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EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

BOARD OF ELECTIONS

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

AGENDA COMMISSIONERS' MEETING TUESDAY, SEPTEMBER 22, 2009 AT 1:30 PM

1. Minutes
 - a) 08/18/09
 - b) 08/25/09
 - c) 09/01/09
2. Marcus Cederqvist
 - a) HAVA Update
 - b) Confirmation of Run-off Primary Election – September 29, 2009
 - c) Run-off Election – Funding for the Department of Education
3. Steven H. Richman
 - a) Selection of Name and Emblem for Independent Body Seeking to Elect Jimmy McMillan – Mayor
 - b) Designating and Independent Nominating Petitions of Walter Iwachiw, Candidate for Mayor
 - c) Independent Nominating Petitions of Oscaretin Ighile, Candidate for Member of the City Council
4. Troy Johnson
 - a) Provisional Certification for Delegate and Alternate Delegate to Judicial District Conventions and Members of the County Committee
5. John Ward
 - a) Comparative Expenditures
 - b) Vacancy Report
6. Executive Session
 - a) Litigation

For Your Information

- Order to Show Cause – Castellanos v BOE – Index No. 25252/09
- Order to Show Cause – King v BOE – Index No. 25253/09
- Letter to Mr. Jeff Shear, Chief of Staff, Office of Deputy Chancellor for Finance and Administration, New York City Department of Education
- Letter to Hon. Adrian Benepe, Commissioner, New York City Department, The Arsenal, Central Park
- Hon. Martha K. Hirst, Commissioner, Department of Citywide Administrative Services
- Mr. Douglas Apple, General Manager, New York City Housing Authority
- Orders to Show Cause and Temporary Restraining Orders Francesca Castellanos, et. al. v Ydanis Rodriguez and the Board of Elections – Index No. 25252/2009/Andy King v Larry Seabrook and the Board of Elections in the City of New York – Index No. 25253/2009
- HAVA Weekly Status Report, Week of September 11, 2009 through September 17, 2009
- HAVA Weekly Status Report, Week of September 4, 2009 through September 10, 2009
- Notice to All Runoff Candidates
- New York Supreme Court Appellate Division: Second Department – Erlene J. King, Petitioner-Respondent against The Board of Elections in the City of New York, Respondent-Appellant – Index No. 700035/09
- United States District Court, Southern District of New York – Jose Adames, Plaintiff against Richman, et. al., Defendants – 09 CIV. 7698 (JGK)
- Supreme Court of the State of New York Appellate Division: Second Judicial Department – Robert A. Spolzino, J.P., Mark C. Dillon, Howard Miller, Daniel D. Angiolillo, Thomas A. Dickerson, JJ. In the Matter of Mireille P. Leroy, Appellant v. Board of Elections in the City of New York, Respondent – Decision & Order on Motion (2009-030302)
- Office of the Self-Represented, Request for Judicial Intervention – Plaintiff, Kevin Coenen/Defendant, Board of Elections – Supreme Court Index No. 09/112962
- Supreme Court of the State of New York, County of Kings – Osaretin Ighile – Plaintiff against Board of Elections in the City of New York – Defendant, Affirmation of Stephen Kitzinger in Opposition to Order to Show Cause, Index No. 700036/2009
- Supreme Court of the State of New York, County of Kings – Osaretin Ighile, Plaintiff against Board of Elections in the City of New York, Defendant – Board of Elections in the City of New York’s Opposition to the Order to Show Cause – Index No. 700036/2009
- Motion – Mo. No. 2009-1060 – Anna R. Lewis, Appellant v Lydia Hummel, Respondent, The New York City Board of Elections, Respondent
- Supreme Court of the State of New York Appellate Division: Second Judicial Department – Peter B. Skelos, J.P., Joseph Covello, Daniel D. Angiolillo, Seri S. Roman, JJ., Earlene J. King, Respondent v Board of Elections in the City of New York, Appellant – Decision & Order – Index No. 70035/09
- New York Supreme Court – Queens County – Marquez Claxton, 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,
Respondents – Index No. 21060/09

- Supreme Court of the State of New York, County of New York – Walter Iwachiw, Plaintiff against NYC Board of Elections, Defendant – Order to Show Cause
- Supreme Court of the State of New York, County Of New York – Walter Iwachiw, Plaintiff against New York City Board of Elections, Defendant – Board of Elections in the City of New York’s Opposition to the Order to Show Cause – Index No. 09/402022
- Supreme Court of the State of New York, Appellate Division: First Department – Anna R. Lewis, Petitioner-Respondent against Lydia Hummel, Respondent-Appellant and The New York City Board of Elections, Respondent-Respondent
- United States District Court, Southern District of New York – Brother T. Williams Bey, Niyyirah El, Lincoln Salmon, Juan Antonio Martinez, Sr., S. Juan Antonio Martinez, Jr., Sonya Simmons, Joyce Nix, et. al., Plaintiffs v The Commissioners of Elections Constituting the Board of Elections in the City of New York, Defendant – Memorandum Opinion and Order – 09 Civ. 7560 (DLC)
- Mandatory Overtime – Run-off Election
- Designation of Special Election Part – Primary Day – September 15, 2009 in Kings County

News Items of Interest

- *The New York Times*: The Business of Voting Machines
- *Yeshiva World News*: Mike Bloomberg Unveils Plan for Automatic Voter Registration and Weekend Voting
- *Newsday.com*: Paterson Watch: Disabled Blast Veto of Two Bills
- *The Daily News*: State and city unready for voting machine headaches

Marcus Cederqvist

From: George Gonzalez
Sent: Monday, September 21, 2009 4:55 PM
To: Steven H. Richman
Cc: *ExecutiveManagement; John P. O'Grady; 'Kitzinger, Stephen'; *Legal Department
Subject: RE: Cost estimate to deliver to 180 sites on a Saturday

Thanks Steven. I am putting this on the agenda for discussion and guidance at tomorrow's Commissioners meeting.

George González
 Deputy Executive Director
 Board of Elections
 32 Broadway - 7th Floor
 New York, NY 10004
 212.487.5403 - phone
 212.487.5349 - fax
ggonzalez@boe.nyc.ny.us

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

From: Steven H. Richman
Sent: Monday, September 21, 2009 4:42 PM
To: George Gonzalez
Cc: *ExecutiveManagement; John P. O'Grady; Kitzinger, Stephen; *Legal Department
Subject: RE: Cost estimate to deliver to 180 sites on a Saturday

Please advise him that the Board of Elections has **not been funded** for the expenses in connection with the run-off election, we too face a structural deficit and we would be all too happy to include the DOE request when we seek additional funding from the Mayor, OMB and the Council.

It is a bad precedent to begin to pay for the use of public school buildings after our long practice of not paying for the use of school buildings, particularly when our funding continues to be reduced.

STEVEN H. RICHMAN
 General Counsel
 Board of Elections in the City of New York
 32 Broadway, 7th Floor
 New York, NY 10004-1609
 Tel: (212) 487-5338
 Fax: (212) 487-5342
 E-Mail: srichman@boe.nyc.ny.us

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

From: Shear Jeffrey [mailto:JShear@schools.nyc.gov]
Sent: Monday, September 21, 2009 4:05 PM
To: George Gonzalez
Cc: *ExecutiveManagement; Steven H. Richman; John P. O'Grady; Kitinger, Stephen; Shea John
Subject: RE: Cost estimate to deliver to 180 sites on a Saturday

Dear George,

Thank you for your note. The Division of School Facilities is doing the best it can to accommodate your request given the severe fiscal climate under which it is operating. Keeping certain schools open until 8pm on Wednesday, Thursday and Friday, for example, also imposes additional costs upon DSF but nowhere near as large as when a school scheduled to be closed on a certain day has to be opened. Keeping 180 schools open on Saturday, however, is a very large expense. I have discussed this with senior DSF management and they have committed to reviewing the entire maintenance schedule and extended use schedule for those schools to see which buildings may have cleaning staff already committed for part of Saturday for things like cleaning the schoolyard or running a sports league. Our best guess at this time is that this can be done for approximately 60 of the buildings and that while DOE will incur additional costs they will be smaller than originally estimated. But for the remaining 120 sites, we are asking for \$15,000 from the Board of Elections to offset this extraordinary expense. DSF has been cut by tens of millions of dollars over the past few years and is currently running a structural deficit for FY10 that could cause further budget cuts to our schools.

We hope you understand the balance we are trying to strike here between supporting our democracy and supporting funding for the classroom for over one millions New York City schoolchildren.

