatures by the objectors in their specifications of objections. It is the candidate's position that the respondent-objectors' specifications of objections were fatally defective as to the two above issues, and should be rendered null and void. The petitioner-candidate thus contends that, in the absence of these objections, his designating petition would stand as uncontested and as containing sufficient valid signatures to win placement on the ballot.

Symbol Sheet

In his first argument, counsel for the candidate asserts that the specifications of objections as filed by the respondent-objectors are defective for their failure to file a symbol sheet, or a sheet of abbreviations, to indicate the specific nature of the objection being raised. It was established that the respondent-objectors had not filed a separate symbol sheet with their specifications.

Pursuant to §6-154(2) of the Election Law, the Board of Elections is empowered to make rules in reference to objections and specifications of objections to a designating petition. In accordance with this statute, the Board of Elections in the City of New York promulgated designating petition rules for the September 2009 Primary Election. Rule H6 sets forth some 36 abbreviations which are found acceptable by the Board to assert specific objections. This rule further states: "Objectors may use other abbreviations or symbols as long as they are clearly defined in the specification."

There is no provision in the above rule which requires a separate symbol or abbreviation sheet if the objectors are simply utilizing the list of abbreviations deemed acceptable by the Board. As noted above, the respondent-objectors had not filed a separate symbol or abbreviation sheet. However, there has been no proof submitted by the petitioner-candidate that the respondents had used any symbols or abbreviations which were not on the list promulgated by the Board. In light of the above, the Court finds the petitioner-candidate's argument on this issue to be lacking in merit, and

insufficient to warrant the nullification of the specifications of objections.

Misstatement of Signatures

Rule H4 of the Board's rules provides:

If the specifications of objections claim that there are an insufficient number of valid signatures, the specifications must state the total number of signatures contained in the petition and the total number of signatures which the objector claims to be invalid.

It was demonstrated by the petitioner-candidate that the respondent-objectors, in their specifications of objections, had misstated the number of signatures contained in his designating petition. It is evident that the objectors had set the number of signatures contained in the petition at a total which was approximately 200 fewer than the total reported by the Board. The Court finds such misstatement did not result in any prejudice to the candidate, especially as the Board had relied on its own calculations. This Court agrees with the Referee's finding that the key element pertinent to Rule H4 is the number of invalid signatures claimed by the objectors. Accordingly, this argument advanced by the petitioner is also found to be without merit.

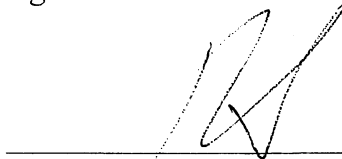
III. Summary

In light of the above, the total number of valid signatures in the petitioner-candidate's designating petition remains unchanged at 674. As this total is insufficient for the placement of the candidate's name on the ballot in the Primary election, the petition to validate is denied, and that proceeding is dismissed. The report of the Referee is

confirmed, and the petition to invalidate is permitted to be withdrawn. Both proceedings are dismissed with prejudice.

This constitutes the decision and judgment of this Court.

Dated: August 14, 2009

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

J. S. C.

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCMPART 1

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

CORDELIA GILFORD

Index No. 260440/2009

-against-

Hon. ROBERT G. SEWARD

CARLOS SIERRA

Justice.

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Application to invalidate the designating petitions of Carlos Sierra, as candidate for public office member of the New York City Council for the 16th Councilmatic District in the Bronx Democratic Party Primary to be held on September 15, 2009 is permitted to be withdrawn pursuant to the oral withdrawal placed on the record by Stanley Schlegel, Esq., legal counsel to petitioner, before the Special Referee.

The Special Referee's report in this matter is confirmed. Accordingly, the invalidating petition is permitted to be withdrawn and the proceeding is dismissed with prejudice.

This constitutes the decision and judgment of the Court.

Motion is Respectfully Referred to:

Justice:

Dated:

Dated: 8/10/09

Hon. _____

J.S.C.

ROBERT G. SEWARD 177

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCMPART

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

JOYCE E. WILSON

-against-

KRYSTAL ZAMILLA SERRANO

Index No. 260446/2009

Hon. ROBERT Q. SEENALD

Justice.

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this


Application to invalidate the designating petition of Krystal Zamilla Serrano as a candidate for Council Member from the 12th Council District, Bronx County, for the Democratic Party Primary to be held on September 15, 2009 is denied. The Report of the Referee is confirmed.

Accordingly, the invalidating petition is denied and the proceeding is dismissed.