Sincerely,
 Jeffrey Shear
 Chief of Staff
 Infrastructure & Planning

From: George Gonzalez [mailto:ggonzalez@boe.nyc.ny.us]
Sent: Monday, September 21, 2009 2:53 PM
To: Shear Jeffrey
Cc: *ExecutiveManagement; Steven H. Richman; John P. O'Grady; Kitinger, Stephen
Subject: FW: Cost estimate to deliver to 180 sites on a Saturday

Dear Jeffrey,

As you may know, the Board of Elections in the City of New York is required to conduct a Run-off Election if the candidates for the Public Offices Mayor, Comptroller and Public Advocate do not receive 40 per cent of the vote. This year, the Board will be conducting a Run-off Election for the Public Office of Comptroller and Public Advocate on Tuesday, September 29, 2009. In order for the Board to deliver the voting equipment (mechanical lever machines and ballot marking devices [BMDs] for the voters of the City of New York, we are asking for the schools to be open on Saturday, September 26, 2009. This is due to the tight schedule between the Primary and Run-off Election as well as the Jewish holidays, in which the public schools are closed. The delivery of the machines to the school will commence on as follows:

- Wednesday, September 23, 2009
- Thursday, September 24, 2009
- Friday, September 25, 2009

On the above-referenced days, we are requesting that the schools be open to 8:00 P.M. to accept delivery of the voting equipment

On Saturday, September 26, 2009, we are requesting that the approximately 180 schools

(citywide) be open from 8:00 a.m. to 5:00 p.m. to accept deliveries. As you know, Monday, September 28, 2009 is the Yom Kippur holiday and all schools will be closed in observance.

The Division of School Facilities has stated that the cost for keeping the schools open on Saturday the 26th cannot be absorbed by the DOE. Below is an e-mail from Salvatore J. Calderone, Director of Field Operations, Division of School Facilities regarding the cost of keeping approximately 180 schools open on Saturday, September 26, 2009.

Your attention, assistance and understanding with this matter are greatly appreciated. If you have any questions or require additional information, please do not hesitate to call me at 212.487.5403 or e-mail me at ggonzalez@boe.nyc.ny.us.

George González
Deputy Executive Director
Board of Elections
32 Broadway - 7th Floor
New York, NY 10004
212.487.5403 - phone
212.487.5349 - fax
ggonzalez@boe.nyc.ny.us

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

From: John P. O'Grady
Sent: Monday, September 21, 2009 12:20 PM
To: *ExecutiveManagement
Subject: FW: Cost estimate to deliver to 180 sites on a Saturday

Please advise.

Thank You

John P. O'Grady
Chief Voting Machine Technician
Board of Elections in the City of New York
32 Broadway, N.Y. N.Y. 10004
Phone 212 487-5457
Fax 212 487-3909

From: Calderone Salvatore [<mailto:SCalder@schools.nyc.gov>]
Sent: Monday, September 21, 2009 11:59 AM
To: John P. O'Grady

Cc: DiPadova Louis

Subject: Re: Cost estimate to deliver to 180 sites on a Saturday

John,

Given our current fiscal climate, and considering the operational cuts we have already wethered, it would be extremely difficult for us to absorb the cost of the requests you have made.

As a gesture of good will, the DOE has already covered the additional costs incurred in the Primary Election last week. Unfortunately we cannot allow for any further additional costs to come from within our budget.

Please seek other alternatives in order to get this work accomplished during the course of the regular school day.

Regards,

Sal

Sent from my BlackBerry Wireless Handheld

From: John P. O'Grady

To: Calderone Salvatore

Cc: DiPadova Louis

Sent: Thu Sep 17 16:36:41 2009

Subject: RE: Cost estimate to deliver to 180 sites on a Saturday

Sal;

We are not prepared to paid this cost.

Thank You

John

John P. O'Grady
Chief Voting Machine Technician
Board of Elections in the City of New York
32 Broadway, N.Y. N.Y. 10004
Phone 212 487-5457
Fax 212 487-3909

From: Calderone Salvatore [mailto:SCalder@schools.nyc.gov]

Sent: Thursday, September 17, 2009 2:58 PM

To: John P. O'Grady

Cc: DiPadova Louis

Subject: Cost estimate to deliver to 180 sites on a Saturday

John,

A ballpark number to keep 180 buildings open (40 in each borough except for SI, which would be

20) for a Saturday from 8 AM to 4 PM would be approximately \$23,000. That includes me covering the cost for the first four hours.

Let me know how you want to handle.

Sal



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STEVEN H. RICHMAN
GENERAL COUNSEL
Tel: (212) 487-5338
Fax: (212) 487-5342
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srichman@boe.nyc.ny.us

September 21, 2009

TO: The Commissioners of Elections

FROM: Steven H. Richman, General Counsel



**COPY: Marcus Cederqvist, George Gonzalez, Pamela Perkins,
Troy Johnson, Charles Webb, Steven Denkberg,
Christopher Manos & Diana Scopelliti;
Stephen Kitzinger, New York City Law Department**

**RE: SELECTION OF NAME AND EMBLEM FOR INDEPENDENT
BODY SEEKING TO ELECT JIMMY MCMILLAN - MAYOR**

On August 21, 2009, the Board sent notice to Jimmy McMillan advising that the name selected for his independent body "THE RENT IT TOO DAMM HIGH" and the emblem thereon did not comply with the requirements of Section 7-104(2) of the Election Law (copy attached). The name selected exceeded the number of characters allowed on the ballot and the choice of emblem was not an emblem, it was the full name selected for the independent body. It afforded him the opportunity to select a name and emblem pursuant to Sections 6-138(3)(b) and 7-104(2) that conformed to the statutory requirements.

By a certificate filed on August 24, 2009, Mr. McMillan filed a certificate (copy attached) seeking to use the same name and emblem.

Therefore said designation still does not conform to Section 7-104(2), in that the name exceeds fifteen letters, and it is not an emblem for the independent body.

Therefore, pursuant to Sections 6-138(3)(f) and 7-104(2) of the Election Law, the selection of a name and emblem falls to the Board of Elections in the City of New York.

It is those determinations that we seek from the Board in this matter.

Thank you for your attention to these matters.

Attachments

CERTIFICATE
(Pursuant to Section 6-138(3)(b) of the Election Law)
(selecting a different name/emblem for an independent body)

I, Jimmy McMillan
residing at 1996 Nostrand Ave
having been nominated by the RENT IS TOO DAMN HIGH
Party, an independent body, as a candidate for the Office of MAYOR

at the NOV 3, 2009 ^{General} Election to be held on NOV 3, 2009

2009; and the Board of Elections in the City of New York, having made a determination, pursuant to Election Law Section 6-138(3)(a), that the use of the name and/or emblem of the

RENT Is Too Damn High ~~RENT IS TOO DAMN HIGH~~

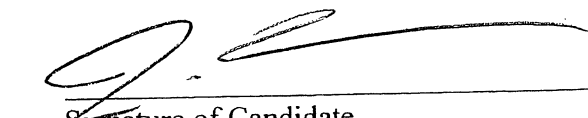
RENT Is Too Damn High Party creates the possibility of confusion with the name/emblem of an existing party or an independent body that previously filed independent nominating petition for the same office; and

notice of such determination having been mailed to me by said Board on 08/21/09

2009; I hereby select the name/emblem RENT IS TOO DAMN HIGH

RENT IS TOO DAMN HIGH Party as a different name/emblem, pursuant to Section 6-138(3)(b) of the Election Law.

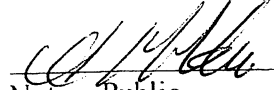
8-24-09
Date


Signature of Candidate
James McMillan

STATE OF NEW YORK)
COUNTY OF New York ss:

On this 24 day of August, 2009, before me personally appeared _____, to me known and known to me to be the individual described therein, and who

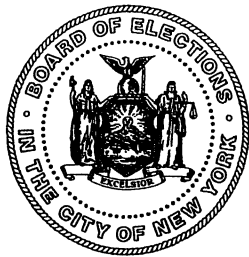
executed the foregoing instrument, and he acknowledge to me that he executed the same.


Notary Public

Ali Yildirim
Notary Public, State of New York
Reg. # 01Y16196600
My Comm. Exp. 11/17/2012

RECEIVED
G.O. BOARD OF ELECTIONS
IN THE CITY OF NEW YORK
2009 AUG 24 AM 11:12

MG



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JULIE DENT
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STEVEN H. RICHMAN
GENERAL COUNSEL
Tel: (212) 487-5338
Fax: (212) 487-5342
E-Mail:
srichman@boe.nyc.ny.us

Via Express Mail

Date: August 21, 2009

TO: Jimmy McMillan
1996 Nostrand Avenue
Brooklyn, NY 11210

Dear Mr. McMillan:

On August 18, 2009 an independent nominating petition nominating you as the candidate for Mayor for the "Rent is Too Damn High Party" was filed with the Board of Elections in the City of New York.

Pursuant to the provisions of Section 6-138(3) (a) of the New York State Election Law which provides:

"The name selected for the independent body making the nomination shall be in English characters and shall not include the name or part of the name or an abbreviation of the name or part of the name, or shall the emblem or name be of such a configuration as to create the possibility of confusion with the emblem or name of a then existing party or the emblem or name of an independent body selected by a previously file independent nominating petition for the same office."

and

Section 7-104(2) of the Election Law, which provides:

“The names of parties or independent bodies which contain more than fifteen letters may, whenever limitations of space so require, be printed on the ballot in an abbreviated form.”

a Commissioners' Committee of the Board of Elections in the City of New York, at its meeting held today, has determined that the name which appears on the independent nominating petition filed on your behalf does not comply with the foregoing requirements. In addition, the symbol or emblem selected is the name of the independent body that exceeds the aforementioned statutory requirements.

Therefore, pursuant to Sections 6-138(3)(b) and 7-104(2) of the New York State Election Law, the Board of Elections in the City of New York hereby sends this notice to select a name and emblem for your independent political body which complies with the foregoing requirements.

In accordance with those statutory provisions, you may file with the Board of Elections in the City of New York (at its General Offices located in the Borough of Manhattan at 32 Broadway, 7th Floor, New York, NY 10004) **within seven days after the date of this notice**, a certificate selecting a abbreviated form of the name of the independent body and an emblem reflecting the name selected. A sample certificate form is also enclosed herewith.

Please note that if you do not file such a certificate with the Board of Elections in the City of New York, then that Board, pursuant to the provisions of Sections 6-138(3) (f) and 7-104(2) shall select a name and emblem.

Thank you for your cooperation and understanding in this matter.

Very truly yours,

The Commissioners of Elections in the City of New York

fifty thousand inhabitants, according to the last preceding federal enumeration, one thousand signatures;

(f) For any office to be filled by all the voters of any other city or county, or of a councilmanic district in any city other than the city of New York, five hundred signatures;

(g) For any office to be filled by all the voters of any congressional district, twelve hundred fifty signatures;

(h) For any office to be filled by all the voters of any state senatorial district, one thousand signatures;

(i) For any office to be filled by all voters of any assembly district, five hundred signatures;

(j) For any office to be filled by all the voters of any political subdivision, except as herein otherwise provided, contained within another political subdivision, not to exceed the number of signatures required for the larger subdivision;

(k) For any other office to be filled by the voters of a political subdivision containing more than one assembly district, county or other political subdivision, not to exceed the aggregate of the signatures required for the subdivisions or parts of subdivisions so contained; and

(l) For any county legislative district, five hundred signatures.

3. The number of signatures on a petition to designate a candidate or candidates for the position of delegate or alternate to a state or judicial district convention or member of the state committee or assembly district leader or associate assembly district leader need not exceed the number required for member of assembly, and to designate a candidate for the position of district delegate to a national party convention need not exceed the number required for a petition for representative in congress.

§ 6-138. Independent nominations; rules.

1. Independent nominations for public office shall be made by a petition containing the signatures of registered voters of the political unit for which a nomination is made who are registered to vote. The name of a person signing such a petition for an election for which voters are required to be registered shall not be counted if the name of a person who has signed such a petition appears upon another valid and effective petition designating or nominating the same or a different person for the same office.

DESIGNATION AND NOMINATION OF CANDIDATES 6-138

2. Except as otherwise provided herein, the form of, and the rules for a nominating petition shall conform to the rules and requirements for designating petitions contained in this article.

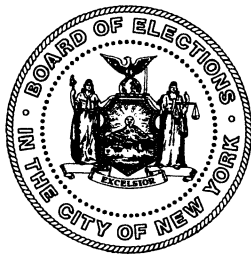
3. a. The name selected for the independent body making the nomination shall be in English characters and shall not include the name or part of the name or an abbreviation of the name or part of the name, nor shall the emblem or name be of such a configuration as to create the possibility of confusion with the emblem or name of a then existing party, or the emblem or name of an independent body selected by a previously filed independent nominating petition for the same office.

b. Notwithstanding the requirements of paragraph a of this subdivision, if the emblem or name selected for an independent body on any independent nominating petition is the same as that selected by any previously filed independent nominating petition for the same office, the board of elections with which such later petition was filed shall, not later than two days after the filing of such later filed petition, send notice of such duplicate selection of emblem or name by first-class mail, to the candidate for such office who was nominated by such later filed petition, and that the candidate to whom such notice is required to be sent may file with such board of elections, not later than seven days after such notice was mailed, a certificate selecting a different emblem or name.

c. A person who has been nominated or who expects to be nominated as the candidate of an independent body for the office of President of the United States at any election for such office may, not later than three days after the last day to file nominating petitions, file with the state board of elections, a special certificate which shall be irrevocable, stating that such person does not wish to permit candidates for any other office, except the office of Vice-President of the United States, to appear on the ballot with the same name and emblem as the independent body which has nominated or will nominate such candidate for the office of President.

d. Not later than seven days after the last day to file nominating petitions, the state board of elections shall notify each local board of elections of the name of each candidate for President of the United States who has filed such a special certificate, together with the name and emblem of the independent body selected on the petition which nominated such candidate.

e. If any candidate has been nominated for any other office by a petition which selected the same name or emblem for an independent body as



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srichman@boe.nyc.ny.us

September 21, 2009

TO: The Commissioners of Elections

FROM: Steven H. Richman, General Counsel

**COPY: Marcus Cederqvist, George Gonzalez, Pamela Perkins,
Troy Johnson, Charles Webb, Steven Denkberg,
Christopher Manos & Diana Scopelliti;
Stephen Kitzinger, New York City Law Department**

**RE: Designating and Independent Nominating Petitions of
Walter Iwachiw, Candidate for Mayor**

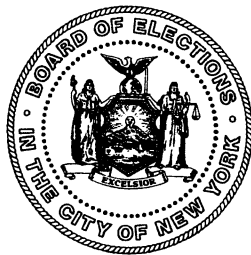
Some Commissioners have requested that the petitions filed during this election cycle by Walter Iwachiw deserve further review by this Board and consideration of a referral of his submissions to the appropriate investigatory authority.

Please note that you removed this candidate from the November 3, 2009 ballot at a hearing held on September 8, 2009 for an insufficient number of signatures on its face. He was also removed from the Republican Party Primary ballot for insufficient signatures based on Specifications of Objections that were filed.

Briefly stated, he filed the exact same petition pages twice--once as his Designating Petition and then again as his Independent Nominating Petition. Both sets of petition volumes will be available at the Board meeting for your personal review.

With respect to actions by the Board, I recommend that the Board direct the staff to refer all of Mr. Iwachiw's petition volumes to the District Attorney for New York County (since this is the venue where said documents were offered for filing) for his review and investigation to determine if criminal prosecution is warranted in this matter.

Thank you for your attention to this important matter.



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS

BOARD OF ELECTIONS

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

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

STEVEN H. RICHMAN
GENERAL COUNSEL
Tel: (212) 487-5338
Fax: (212) 487-5342
E-Mail:
srichman@boe.nyc.ny.us

September 21, 2009

TO: The Commissioners of Elections

FROM: Steven H. Richman, General Counsel

**COPY: Marcus Cederqvist, George Gonzalez, Pamela Perkins,
Troy Johnson, Charles Webb, Steven Denkberg,
Christopher Manos & Diana Scopelliti;
Stephen Kitzinger, New York City Law Department**

**RE: Independent Nominating Petitions of Osaretin Ighile,
Candidate for Member of the City Council**

During the course of the hearing before Justice David Schmidt in Kings County Supreme Court last Thursday, (in a proceeding where the candidate seeks to be restored to the ballot, notwithstanding his omission of the Council District Number from each sheet of the petition), I had the opportunity to review the petition itself. [Note: the Court has not yet issued a determination with respect to that Order to Show Cause.]

Please note that you removed this candidate from the November 3, 2009 ballot at a hearing held on September 8, 2009 for failing to including the Council District number on each sheet of his petition.

In the course of said review, I observed the following issues which had not been presented to the full Board or a Committee thereof to date.

Therefore, at this time, I present to you for your review and determination the following matters relating to said petition:

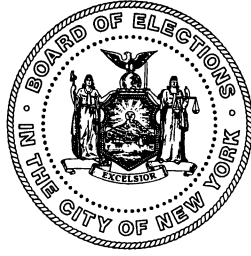
- (1) The volumes of the petition are not securely bound. They are held together by black metal paper clips.**
- (2) The Independent Nominating Petition submitted contains labels containing the candidate's name and address and public office as well as the committee to fill vacancies which have been placed on Designating Petition sheets or Opportunity to Ballot petition sheets. The dates printed next to the signatures often overlap for the period of both Designating Petitions and OTB Petitions.**

The petition volumes will be available at the Board meeting for your personal review.

With respect to actions by the Board, I recommend that the Board direct the staff to Issue:

- (1) A Notice of Non-Compliance with respect to the petition volumes not being securely fastened. This would give the candidate three business days to attempt to cure the defect.**
- (2) Another Notice of a Preliminary Finding of a Prima Facie Defect, the use of labels on a claimed Independent Nominating Petition consisting in large part of petition pages that were printed as Designating or OTB petitions, and setting a hearing before you for Tuesday, October 6, 2009 at 1:30 PM. (The potential for fraud is presented in this instance and merits further review.)**

Thank you for your attention to this important matter.