This constitutes the Decision and Judgment of the Court.

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 8.13.09

Hon. 
J.S.C.
ROBERT Q. SEERNALD

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART DISM PART

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed
Settle Order
Schedule Appearance

CARMEN AQUINO

Index No. 260439/2009

-against-
JUANA G. PENA

Hon. ROBERT G. SEWARD

Justice.

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Motion is Respectfully Referred to:

Justice:

Dated:

Application to invalidate the designating petitions of Juana G. Pena, and all other candidates for Public Office and/or Party Position from the 84th Assembly District in the Bronx, for Democratic Party Primary, to be held on September 15, 2009, is denied. The Special Referee's report in this matter is confirmed.

Accordingly, the invalidating petition is denied and the proceeding is dismissed with prejudice.

This constitutes the decision and judgment of the Court.

Dated: 8/14/09

Hon. _____

[Signature]
J.S.C.

ROBERT G. SEWARD

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCURPART

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

MICHAEL RUBEN OLIVENCIA

Index No. 260448/2009

-against-
MIGUEL SANTANA

Hon. ROBERT G. SEEWALD
Justice.

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this
The report of the Referee is confirmed.


Application to invalidate the designating petition of Miguel Santana for the office of Member of the City Council for the 14th District, City of New York, in the Bronx Democratic Party Primary to be held on September 15, 2009 is denied as academic

Accordingly, this proceeding is dismissed, with prejudice.

This constitutes the order and judgment of the Court.

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 8/10/09

Hon. 
J.S.C.

ROBERT G. SEEWALD 180

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCMPART

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

MIGUEL SANTANA

Index No. 260437/2009

-against-

Hon. ROBERT G. SEWARD

BOARD OF ELECTIONS

Justice.

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this
The report of the Referee is confirmed.


Application to validate the designating petition of Miguel Santana for the office of Member of the City Council for the 14th District, City of New York, in the Bronx Democratic Party Primary to be held on September 15, 2009 is permitted to be withdrawn pursuant to stipulation on the record in open Court.

Accordingly, this proceeding is dismissed, with prejudice.

This constitutes the order and judgment of the Court.

Motion is Respectfully Referred to:
Justice: _____
Dated: _____

Dated: 8.10.09

Hon. 
J.S.C.

ROBERT G. SEWARD 181

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCMPART

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed
Settle Order
Schedule Appearance

MICHAEL RUBEN OLIVENCIA

Index No. 260449/2009

-against-
KEVIN ENNIS

Hon. ROBERT G. STEWARD

Justice.

The following papers numbered 1 to _____ Read on this motion,
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this
The report of the Referee is confirmed.

Application to invalidate the designating petition of Kevin Ennis for the office of Member of the City Council for the 14th District, City of New York, in the Bronx Democratic Party Primary to be held on September 15, 2009 is denied as academic.

Accordingly, this proceeding is dismissed, with prejudice.

This constitutes the order and judgment of the Court.

Motion is Respectfully Referred to:
Justice:
Dated:

Dated: 8, 10, 09

Hon. 
J.S.C.
ROBERT G. STEWARD 182

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART OSCMPART

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

-----X
 FERNANDO CABRERA
 -against-
 LUCILA SAPP
 -----X

Index No. 260442/2009
 Hon. ROBERT G. SEENALD
 Justice.

The following papers numbered 1 to _____ Read on this motion.
 Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Application to validate the designating petitions of Fernando Cabrera, on behalf of all candidates set forth on the annexed Schedule A, as candidates for public office and party position for the Bronx Democratic Party in the Democratic Party Primary to be held on September 15, 2009 is permitted to be withdrawn pursuant to the oral withdrawal placed on the record in open Court.

Accordingly, the petition is permitted to be withdrawn and the proceeding is dismissed with prejudice.