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
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ADMINISTRATIVE MANAGER

JOHN J. WARD
FINANCE OFFICER

DATE: September 22, 2009
TO: Commissioners

FROM: John J. Ward
Finance Officer

RE: Comparative Expenditures

FY10	P.S. Projection through 9/18/09 Payroll:	\$ 4,229,000
FY10	P.S. Actual through 9/18/09 Payroll:	<u>\$ 5,473,732</u>
	Difference	(\$ 1,244,732)

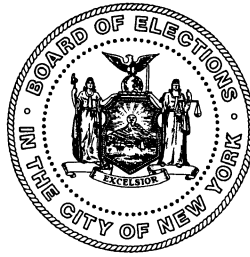
Overtime pays two weeks ending 9/04/09

OVERTIME USAGE

General Office	91,332
Brooklyn	88,454
Queens	55,725
Bronx	46,207
New York	65,332
Staten Island	<u>6,309</u>
Total	\$353,359

Respectfully submitted,

Finance Officer



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
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PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

JOHN J. WARD
FINANCE OFFICER

DATE: September 15 2009
TO: Commissioners

FROM: John Ward
Finance Officer.

RE: Vacancies

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

Powell Law, P.C.
277 Broadway, 9th Floor
New York, New York 10007

212-267-1906 Telephone

212-267-1893 Facsimile

VIA FACSIMILE (212) 487-5342

September 18, 2009

Mr. Steven H. Richman
General Counsel
Board of Elections in the City of New York
Executive Office, 32 Broadway
New York, New York 10004-1609

Re: Order to Show Cause

Mr. Richman,

Attached please find a courtesy copy of the Order to Show Cause and Temporary Restraining Order executed by Judge Marcia Hirsch [hereinafter "Hirsch"], at 5:15 p.m. today. The attached order impounds the voting machines in the 10th District Councilmanic race in New York County and the 12th District Councilmanic race in Bronx County. I will file true copies as per the judge's order by the date specified in Judge Hirsch's Order. Please have the machines secured as specified.

Sincerely,



Verena C. Powell

Verena C. Powell
VCP/vcm

cc: Andy King, via facsimile (718) 515-5463
Richard Winsten, via facsimile (914) 827-9868
Francesca Castellanos, via facsimile (212) 568-3255

SEQUENCE NO. _____

At Special Election Part of the Supreme Court
of the State of New York, held in and for the
County of ~~New York~~ ^{Queens} at the Supreme Court
Courthouse at 125-01 Queens Blvd.,
Kew Gardens, New York on the 18th
day of September 2009. *at 5:15 pm*

PRESENT: MARCIA P. HIRSCH, Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK *(To be held in Queens)*

In the Matter of the Application of

FRANCESCA M. CASTELLANOS, CLEOFIS
SARETE, RUBEN DARIO VARGAS,
LUIS FACUNDO and FRANCISCO SPIES,

ORDER TO SHOW CAUSE

Aggrieved candidates for the Democratic
candidates for the Public Office of City Council
Member of the County of New York, City and
State of New York, 10th District,

INDEX NO.: NO MOTION SER.
25252/09 FILED ON
COMMENCEMENT

Petitioners,

-against-

YDANIS A. RODRIGUEZ, candidate and
THE BOARD OF ELECTIONS IN THE CITY
OF NEW YORK,

Respondent(s),

For an Order Pursuant to Article 9 of the Election
Law to Declare Invalid the election results of the
Democratic Party Primary Election held
September 15, 2009; and directing The Board of
Elections in the City of New York, to hold a new primary
election to choose the Democratic candidate for the
Public Office of City Council Member of the
City of New York, New York County, 10th District.

Upon the annexed Petition of FRANCESCA M. CASTELLANOS, CLEOFIS SARETE,
RUBEN DARIO VARGAS, LUIS FACUNDO and FRANCISCO SPIES, [hereinafter,

Candidates"], duly verified on the 17th day of September 2009, and upon all the proceedings heretofore had herein, it is hereby

ORDERED, that the Respondents herein, show cause before this Court at Part A, to be held at the Supreme Courthouse at 125-01 Queens Boulevard, County of Queens, City of New York, Room 324, on the 23rd day of September 2009 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

1. For a full court and/or special master review of the canvass, recanvassing and evaluation of validity of the ballots at the time the respondent Board does the canvass pursuant to Election Law Sections 9-208 and 9-209 of all election results with respect to the counting of all ballots with respect to the September 15, 2009 Primary Election race for the public office of City Council Member, 10th District of the County of New York, City and State of New York and for a review of all the results of the recanvass prior to certification of the results;

2. To preserve all ballots whether machine ballots and all paper ballots for a full review by the court pursuant to Election Law Section 16-113;

3. In the event that the petitioners, FRANCESCA CASTELLANOS, CLEOFIS SARETE, RUBEN DARIO VARGAS, LUIS FACUNDO or FRANCISCO SPIES, is determined not to be the winner of the primary election, after such a full review and recanvass of the results by the respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK declaring defective, invalid, null and void the results of the September 15, 2009 Primary Election with respect to the 10th Councilmanic District in the County of New York, City and State of New York, pursuant to Election law Sections 16-100 and 16-116;

4. In the event FRANCESCA M. CASTELLANOS, CLEOFIS SARETE, RUBEN DARIO VARGAS, LUIS FACUNDO or FRANCISCO SPIES, is not the winner of the Primary Election held on September 15, 2009, enjoining the BOARD OF ELECTIONS IN THE CITY OF NEW YORK to hold a new Primary Election for the public office of City Council Member from the 10th District of the

~~County of New York, City and State of New York,~~

5. Such other and further relief as to this Court may deem just and proper in the circumstances; and it is further

ORDERED, that pending the hearing of this proceeding that the Respondents BOARD OF THE ELECTIONS IN THE CITY OF NEW YORK be and are hereby ordered (1) to impound all said voting machines in the 10th Council District and all paper ballots and place each and every machine same *lock & key in a secured location* under ~~a police guard from the New York City Police Department to guard each and every machine and~~ ~~a police guard from the New York City Police Department to guard all of the paper ballots and all ballot materials~~ to prevent any tampering of same at any location where any ballot may be present; and (2) directed to keep each and every voting machine under full lock, key and under a full seal; (3) stayed from resetting any voting machine counts back to zero and to preserve the voting machines in their current state; (4) directed to preserve all paper ballots, emergency ballots, poll cards, inspector reports, canvass reports and any absentee ballots and/or Emergency Ballots, Absentee Ballots, Affidavit Ballots and/or federal or military ballots and all other ballot materials with respect to the primary election for City Council Member for the 10th District of the County of New York, City and State of New York in the Primary election held on September 15, 2009 *under lock & key in a secured location* ~~with a police guard from the New York City Police Department,~~ (5) stayed from certifying the results of the Primary election for City Council Member for the 10th District of the County of New York, City and State of New York held on September 15, 2009; ~~(6) further ordered and directed to produce upon the hearing of this Order to Show Cause and on all adjournments thereof, all Ballots, Emergency Ballots, Absentee Ballots, Voting Machines and Polling Books, utilized in the Primary election for City Council Member for the 10th District of the County of New York, City and State of New York, held on September 15, 2009;~~

SUFFICIENT CAUSE APPEARING THEREFORE, leave is hereby granted to the Petitioner(s) to submit, upon the return day of this Order to Show Cause and any adjournments thereof, and the argument thereof, such additional evidence, exhibits, and other proof as may be necessary.

SUFFICIENT CAUSE APPEARING THEREFORE, it is further

ORDERED, that service of a copy of this order to show cause, together with a copy of the papers upon which it is granted, on the Respondents constituting the BOARD OF ELECTIONS IN THE CITY OF NEW YORK, be made by leaving a copy thereof at the Office of the Chief Clerk of the said BOARD OF ELECTIONS at 32 Broadway, in the Borough of Manhattan, City of New York, on or before the 21st day of September 2009, and

SUFFICIENT CAUSE APPEARING THEREFORE, it is further

ORDERED that service of a copy of this order, together with a copy of the papers upon which it is granted, upon the Respondent-Candidate be made either by delivering the same to the Respondent-Candidate personally, pursuant to CPLR Section 308(1), on or before the 21st day of September, 2009, or (2) by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to the Respondent-Candidate at the address set forth in his Petition filed with the Board of Elections in the City of New York and by mailing the same in a Post Office branch, regularly maintained by the United States Postal Service in the City of New York, with proof of mailing by certificate of mailing, on or before the 21st day of September, or (3) by affixing the same to the outer or inner door of the residence of Respondent-Candidate at the address set forth in his Petition filed with the Board of Elections in the City of New York, and by enclosing the same in securely sealed and duly prepaid wrapper, addressed to the Respondent-Candidate at the address set forth in his Petition filed with the Board of Elections in the City of New York and by depositing same in a Post Office regularly maintained by the United States Postal Service in the City of New York, with proof of mailing by certificate of mailing, on or before the 21st day of Sept. 2009, or (4) by affixing the same to the outer or inner door of the residence of Respondent-Candidate at the address set forth in his Petition filed with the Board of Elections in the City of New York, and by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to the Respondent-Candidate at the address set forth in his Petition filed with the Board of Elections in the City of New York by guaranteed overnight

express mail, with proof of mailing by guaranteed overnight express mailing, on or before the 21st day of September 2009; and that such service shall be deemed due, timely, good and sufficient service thereof, and such service shall constitute sufficient notice hereof.