This constitutes the decision and judgment of the

Court _____
 Dated: 8.13.09

Hon. _____
 J.S.C.
 ROBERT G. SEENALD

Motion is Respectfully Referred to:
 Justice: _____
 Dated: _____

Quest
Kings County
Index No. 21141/09

To be argued by
JOHN HOGROGIAN
(15 Minutes)

Comm b
F41

NEW YORK SUPREME COURT
APPELLATE DIVISION: SECOND DEPARTMENT

In the Matter of the Application of
MIREILLE P. LEROY,

Petitioner-Appellant, Appeal No.
2009-07528

-against-

BOARD OF ELECTIONS IN THE CITY OF NEW YORK,
Respondent-Respondent,

FOR AN ORDER, PURSUANT TO SECTIONS 16-100, 16-102, AND 16-116 OF THE ELECTION LAW, DECLARING VALID THE DESIGNATING PETITION WHICH DESIGNATED THE PETITIONER AS AN AGGRIEVED CANDIDATE FOR THE PUBLIC OFFICE OF CITY COUNCIL OF THE CITY OF NEW YORK, DISTRICT 28 CITY COUNCIL OF THE CITY OF NEW YORK, IN THE DEMOCRATIC PRIMARY ELECTION TO BE HELD ON SEPTEMBER 15, 2009.

BRIEF FOR RESPONDENT

MICHAEL A. CARDOZO,
Corporation Counsel of the
City of New York,
Attorney for Respondent-Respondent,
100 Church Street,
New York, New York 10007.
(212) 788-1027 or 788-0849

STEPHEN KITZINGER,
JOHN HOGROGIAN,
of Counsel.

August 18, 2009

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NEW YORK SUPREME COURT
APPELLATE DIVISION - SECOND DEPARTMENT

In the Matter of the Application of

MIREILLE P. LEROY,

Petitioner-Appellant,

-against-

BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Respondent-Respondent,

FOR AN ORDER, PURSUANT TO SECTIONS 16-100, 16-102, AND 16-116 OF THE ELECTION LAW, DECLARING VALID THE DESIGNATING PETITION WHICH DESIGNATED THE PETITIONER AS AN AGGRIEVED CANDIDATE FOR THE PUBLIC OFFICE OF CITY COUNCIL OF THE CITY OF NEW YORK, DISTRICT 28 CITY COUNCIL OF THE CITY OF NEW YORK, IN THE DEMOCRATIC PRIMARY ELECTION TO BE HELD ON SEPTEMBER 15, 2009.

BRIEF FOR RESPONDENT

PRELIMINARY STATEMENT

In this special proceeding, petitioner-appellant Mireille P. Leroy ("petitioner") seeks an order that would declare valid a designating petition to put her on the ballot for the Democratic primary election for member of the City Council for District 28. On July 27, 2009, respondent-respondent Board of Elections of the City of New York determined that petitioner's designating petition was invalid and that her name would not appear on the ballot.

Petitioner appeals from an order and judgment of the Supreme Court, Queens County (Kerrigan, J.), dated August 11, 2009. In that order and judgment, the Supreme Court dismissed

the petition as untimely. The Court further held that even if the petition were timely, it was meritless because the defects on the petition cover were not de minimis or insubstantial.

QUESTIONS PRESENTED

1. Did the Supreme Court correctly dismiss the petition as untimely?

2. Did the Supreme Court correctly hold that the cover defects were not de minimis or insubstantial?

STATEMENT OF FACTS

Petitioner's Designating Petition

On July 16, 2009, petitioner filed with the Board of Elections a designating petition to appear on the ballot for the Democratic primary election for member of the City Council for the 28th District. The cover sheet of that petition is appended as Exhibit A to the petition that commenced this proceeding.

That cover sheet contained a defect. While the cover stated that the petition consisted of fifteen volumes, it listed sixteen volume identification numbers. By letter dated July 21, 2009, the Board of Elections notified petitioner of the defect and informed her that she could cure the defect within three business days of the date of the letter. This letter is appended as Exhibit B to the petition that commenced this proceeding.

On July 22, 2009, petitioner filed with the Board of Education an amended cover sheet. That amended cover sheet is appended as Exhibit C to the petition that commenced this proceeding. That amended cover sheet stated that the petition consisted of fifteen volumes and listed fifteen volume identification numbers. The cover sheet, however, gave incorrect identification numbers for eight of the petition volumes. The cover sheet furthermore did not identify the political party for whose nomination petitioner wished to run.

By letter dated July 27, 2009, the Board of Elections notified petitioner that it had "determined that [petitioner] will not appear on the ballot for the September 15, 2009 Primary Election" The reason stated was that "the Amended Cover Sheet filed 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" This letter is appended as Exhibit D to the petition that commenced this proceeding.

On August 4, 2009, the Board of Elections conducted hearings on objections and prima facie matters. Petitioner was not listed on either calendar. By counsel, petitioner appeared before the Board and asked to be heard. Counsel for petitioner argued to the Board that the amended cover sheet was in substantial compliance with the law and that her name should appear on the primary ballot. After hearing this presentation,

the Board took no action on it. Only a Board member may make a motion for reconsideration of a matter, and none did.

Commencement of This Proceeding

By order to show cause, petition, and memorandum of law dated August 7, 2009, petitioner commenced this special proceeding in Supreme Court, Queens County. Petitioner conceded that both the original and amended cover sheets contained the defects stated by the Board (§§ 7-8, 10). She alleged that she considered the Board's letter of July 27, 2009 to be "the Board of Elections notice that the Amended Cover Sheet was not properly done and that she had a three day right to cure the deficiency" (§ 12). She further alleged that on August 4, 2009, the Board "determined that the Amended Cover Sheet failed to comply with the rules of the Board of Elections and that was a fatal defect invalidating the designating Petition" (§ 13). In a memorandum of law, petitioner argued that the amended cover sheet was in substantial compliance with the law. The Board did not submit an answer.

The Supreme Court (Kerrigan, J.) conducted a hearing on the matter. The Board made an oral motion to dismiss on timeliness grounds (Tr. 3-26). The parties also argued regarding whether the cover defects were de minimis (Tr. 26-59).

ORDER AND JUDGMENT OF THE SUPREME COURT

On August 11, 2009, the Supreme Court (Kerrigan, J.) both rendered a decision on the record and also issued a written

order and judgment (Tr. 59-68). The Court dismissed the petition as untimely. It found that the administrative determination of the Board took place on July 27, 2009, when it issued its letter notifying petitioner that her name would not appear on the ballot. Under Election Law § 16-102(2), petitioner needed to commence this proceeding by July 30, 2009 (three days after the determination). The Court held that the Board made no determination regarding petitioner at its proceedings of August 4, 2009. The Court further held that "the defect of listing incorrect petition identification numbers on the cover sheet was not de minimis or unsubstantial"

POINT I

**THE SUPREME COURT CORRECTLY
DISMISSED THIS PROCEEDING AS
UNTIMELY.**

The Supreme Court correctly dismissed this proceeding as untimely. In its letter of July 27, 2009, the Board specifically informed petitioner that her name would not appear on the ballot. That letter unequivocally determined the invalidity of her designating petition. The statutory limitation period to commence this proceeding is three days from the determination. This Court should affirm the order and judgment of the Supreme Court.

Election Law § 16-102(2) provides that a party must commence a proceeding to challenge a determination of invalidity "within three business days after the officer or board with whom

or which such petition was filed, makes a determination of invalidity" The central issue here is to identify the date of the Board's determination.

The Board has adopted rule D6 to cover situations such as that presented in this case. The rule provides, in relevant part:

If the Board determines that an attempt to cure a defect does not comply with these Rules or the Election Law, the Board shall upon expiration of the three (3) business days set forth in Rule D4, notify the candidate ... of its determination and the reasons therefore. The Board shall give written notice of such determination and the fact that the candidate(s) will not appear on the ballot

This rule is published at www.vote.nyc.ny.us.

The Board followed rule D6 in issuing its letter of July 27, 2009. Petitioner's attempt to cure the cover sheet defect only resulted in new defects. The Board notified petitioner that her name "will not appear on the ballot" The letter does not mention any three-day cure period, dramatically unlike the earlier Board letter of July 21, 2009. By its plain language and that of rule D6, the letter of July 27, 2009, was a final Board determination. Pursuant to Election Law § 16-102(2), petitioner had until July 30, 2009, to commence this proceeding. Only eight days after that did she do so.

The Board did not make a determination regarding petitioner on August 4, 2009. Petitioner did not appear on the Board's calendar for that date. As a courtesy, the Board allowed her counsel to present argument to it. The Board did

not take any action in response. It did not reopen the determination of July 27, 2009. It did not adopt a motion for reconsideration. It did not issue any paper evidencing a determination of any sort on that date. Petitioner's argument before the Board on August 4, 2009, did not extend the limitation period. See Yarbough v. Franco, 85 NY2d 342, 348 (2000).

Petitioner argues that the letter of July 27, 2009, cannot be a determination of the Board because it was made by a committee of the Board (App. Br. at 5-8). Election Law § 3-212(5) provides that the Board of Elections can act through a committee of less than all commissioners. The Board designated a petition and cover sheet review committee. That committee properly made a final determination on behalf of the Board as a whole.

The Supreme Court correctly pinpointed the determination date as July 27, 2009. This proceeding is untimely.