Justice, Supreme Court

CERTIFICATION

The undersigned, being an attorney duly admitted to practice law in the before the Courts of the State of New York, hereby certifies that, to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the within papers or the contentions therein are not frivolous as defined in subsection (c) of 22 NYCRR §130-1.1.

Dated: New York, New York
 September 17, 2009


Verena C. Powell

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

In the Matter of the Application of

**FRANCESCA M. CASTELLANOS, CLEOFIS
SARETE, RUBEN DARIO VARGAS,
LUIS FACUNDO and FRANCISCO SPIES,**

PETITION

**As candidate for the Democratic nomination for the
Public Office of City Council Member of the
City of New York, New York County, 10th District,**

INDEX NO.:

Petitioner,

-against-

**YDANIS A. RODRIGUEZ, candidate and
THE BOARD OF ELECTIONS IN THE CITY
OF NEW YORK,**

Respondent(s),

**For an Order Pursuant to Article 9 of the Election
Law to Declare Invalid the election results of the
Democratic Party Primary Election held
September 15, 2009; and directing The Board of
Elections in the City of New York, to hold a new primary
election to choose The Democratic candidate for the
Public Office of City Council Member of the
City of New York, New York County, 10th District.**

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Petitioners respectfully show and allege that:

1. That at all times hereinafter mentioned, Petitioners **FRANCESCA M. CASTELLANOS**, resides at 503 West 169th Street, New York, New York; **CLEOFIS SARETE**, resides at 4530 Broadway, New York, New York; **RUBEN DARIO VARGAS**, resides at 105 West 104th Street, New York, New York; **LUIS FACUNDO**, resides at 425 West 205th Street, New York, New York and **FRANCISCO SPIES**, reside at 181 East 205th Street, Bronx, New York, were and still are duly qualified candidates in the State of New York, running for the public office of City Council, from the 10th District of the

County New York, City and State of New York at a Primary Election held September 15, 2009.

2. That upon information and belief, the Respondent YDANIS A. RODRIGUEZ, residing at 18 Jacobus Place, New York, New York, was and still is duly qualified candidate running for the public office of City Council, from the 10th District of the County New York, City and State of New York in the Primary Election held September 15, 2009.

3. That at all of the times hereinafter mentioned, the Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK was and is charged with the responsibility of the supervision of the conduct of the official elections held in the City of New York.

4. That the BOARD OF ELECTIONS IN THE CITY OF NEW YORK has not yet certified the results of the race for City Council from the 10th District of the County of New York, City and State of New York in the Primary Election held Tuesday, September 15, 2009.

5. That upon information and belief, the unofficial count taken by the BOARD OF ELECTIONS indicates that the Respondent-Candidate, YDANIS A. RODRIGUEZ, received 4,524 more votes than Petitioner FRANCESCA CASTELLANOS, 4,579 more votes than Petitioner CLEOFIS SARETE, 4,364 more votes than Petitioner RUBEN DARIO VARGAS, 4,630 more votes than Petitioner LUIS FACUNDO, and 4,643 more votes than Petitioner FRANCISCO SPIES out of over 7,977 votes cast on voting machines with several thousand uncounted Absentee and Affidavit ballots remaining uncounted.

6. The Respondent, YDANIS A. RODRIGUEZ, has the support of a number of elected New York County Democratic office holders and access to the resources of the New York County Democratic Committee

7. Because of the status of the parties herein and pursuant to Section 16-113 of the Election Law, the Court hearing this matter must continue to preserve all ballots under police guard, supervise and stay the certification of the results by the Board of Elections in the City of New York and any final re-canvass of all of the results, including the Board of Election process that is continuing presently, and

review all of the results of the re-canvass with respect to the canvassing and re-canvassing of the results, including the absentee ballots, paper ballots, affidavit, and/or federal and military ballots and determine the validity of any challenged or contested ballots upon notice to all interested positions.

8. In addition, the Court pursuant to 16-113 of the Election Law is empowered to review all of the NYC Board of Elections' determinations de novo and should do so. Prior to any final certification of results, the Court must review all of the determinations of the NYC Board of Elections to determine if they are correct.

9. Because of time constraints, I am listing initial arguments and reserving the right to add additional arguments as this matter progresses.

10. The Board improperly rejected ballots where applications for ballots were contained therein. Such a rejection impairs the ability of a voter to cast his vote and denies a franchise to that voter. The court must correct this error.

11. The incorrectness of the determinations herein are that hundreds of ballots have been or may be rejected for Board of Elections administrative or bureaucratic errors, such as missing or extraneous markings on the envelopes or the ballots themselves. A rejection on such a ministerial error denies the voter an opportunity to cast a ballot and flies in the face of the voter's right to vote and have that vote counted.

12. In addition, a significant number of ballots were rejected because a voter would sign his affidavit with an incorrect date, although the ballot was proper and should have been counted. In other words, for example if a voter dated his signature September 16, 2009, but the postmark indicated September 15, 2009, it was clear that the date of the signature was in error. The ballot would then be rejected. However, for this minor and unintentional human error, the voter's franchise should not be denied to him.

13. Many ballots are questioned because a voter would unseal an envelope and reseal it, leading to a possible question of the ballot's integrity. That should not lead to rejection of the ballot

unless there was a genuine question of the integrity of the ballot. The high value of the right to franchise is the ultimate question herein.

14. In addition, ballots were rejected because they were cast by paper at a poll site instead of a machine due to inspector misinformation. This rejection on such technical grounds that deny franchise should not be permitted.

15. For those reasons prior to a final certification of the results, the Court must review all of the rulings especially on the issues indicated. A correct result can then be had subject to the Court's re-canvass of the rulings.

16. However, in the event FRANCESCA M. CASTELLANOS, CLEOFIS SARETE, RUBEN DARIO VARGAS, LUIS FACUNDO or FRANCISCO SPIES, after this full canvass and recanvass is determined not to be the winner of the primary held on September 15, 2009, that these results should not be certified, the results of this election with respect to the public office of City Council from the 10th District of the County of New York, City and State of New York Primary Election held September 15, 2009 should be invalidated, and a new election should be ordered by this Court.

17. That there has been such fraud and/or irregularity with respect to the conduct of the above-mentioned Primary Election that it is impossible to make a determination as to who was rightfully elected.

18. Upon information and belief, the results of the Primary Election held on September 15, 2009 are invalid, in the event that FRANCESCA M. CASTELLANOS, CLEOFIS SARETE, RUBEN DARIO VARGAS, LUIS FACUNDO or FRANCISCO SPIES, is determined not to be the winner by reason of the following facts:

- (a) That paper ballots properly prepared by voters were not counted because they were submitted at the wrong polling site.
- (b) That the public and/or protected counters on many voting machines reflected more votes than

were actually cast.

- (c) That on many voting machines, the public counters and the protected counters did not agree as the number of votes cast.
- (d) That the number of emergency paper ballots taken in this election was disproportionate to the number of voters, and well in excess of the difference between the votes cast on the machines for the candidates, and that they have not been included in the count.
- (e) That Election Inspectors permitted and encouraged incomplete paper ballots to be filed, in an attempt to cause these ballots not to be counted.

18. That the above mentioned instances of fraud and/or irregularity are sufficiently large in number and are of such nature as to establish the probability that the election results would change absent such fraud and/or irregularity. That your Petitioner requests leave and reserve the right to submit upon the argument and hearing of this application, evidence by way of affidavits, testimony, and documentary proof to substantiate and support this application.

19. That Petitioners request the Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK to produce upon the argument and hearing of this application all ballots, Emergency Ballots, Absentee Ballots, 10th Council District voting machines and polling books provided for in the annexed Order to Show Cause.

20. Other than this proceeding, Petitioner has no adequate, sufficient, or effective remedy or means of relief in this matter. In order to effect immediate personal service of the annexed Order to Show Cause and this Petition on the Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK, the Commissioners of whom are required at various times to be on official business at places other than their official business offices, it is respectfully requested that this Court direct that such service may be made upon any Commissioner of Elections, or at the General Office (headquarters) of the said BOARD OF ELECTIONS at 32 Broadway, Borough of Manhattan, New York City, New York, or at the office of any Chief Clerk of said BOARD OF ELECTIONS in any borough in New York City.

21. Service of the within papers should be made to Respondent Board and Respondent Candidate by September 22, 2009 by regular mail, or by "nail and mail," or by overnight mail.

22. Given the closeness of the vote, the importance of the office, the real possibility of tampering, the current status of the parties herein, the order to show cause must be signed as requested.

23. That because of the closeness of the election, the voting machine and all paper ballots, any ballot materials, poll cards and inspector reports should be impounded and held under police guard.

24. The court should stay any certification of the results pending a full re-canvass as indicated herein. This should be done to carefully review every ruling that has been made herein.

25. 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. This matter should be handled expeditiously because it is an election matter in a very close contest.