POINT II

IN THE ALTERNATIVE, THE SUPREME COURT CORRECTLY HELD THAT THE COVER SHEET DEFECTS WERE NOT DE MINIMIS OR INSUBSTANTIAL.

Despite dismissing the petition as untimely, the Supreme Court addressed the merits of this proceeding. That Court correctly determined that the cover sheet defects were not de minimis and were not substantially in compliance with law.

If this Court need to address the merits of the proceeding, it should affirm the dismissal of the proceeding.

Election Law § 6-134(10) recognizes substantial compliance as a viable rule in this area. In its oral decision, the Supreme Court stated its reasons for holding that the cover sheet defects were not de minimis (Tr. at 65):

And with not that much to guide me in terms of prior precedent, I have some problem with where defects of this nature might lead. If I hold that the defects here both on the original and on the amended are de minimis, given the fact that this is one of the more important items to be identified on the cover sheet, I don't want to see a situation where it makes a person's job more difficult in trying to ascertain petition volumes, review petition volumes, potentially challenge petition volumes.

The Supreme Court correctly noted the mischief that can result from inaccurate petition identification numbers on cover sheets. The Court found that confusion could result for candidates looking to challenge petitions. A possibility of confusion is a legitimate basis for holding that a defect is not de minimis. See Siems v. Lite, 307 AD2d 1016, 1016 (2d Dept. 2003).

This Court need not address the merits of this proceeding. Should this Court reach the merits, it should affirm the order and judgment of the Supreme Court.

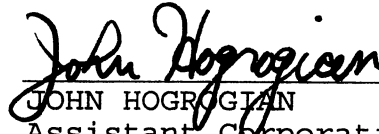
CONCLUSION

FOR THE REASONS STATED, THE ORDER
AND JUDGMENT OF THE SUPREME COURT
SHOULD BE AFFIRMED, WITH COSTS

Respectfully submitted,

MICHAEL A. CARDOZO,
Corporation Counsel of the
City of New York,
Attorney for Respondent-Respondent,
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(212) 788-1027 or 788-1065

By:



JOHN HOGROGIAN
Assistant Corporation Counsel

STEPHEN KITZINGER,
JOHN HOGROGIAN,
of Counsel.

PRINTING SPECIFICATIONS STATEMENT

This brief was prepared with Microsoft Word 2000, using Courier New 12. According to the aforementioned processing system, the entire brief, including portions that may be excluded from the word count pursuant to 22 N.Y.C.R.R. § 600.10(d)(1)(i), contains 2,124 words.

MICHAEL A. CARDOZO,
Corporation Counsel of the
City of New York,
Attorney for Respondent-
Respondent-Cross-Appellant.

By: 
JOHN HOGNOGIAN
Assistant Corporation Counsel

Com m g
K12

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D24308
O/kmg

AD3d

Argued - August 18, 2009

ROBERT A. SPOLZINO, J.P.
MARK C. DILLON
HOWARD MILLER
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

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GENERAL COUNSEL
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IN THE CITY OF NEW YORK
2009 AUG 20 PM 3:19

2009-07440

DECISION & ORDER

In the Matter of Robert Master, etc., et al., petitioners-respondents, v Charles Davis, et al., appellants, et al., respondent.

(Index No. 700032/09)

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition for an opportunity to ballot by providing for a write-in candidate pursuant to Election Law § 6-164 in a primary election to be held on September 15, 2009, for the nomination of the Working Families Party as its candidate for the public office of the Member of the New York City Council, 33rd Council District, Charles Davis, Michael M. Boyce, and Joshua D. Iovine appeal from a final order of the Supreme Court, Kings County (Schmidt, J.), entered August 11, 2009, which, after a hearing, in effect, denied their motion to dismiss the proceeding and granted the petition to invalidate the petition for an opportunity to ballot.

ORDERED that the final order is affirmed, without costs or disbursements.

The petitioners commenced this proceeding, inter alia, to invalidate a petition for an opportunity to ballot. The appellants moved to dismiss the proceeding, among other things, on the ground that the petition to invalidate failed to specify the individual signatures the petitioners were challenging. The Supreme Court, in effect, denied the motion and granted the petition to invalidate the petition for an opportunity to ballot. We affirm.

Contrary to the appellants' contention, the petitioners were not required to specify in

the petition which signatures they were challenging. The petition to invalidate sufficiently apprised the appellants of the grounds for the objections so that they could adequately prepare a defense even without considering the allegations contained in the petitioners' verified bill of particulars (see *Matter of Venuti v Westchester County Bd. of Elections*, 43 AD3d 482, 484; *Matter of Brotherton v Suffolk County Bd. of Elections*, 33 AD3d 944; *Matter of Edelstein v Suffolk County Bd. of Elections*, 33 AD3d 945, 946; cf. *Matter of Belak v Rossi*, 96 AD2d 1011, 1011-1012; *Matter of Levitt v Mahoney*, 133 AD2d 516).

Contrary to the appellants' contention, the seven people who filed designating petitions for the public office of Member of the New York City Council, 33rd Council District, were not necessary parties within the meaning of CPLR 1001(a). These individuals' candidacies would not be affected by any final order relating to this proceeding since their names will remain on the ballot regardless of the outcome of this proceeding (see *Matter of Master v Pohanka*, 43 AD3d 478, 479).

Furthermore, eight of the signatures on the petition for an opportunity to ballot were invalid on the ground that those voters previously had signed a valid designating petition for a candidate for the same office (see *Matter of Rabadi v Galan*, 307 AD2d 1014; *Matter of Reda v Lefever*, 112 AD2d 1070). Without these eight signatures, the petition for an opportunity to ballot does not contain the requisite number of signatures. Accordingly, the Supreme Court properly, in effect, denied the motion to dismiss the proceeding and granted the petition to invalidate the petition for an opportunity to ballot.

The appellants' remaining contention is without merit.

SPOLZINO, J.P., DILLON, MILLER, ANGIOLILLO and DICKERSON, J.J., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

County
FY1

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D24306
Y/hu

____AD3d____

Argued - August 18, 2009

ROBERT A. SPOLZINO, J.P.
MARK C. DILLON
HOWARD MILLER
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

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GENERAL COUNSEL
BO. OF ELECTIONS
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2009-07528

DECISION & ORDER

In the Matter of Mireille P. Leroy, appellant, v
Board of Elections in City of New York, respondent.

(Index No. 21141/09)

In a proceeding pursuant to Election Law § 16-102, inter alia, to validate a petition designating Mireille P. Leroy as a candidate in a primary election to be held on September 15, 2009, for the nomination of the Democratic Party as its candidate for the public office of Member of the New York City Council, 28th Council District, the petitioner appeals from a final order of the Supreme Court, Queens County (Kerrigan, J.), dated August 11, 2009, which dismissed the proceeding as untimely.

ORDERED that the final order is affirmed, without costs or disbursements.

Pursuant to Election Law § 16-102(2), a proceeding with respect to a designating 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." The petitioner was notified on July 27, 2009, that her designating petition had been invalidated by the Board of Elections in the City of New York (hereinafter the Board) pursuant to Rule D6 of the duly-adopted Designating Petition and Opportunity to Ballot Petition Rules for the September 2009 Primary Election. Rule D6 provided for a final determination of invalidity upon a potential candidate's failure to cure a defect in his or her designating petition. The petitioner failed to commence this proceeding by July 30, 2009, which was both the fourteenth day after the last day to file the petition

August 20, 2009

Page 1.

MATTER OF LEROY v BOARD OF ELECTIONS IN CITY OF NEW YORK

and the third business day after the written determination by the Board that the designating petition was invalid. Accordingly, the proceeding was properly dismissed as untimely (see *Matter of Sayegh v Scannapieco*, 10 AD3d 439; *Matter of Marino v Orange County Bd. of Elections*, 307 AD2d 1011, 1012; *Matter of Eckart v Edelstein*, 185 AD2d 955, 955-956; see also *Matter of McDonough v Scannapieco*, _____AD3d _____ [decided herewith]; *Matter of Kurth v Orange County Bd. of Elections*, _____AD3d _____ [decided herewith]). The petitioner's contention that the Board's written determination of invalidity was a nullity is raised for the first time on appeal, and therefore is not properly before this Court (see *Burgos v Rateb*, 64 AD3d 530).

In light of our determination, the petitioner's remaining contention is academic.

SPOLZINO, J.P., DILLON, MILLER, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

Comm mtg
FY1

ROBERT ROSENTHAL
COUNSELOR AT LAW
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STUYVESANT STATION
NEW YORK, NEW YORK 10009

(212) 353-3752

August 19, 2009

Mr. Steve Richman
Legal Counsel
New York City
Board of Elections
32 Broadway, 7th Floor
New York, New York

RECEIVED
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IN THE CITY OF NEW YORK
2009 AUG 20 P 3:21

Re: Feliciano v. Caballero, Ind. No. 110791/09
Democratic Primary
District Leader 74th Assembly District, Part A

Dear Mr. Richman:

Enclosed is the transcript containing Justice Lehner's decision granting Petitioner's motion in the above referenced case, ordering that Mr. Caballero's name not be printed on the ballot for District Leader in the 74th Assembly District, Part A.