WHEREFORE, your Petitioner respectfully prays for the annexed order to show cause be signed immediately, with the stay provisions contained therein calling for a stay of certification and an impound order, and with the service provisions contained therein, and for a final order granting the relief prayed for in the said order to show cause, which is a re-canvass of the results and a new election if FRANCESCA M. CASTELLANOS, CLEOFIS SARETE, RUBEN DARIO VARGAS, LUIS FACUNDO or FRANCISCO SPIES, is not certified the winner on the re-canvass of the ballots, and for such other and further relief as to may proper in the premises, together with costs and disbursements of the above-entitled proceeding.

DATED: New York, New York
September 17, 2009

Verena C. Powell, Esq.
Attorney for Petitioners
277 Broadway, 9th floor
New York, New York 10007

By: 
VERENA C. POWELL, ESQ.

WHEREFORE, your Petitioner respectfully prays for the annexed Order to Show Cause and for a final order granting the relief prayed for in the said Order to Show Cause, and for such other and further relief as the court deems just and proper.

DATED: September 17, 2009
New York, New York


FRANCESCA M. CASTELLANOS

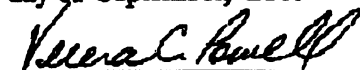
Individual Verification

State of New York)
 >ss.:
County of New York)

FRANCESCA M. CASTELLANOS, being duly sworn, deposes and says that deponent is the claimant in the within action; that she has read the foregoing Petition of Irregularity in the Primary Election of Tuesday, September 15, 2009 and knows the contents thereof; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believe it to be true.



Sworn before me on this 17th
day of September, 2009


Notary Public

PO 03-6109940
Qualified in Bronx City
Commission expires
May 24, 2012

WHEREFORE, your Petitioner respectfully prays for the annexed Order to Show Cause and for a final order granting the relief prayed for in the said Order to Show Cause, and for such other and further relief as the court deems just and proper.

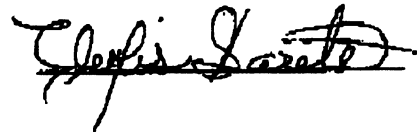
DATED: September 17, 2009
New York, New York


CLEOFIS SARETE

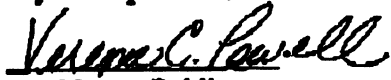
Individual Verification

State of New York)
) ss.:
County of New York)

CLEOFIS SARETE, being duly sworn, deposes and says that deponent is the claimant in the within action; that she has read the foregoing Petition of Irregularity in the Primary Election of Tuesday, September 15, 2009 and knows the contents thereof; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believe it to be true.



Sworn before me on this 17th
day of September, 2009


Notary Public

PO 03-6109940
Qualified in Bronx City
Commission expires
May 24, 2012

WHEREFORE, your Petitioner respectfully prays for the annexed Order to Show Cause and for a final order granting the relief prayed for in the said Order to Show Cause, and for such other and further relief as the court deems just and proper.

DATED: September 17, 2009
New York, New York

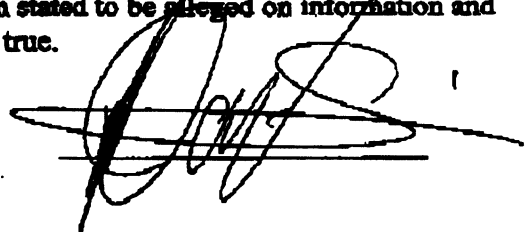


RUBEN DARIO VARGAS

Individual Verification

State of New York)
) ss.:
County of New York)

RUBEN DARIO VARGAS, being duly sworn, deposes and says that deponent is the claimant in the within action; that she has read the foregoing Petition of Irregularity in the Primary Election of Tuesday, September 15, 2009 and knows the contents thereof; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believe it to be true.



Sworn before me on this 17th
day of September, 2009

Viviana C. Powell
Notary Public

PO 93-6109940
Qualified in Bronx County
Commission expires
May 24, 2012 Viviana Powell

WHEREFORE, your Petitioner respectfully prays for the annexed Order to Show Cause and for a final order granting the relief prayed for in the said Order to Show Cause, and for such other and further relief as the court deems just and proper.

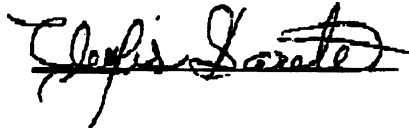
DATED: September 17, 2009
New York, New York


CLEOFIS SARETE

Individual Verification

State of New York)
 >ss.:
County of New York)

CLEOFIS SARETE, being duly sworn, deposes and says that deponent is the claimant in the within action; that she has read the foregoing Petition of Irregularity in the Primary Election of Tuesday, September 15, 2009 and knows the contents thereof; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believe it to be true.



Sworn before me on this 17th
day of September, 2009


Notary Public

PO 036109940
Qualified in Bronx City
Commission expires
May 24, 2012

WHEREFORE, your Petitioner respectfully prays for the annexed Order to Show Cause and for a final order granting the relief prayed for in the said Order to Show Cause, and for such other and further relief as the court deems just and proper.

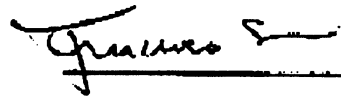
DATED: September 17, 2009
New York, New York


FRANCISCO SPIES

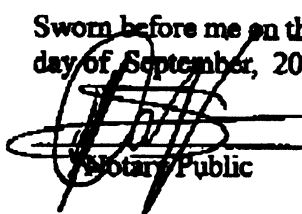
Individual Verification

State of New York)
>ss.:
County of New York)

FRANCISCO SPIES, being duly sworn, deposes and says that deponent is the claimant in the within action; that he has read the foregoing Petition of Irregularity in the Primary Election of Tuesday, September 15, 2009 and knows the contents thereof; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believe it to be true.



Sworn before me on this 18
day of September, 2009


Notary Public

Notary Public, State of New York
No. 0146257-7113
Qualified in New York County
Commission Expires ~~Aug 3, 2009~~ 08/17/2011

Index No.:

Year: 2009

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

In the Matter of the Application of

**FRANCESCA M. CASTELLANOS, CLEOFIS SARETE, RUBEN DARIO VARGAS,
LUIS FACUNDO and FRANCISCO SPIES,**

Aggrieved candidates for the Democratic candidacy for the Public Office of City Council
Member of the County of New York, City and State of New York, 10th District,

Petitioners,

~against~


**YDANIS A. RODRIGUEZ, candidate and THE BOARD OF ELECTIONS IN THE CITY
OF NEW YORK,**

For an Order Pursuant to Article 9 of the Election Law to Declare Invalid the election results of
the Democratic Party Primary Election held September 15, 2009; and directing The Board of
Elections in the City of New York, to hold a new primary
election to choose the Democratic candidate for the Public Office of City Council Member of the
City of New York, New York County, 10th District.

Respondent(s),

ORDER TO SHOW CAUSE and VERIFIED PETITION

Form Signature Rule: (130-1.1-a)


VERENA C. POWELL, ESQ.
Attorney for Petitioner
277 Broadway, 9th Floor
New York, New York 10007
Tel.: (212) 267-1906
Fax: (212) 267-1893

To:

**BOARD OF ELECTIONS OF THE CITY OF NEW YORK
32 Broadway, 7th Floor
New York, New York 10004**

**SPECIAL TERM, ELECTION LAW MATTERS
CLERK OF THE SUPREME COURT
125-01 Queens Boulevard
Kew Gardens, New York 11412**

Powell Law, P.C.
277 Broadway, 9th Floor
New York, New York 10007

212-267-1906 Telephone

212-267-1893 Facsimile

VIA FACSIMILE (212) 487-5342

September 18, 2009

Mr. Steven H. Richman
General Counsel
Board of Elections in the City of New York
Executive Office, 32 Broadway
New York, New York 10004-1609

Re: Order to Show Cause

Mr. Richman,

Attached please find a courtesy copy of the Order to Show Cause and Temporary Restraining Order executed by Judge Marcia Hirsch [hereinafter "Hirsch"], at 5:15 p.m. today. The attached order impounds the voting machines in the 10th District Councilmanic race in New York County and the 12th District Councilmanic race in Bronx County. I will file true copies as per the judge's order by the date specified in Judge Hirsch's Order. Please have the machines secured as specified.

Sincerely,



Verena C. Powell

Verena C. Powell
VCP/vcm

cc: Andy King, via facsimile (718) 515-5463
Richard Winsten, via facsimile (914) 827-9868
Francesca Castellanos, via facsimile (212) 568-3255

POWELL LAW, P.C.
277 BROADWAY, 9th Floor
New York, New York 10007

SEQUENCE NO. ~~12~~

At Special Election Part ^A of the Supreme Court
of the State of New York, held in and for the
County of ~~Bronx~~ ^{Queens} at the Supreme Court
Courthouse at 125-01 Queens Blvd.,
Kew Gardens, New York on the 18th
day of September 2009. at 5:11 PM

PRESENT: MARCIA P. HIRSCH, Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ~~BRONX~~ *(to be held in Queens)*

In the Matter of the Application of

ANDY KING,

ORDER TO SHOW CAUSE

An aggrieved candidate for the Democratic
candidate for the Public Office of City Council
Member of the County of Bronx, City and
State of New York, 12th District,

INDEX NO. 2525370 NO MOTION FEE,
FILED ON
COMMENCEMENT.