While we were able to get this transcript from the court reporter, Justice Lehner has not been available to "so order" it.

Obviously, we will continue to pursue the judge, and serve the Board of Elections with the "so ordered" transcript as quickly as possible.

I am providing you with this copy of the transcript as evidence of the court's decision, so that the Board is aware of the order that Mr. Caballero's name not be printed on the ballot.

If you have questions or need additional information, please call me.

Sincerely,

Robert Rosenthal

Enc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 19

-----X
ANTHONY FELICIANO,

Plaintiff,

-against-

Index No.
110791/09

ROBERTO CABALLERO,

Defendant.
-----X

Decision

60 Centre Street
New York, New York
August 12, 2009

B E F O R E :

HONORABLE EDWARD H. LEHNER,

Justice

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

ROBERT ROSENTHAL, ESQ.
Attorney for the Plaintiff
523 East 14th Street
New York, New York 10009

JOHN PHELPS, CSR, RPR, CRR
SENIOR COURT REPORTER

FILED

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Proceedings

THE COURT: Since the committee on vacancies has not been served, it appears I can not disqualify that committee, but the Court since the -- the Court finds that the Referee's report is appropriate and there was no opposition, no testimony in opposition, and there's no reason to not confirm the Referee's report. So accordingly the report of the Referee disqualifying Roberto P. Caballero as a district leader, as the male district leader in Part A of the 74th Assembly District, the application to disqualify him is granted and the Board of Elections is directed to remove his name from the forthcoming primary ballot for that position; is that sufficient?

MR. ROSENTHAL: Thank you, your Honor.


THE COURT: The foregoing constitutes the judgment of the Court.

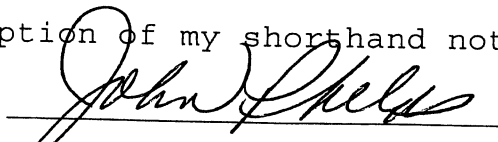
(Whereupon the proceedings were concluded.)

C E R T I F I C A T E

I do hereby certify that the foregoing taken at the time and place aforesaid, is a true and correct transcription of my shorthand notes.

SO ORDERED


Edward H. Lehner
J.S.C.


JOHN PHELPS, CSR, RPR, CRR

FILED
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NEW YORK

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The logo for Newsday.com, featuring the word "newsday.com" in a bold, lowercase, sans-serif font. A horizontal line is drawn above the text, and a small, curved mark is positioned above the "d" in "newsday".

More NYC Dems voting at upstate residences

August 21, 2009 by The Associated Press / VALERIE BAUMAN (Associated Press Writer)

ALBANY, N.Y. (AP) — Mary Woods, a real estate manager in Greenwich Village, is a Democrat in Manhattan, where there are six Democratic votes for every Republican.

There, her ballot is a drop in a very blue bucket.

That was part of her recent decision to switch her registration to vote in a region where Republicans have a narrow enrollment advantage. She has a part-time home in Pine Plains, about 90 miles north of New York City.

"There's a gazillion people who vote like me in New York City," Woods said. "There's not so many up here."

These weekend and holiday upstaters may have helped seal a narrow win in March by newcomer Democrat Scott Murphy in the 20th Congressional District, a traditionally Republican and mostly rural district stretching from Dutchess County to near the Canadian border.

"Quite frankly, they're stealing my vote," said Joseph Mondello, chairman of the state Republican Committee and a Long Islander.

"It appears to me that their vote counts more than someone who has to vote where they live," said Christopher Callaghan, a Republican and former Saratoga County Treasurer who ran unsuccessfully for state comptroller in 2006.

Records show at least 153 New Yorkers actively registered in both New York City and at their upstate homes voted in the 20th Congressional District's special election in March, 76 percent of whom were enrolled Democrats, according to elections records obtained by The Associated Press. Nearly 250 more in the district are actively registered upstate and down, but didn't vote in that particular election.

It's illegal to be registered in two places at once, but the state Board of Elections said it probably happens because New York City boroughs are behind on eliminating voters from the city database after they switch their registration. The votes won't be thrown out and there aren't penalties to the voter.