Petitioner,

-against-

LARRY SEABROOK, candidate and
THE BOARD OF ELECTIONS IN THE CITY
OF NEW YORK,

Respondent(s),

For an Order Pursuant to Article 9 of the Election
Law to Declare Invalid the election results of the
Democratic Party Primary Election held
September 15, 2009; and directing The Board of
Elections in the City of New York, to hold a new primary
election to choose the Democratic candidate for the
Public Office of City Council Member of the
City of New York, Bronx County, 12th District.

Upon the annexed Petition of ANDY KING, [hereinafter, "Candidate"], duly verified on the 18th
day of September 2009, and upon all the proceedings heretofore had herein, it is hereby
ORDERED, that the Respondents herein, show cause before this Court at Part ^{SPECIAL ELECTION} A, to be

held at the Supreme Courthouse at 125-01 Queens Boulevard, County of Queens, City of New York,
ANNEX
Room 324, on the 23rd day of September 2009 at 10:00 o'clock in the forenoon of that day or
as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

1. For a full court and/or special master review of the canvass, recanvassing and evaluation of validity of the ballots at the time the respondent Board does the canvass pursuant to Election Law Sections 9-208 and 9-209 of all election results with respect to the counting of all ballots with respect to the September 15, 2009 Primary Election race for the public office of City Council Member, 12th District of the County of Bronx, City and State of New York and for a review of all the results of the recanvass prior to certification of the results;

2. To preserve all ballots whether machine ballots and all paper ballots for a full review by the court pursuant to Election Law Section 16-113;

~~3. In the event that the petitioner, ANDY KING, is determined not to be the winner of the primary election, after such a full review and recanvass of the results by the respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK declaring defective, invalid, null and void the results of the September 15, 2009 Primary Election with respect to the 12th Councilmanic District in the County of Bronx, City and State of New York, pursuant to Election law Sections 16-100 and 16-116;~~

~~4. In the event ANDY KING, is not the winner of the Primary Election held on September 15, 2009, enjoining the BOARD OF ELECTIONS IN THE CITY OF NEW YORK to hold a new Primary Election for the public office of City Council Member from the 12th District of the County of Bronx, City and State of New York;~~

5. Such other and further relief as to this Court may deem just and proper in the circumstances; and it is further

TRo ORDERED, that pending the hearing of this proceeding that the Respondents BOARD OF THE ELECTIONS IN THE CITY OF NEW YORK be and are hereby ordered (1) to impound all said voting machines in the 12th Council District and all paper ballots and place each and every machine same

lock + key in a secure location
~~under a police guard from the New York City Police Department to guard each and every machine and~~
~~a police guard from the New York City Police Department to guard all of the paper ballots and all ballot~~
~~materials to prevent any tampering of same at any location where any ballot may be present; and (2)~~
directed to keep each and every voting machine under full lock, key and under a full seal; (3) stayed
from resetting any voting machine counts back to zero and to preserve the voting machines in their
current state; (4) directed to preserve all paper ballots, emergency ballots, poll cards, inspector reports,
canvass reports and any absentee ballots and/or Emergency Ballots, Absentee Ballots, Affidavit Ballots
and/or federal or military ballots and all other ballot materials with respect to the primary election for
City Council Member for the 12th District of the County of Bronx, City and State of New York in the
Primary election held on September 15, 2009 *under lock + key in a secure*
location. ~~with a police guard from the New York City Police~~

location.
Department, (5) stayed from certifying the results of the Primary election for City Council Member for
the 12th District of the County of New York, City and State of New York held on September 15, 2009,
(6) ~~further ordered and directed to produce upon the hearing of this Order to Show Cause and on all~~
~~adjournments thereof, all Ballots, Emergency Ballots, Absentee Ballots, Voting Machines and Polling~~
~~Books, utilized in the Primary election for City Council Member for the 12th District of the County of~~
~~Bronx, City and State of New York, held on September 15, 2009;~~

SUFFICIENT CAUSE APPEARING THEREFORE, leave is hereby granted to the Petitioner(s)
to submit, upon the return day of this Order to Show Cause and any adjournments thereof, and the
argument thereof, such additional evidence, exhibits, and other proof as may be necessary.

SUFFICIENT CAUSE APPEARING THEREFORE, it is further

ORDERED, that service of a copy of this order to show cause, together with a copy of the
papers upon which it is granted, on the Respondents constituting the BOARD OF ELECTIONS IN
THE CITY OF NEW YORK, be made by leaving a copy thereof at the Office of the Chief Clerk of the
said BOARD OF ELECTIONS at 32 Broadway, in the Borough of Manhattan, City of New York, on or
DATE before the 21st day of September 2009, and

SUFFICIENT CAUSE APPEARING THEREFORE, it is further

ORDERED that service of a copy of this order, together with a copy of the papers upon which it is granted, upon the Respondent-Candidate be made either by delivering the same to the Respondent-Candidate personally, pursuant to CPLR Section 308(1), on or before the 21st day of September, 2009, or (2) by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to the Respondent-Candidate at the address set forth in his Petition filed with the Board of Elections in the City of New York and by mailing the same in a Post Office branch, regularly maintained by the United States Postal Service in the City of New York, with proof of mailing by certificate of mailing, on or before the 21st day of September, or (3) by affixing the same to the outer or inner door of the residence of Respondent-Candidate at the address set forth in his Petition filed with the Board of Elections in the City of New York, and by enclosing the same in securely sealed and duly prepaid wrapper, addressed to the Respondent-Candidate at the address set forth in his Petition filed with the Board of Elections in the City of New York and by depositing same in a Post Office regularly maintained by the United States Postal Service in the City of New York, with proof of mailing by certificate of mailing, on or before the 21st day of Sept. or (4) by affixing the same to the outer or inner door of the residence of Respondent-Candidate at the address set forth in his Petition filed with the Board of Elections in the City of New York, and by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to the Respondent-Candidate at the address set forth in his Petition filed with the Board of Elections in the City of New York by guaranteed overnight express mail, with proof of mailing by guaranteed overnight express mailing, on or before the 21st day of September 2009; and that such service shall be deemed due, timely, good and sufficient service thereof, and such service shall constitute sufficient notice hereof.

ENTER:

Marcia Q. Heald

Justice, Supreme Court

CERTIFICATION

The undersigned, being an attorney duly admitted to practice law in the before the Courts of the State of New York, hereby certifies that, to the best of my knowldgc, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the within papers or the contentions therein are not frivolous as defined in subsection (c) of 22 NYCRR §130-1.1.

Dated: New York, New York
 September 17, 2009


Verena C. Powell

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

In the Matter of the Application of

ANDY KING,

PETITION

**As candidate for the Democratic nomination for the
Public Office of City Council Member of the
City of New York, Bronx County, 12th District,**

INDEX NO.:

Petitioner,

-against-

**LARRY SEABROOK, candidate and
THE BOARD OF ELECTIONS IN THE CITY
OF NEW YORK,**

Respondent(s),

**For an Order Pursuant to Article 9 of the Election
Law to Declare Invalid the election results of the
Democratic Party Primary Election held
September 15, 2009; and directing The Board of
Elections in the City of New York, to hold a new primary
election to choose The Democratic candidate for the
Public Office of City Council Member of the
City of New York, Bronx County, 12th District.**

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Petitioners respectfully show and allege that:

1. That at all times hereinafter mentioned, Petitioner **ANDY KING**, resides at 952 East 218th Street, Bronx, New York, was and still is a duly qualified candidate in the State of New York, running for the public office of City Council, from the 12th District of the County Bronx, City and State of New York at a Primary Election held September 15, 2009.

2. That upon information and belief, the Respondent **LARRY SEABROOK**, residing at 120-33 Benchley Place, Bronx, New York, was and still is duly qualified candidate running for the public office of City Council, from the 12th District of the County Bronx, City and State of New York

16. That there has been such fraud and/or irregularity with respect to the conduct of the above-mentioned Primary Election that it is impossible to make a determination as to who was rightfully elected.

17. Upon information and belief, the results of the Primary Election held on September 15, 2009 are invalid, in the event that ANDY KING is determined not to be the winner by reason of the following facts:

- (a) That paper ballots properly prepared by voters were not counted because they were submitted at the wrong polling site.
- (b) That the public and/or protected counters on many voting machines reflected more votes than were actually cast.
- (c) That on many voting machines, the public counters and the protected counters did not agree as the number of votes cast.
- (d) That the number of emergency paper ballots taken in this election was disproportionate to the number of voters, and well in excess of the difference between the votes cast on the machines for the candidates, and that they have not been included in the count.
- (e) That Election Inspectors permitted and encouraged incomplete paper ballots to be filed, in an attempt to cause these ballots not to be counted.
- (f) Additionally, please refer to Exhibit A, a letter to Steve Richman, General Counsel to the Board of Elections in the City of New York submitted by facsimile on Tuesday, September 15, 2009, delineating problems at several 12th District polling sites.