The board said people are legally required to vote from their primary residence, but that's not clearly defined.

"Certainly if you voted in the morning in Manhattan and then drove to your summer home and voted there the same day, that would absolutely be illegal," said Bob Brehm, a spokesman for the state Board of Elections. "If you're at your summer home and there's a local election — that's where the debate (over registration) is."

Mondello said the party is investigating. He suspects at least some of the trend comes by design — an assertion Democrats deny.

Barry Burden, a professor of political science at University of Wisconsin-Madison who focuses his research on U.S. elections, says New York may be ripe for strategic voting, because it has a partisan split between upstate and downstate voters and a high volume of city residents owning upstate homes.

"Any election system is going to encourage that kind of thing if voters learn to maximize their leverage," he said. "I'm not surprised."

After a monthlong count, Murphy won by 726 votes of more than 160,000 cast in the 20th district. It has 70,000 more enrolled Republicans than Democrats.

"It did play a role in the 20th Congressional District (race)," said June O'Neill, the executive chair of the state Democratic Committee. "And, in that instance, it obviously accrued to our advantage, but people have the legal right to choose where they want to cast that vote."

O'Neill said she first heard about the issue when Republicans started complaining about imported votes during the 20th Congressional race. But she said it's hard to track and impossible to know voter motivation.

New York's Republican party has grown more concerned about these so-called imported votes with each passing election as their influence wanes. Democrats currently hold every statewide elected office and control both houses of the Legislature.

The effect of the exported New York City Democratic vote is magnified in rural Republican towns, like picturesque Pine Plains where Pine Plains United, a community group, has reached out to New York City voters with homes in the area, encouraging them to move their vote upstate.

That's where Woods got involved at her upstate home, pushing for a local politician who supported zoning laws. The candidate won.

"Some of those races go by 10 votes," said Mondello, the state GOP chairman. "You get 10 or 15 people to do that and you can change the outcome of an election."

Charles Napoli, chairman of the Town of Pine Plains Republican Committee, said he's aware of the increase in weekend home owners shifting their registration upstate, but that just means his party has to reach more people.

"When you're confronted with the opposition party increasing its numbers rapidly, you have to increase yours, too," he said.

Dale Peterson, 60, says he made the switch to vote upstate because he's gradually felt

more connected to Columbia County, where he's owned a home in the 20th Congressional district for more than 20 years. He and his wife became increasingly interested in local issues and elections. He voted for Murphy.

He moved his registration to his upstate address in time for the general election in November.

"Certainly, as long-term property owners begin to retire and spend more and more time upstate, you get a bigger and bigger influence of people who are from the city — and I would expect that to continue," said the Democrat, who lives most of the time on Manhattan's West Side.

While he says the races upstate are "more competitive," he didn't have a strategy behind his switch.

"I'm not making the argument that you should sort of pick which district you're voting in, 'where it counts the most,'" he said. "I'm saying we identify with that district, and we want to be represented by people we agree with."

For Deborah Masters, the registration was practical and political. She and her boyfriend rented in Brooklyn, but owned property in Columbia County that they wanted to be eligible for a tax rebate. The 58-year-old artist has been spending most of her time in recent months at her upstate residence.

Concerned about the environment and agriculture industry in upstate New York, the Democrat was already considering changing her registration. The 20th Congressional race was the catalyst she needed.

"I just kind of knew it was a very Republican area when I moved here," said Masters, who voted for Murphy. "I knew my vote would count more, which was very exciting to me."

[< back to article](#)

County
FY2
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Qns. vet loses bid to run for Assembly seat

A QUEENS Army veteran lost his legal battle yesterday to get on the ballot for a state Assembly seat.

Farouk Samaroo, who recently served in Afghanistan, had sued in Brooklyn Federal Court to try to block the special election in a Queens district in which the candidates were chosen by party bosses.

He wanted to run in a regular Democratic primary, and had collected 2,000 signatures to get on the ballot.

U.S. District Court Judge Kiyoo Matsumoto ruled that the Sept. 15 election was valid.

Samaroo can still run as an independent, she said.

Samaroo blasted the decision as "a victory for the Queens County Democratic machine."

"However, it is not a victory for voters," he said. "I actually feel ashamed to call myself a registered Democrat."

Democratic leaders chose Michael Miller as the party's candidate to replace scandal-plagued Assemblyman Tony Serrano, who resigned in June.

The Associated Press