18. That the above mentioned instances of fraud and/or irregularity are sufficiently large in number and are of such nature as to establish the probability that the election results would change absent such fraud and/or irregularity. That your Petitioner requests leave and reserve the right to submit upon the argument and hearing of this application, evidence by way of affidavits, testimony, and documentary proof to substantiate and support this application.

19. That Petitioner request the Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK to produce upon the argument and hearing of this application all ballots, Emergency Ballots, Absentee Ballots, 12th Council District voting machines and

polling books provided for in the annexed Order to Show Cause.

20. Other than this proceeding, Petitioner has no adequate, sufficient, or effective remedy or means of relief in this matter. In order to effect immediate personal service of the annexed Order to Show Cause and this Petition on the Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK, the Commissioners of whom are required at various times to be on official business at places other than their official business offices, it is respectfully requested that this Court direct that such service may be made upon any Commissioner of Elections, or at the General Office (headquarters) of the said BOARD OF ELECTIONS at 32 Broadway, Borough of Manhattan, New York City, New York, or at the office of any Chief Clerk of said BOARD OF ELECTIONS in any borough in New York City.

21. Service of the within papers should be made to Respondent Board and Respondent Candidate by September 22, 2009 by regular mail, or by "nail and mail," or by overnight mail.

22. Given the closeness of the vote, the importance of the office, the real possibility of tampering, the current status of the parties herein, the order to show cause must be signed as requested.

23. That because of the closeness of the election, the voting machine and all paper ballots, any ballot materials, poll cards and inspector reports should be impounded and held under police guard.

24. The court should stay any certification of the results pending a full re-canvass as indicated herein. This should be done to carefully review every ruling that has been made herein.

25. 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. This matter should

be handled expeditiously because it is an election matter in a very close contest.

WHEREFORE, your Petitioner respectfully prays for the annexed order to show cause be signed immediately, with the stay provisions contained therein calling for a stay of certification and an impound order, and with the service provisions contained therein, and for a final order granting the relief prayed for in the said order to show cause, which is a re-canvass of the results and a new election if FRANCESCA M. CASTELLANOS, CLEOFIS SARETE, RUBEN DARIO VARGAS, LUIS FACUNDO or FRANCISCO SPIES, is not certified the winner on the re-canvass of the ballots, and for such other and further relief as to may proper in the premises, together with costs and disbursements of the above-entitled proceeding.

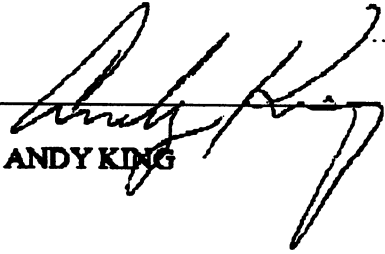
DATED: New York, New York
September 18, 2009

Verena C. Powell, Esq.
Attorney for Petitioner
277 Broadway, 9th floor
New York, New York 10007

By: 
VERENA C. POWELL, ESQ.

WHEREFORE, your Petitioner respectfully prays for the annexed Order to Show Cause and for a final order granting the relief prayed for in the said Order to Show Cause, and for such other and further relief as the court deems just and proper.

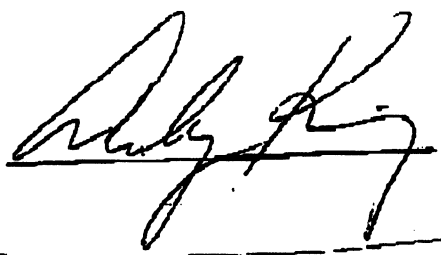
DATED: September 18, 2009
New York, New York


ANDY KING

Individual Verification

State of New York)
 >ss.:
County of New York)

ANDY KING, being duly sworn, deposes and says that deponent is the claimant in the within action; that she has read the foregoing Petition of Irregularity in the Primary Election of Tuesday, September 15, 2009 and knows the contents thereof; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believe it to be true.



Sworn before me on this 18th
day of September, 2009
Veronica C. Howell
Notary Public
PO. 6109990
Bronx County
May 21, 2012

EXHIBIT A

Powell Law, P.C.
277 Broadway, 9th Floor
New York, New York 10007

212-267-1906 Telephone

212-267-1893 Facsimile

VIA FACSIMILE (212) 487-5342

September 15, 2009

Mr. Steven H. Richman
General Counsel
Board of Elections in the City of New York
Executive Office, 32 Broadway
New York, New York 10004-1609

Re: Primary Day Issues, City Council District 12

Mr. Richman,

I am writing to memorialize my conversation of earlier this morning with a representative of your office. At approximately 9:02 a.m., I called on behalf of my client, Andy King, City Council candidate in the 12th District, Bronx County. There were a number of issues at various polling sites within the district. Some of the issues were personnel related, the other issues were mechanically related.

The first matter deals with a polling machine in the 80th Election District, Immaculate Conception that had sixteen votes [16] for the daily tally when the poll opened. This error was reported to the New York City Police Department [hereinafter, "NYPD"] officer on duty in addition to the Inspector(s) on site.

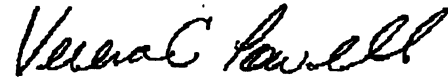
At the Edenwald Houses located in the 59th Election District, the City Council candidates for the 12th district are not on the ballot on polling machine serial number 4567. The same "error", the failure to list the 12th District City Council race on the polling machines occurred at P.S. 41.

Finally, at the Baychester Houses [Baychester Senior Community Center], our certified poll watcher was denied entry to the polling site. Later, the poll watcher was told she would be allowed inside to monitor voting periodically. Additionally, the polling machine for the 61st Election District at the same polling site is inoperable.

Although I left my name and cellular phone number with a representative of your office, I have not received a return call. I do not know if this is because there is wide-spread primary day error or if the concerns of my client and the Bronx electorate, City Council District 12 in particular, are being ignored. I hope these "errors" are dealt with expeditiously by the Board of Elections in the City of New York.

Page 2
S. Richman

Sincerely,

A handwritten signature in black ink that reads "Verena C. Powell". The signature is written in a cursive style with a large, prominent "V" at the beginning.

Verena C. Powell

Verena C. Powell
VCP/vcm

cc: Andy King, via facsimile (718) 515-5463
Richard Winsten, via facsimile (914) 827-9868

Law Office of
POWELL LAW, P.C.
277 Broadway, 9th Floor
New York, New York 10007

Index No.:

Year: 2009

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

In the Matter of the Application of

ANDY KING,

An aggrieved candidate for the Democratic candidacy for the Public Office of City Council
Member of the County of Bronx, City and State of New York, 12th District,

Petitioner,

“against”

**LARRY SEABROOK, candidate and THE BOARD OF ELECTIONS IN THE CITY
OF NEW YORK,**

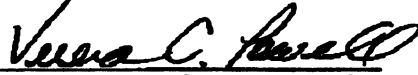
Respondent(s),

For an Order Pursuant to Article 9 of the Election Law to Declare Invalid the election results of
the Democratic Party Primary Election held September 15, 2009; and directing The Board of
Elections in the City of New York, to hold a new primary
election to choose the Democratic candidate for the Public Office of City Council Member of the
City of New York, Bronx County, 12th District.

Respondent(s),

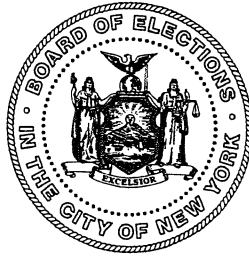
ORDER TO SHOW CAUSE and VERIFIED PETITION

Form Signature Rule: (150-1.1-a)


VERENA C. POWELL, ESQ.
Attorney for Petitioner
277 Broadway, 9th Floor
New York, New York 10007
Tel.: (212) 267-1906
Fax: (212) 267-1893

To:

**BOARD OF ELECTIONS OF THE CITY OF NEW YORK
32 Broadway, 7th Floor
New York, New York 10004**



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

BOARD OF ELECTIONS

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

September 17, 2009

Mr. Jeff Shear
Chief of Staff, Office of Deputy Chancellor for Finance and Administration
New York City Department of Education
52 Chambers Street
New York, NY 10007

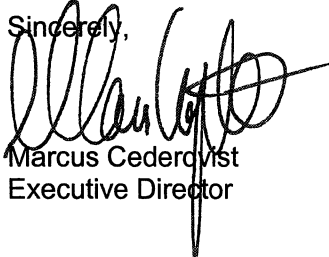
Dear Mr. Shear:

Please be advised that the Board of Elections in the City of New York (BOE) is required to conduct a citywide Runoff Primary Election under State Law on Tuesday, September 29, 2009.

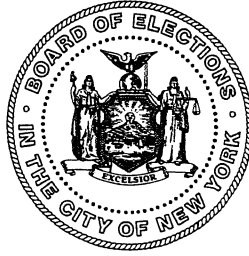
Article II, Section 6-162 of the New York State Constitution requires the BOE to conduct a Runoff Primary Election in instances when a candidate for Mayor, Public Advocate, or Comptroller fail to garner at least forty percent of the votes cast by enrolled members of the party in a Primary Election. The preliminary Election Day results indicate that the BOE will assuredly have to conduct such a Runoff Primary Election for the Public Offices of Public Advocate and Comptroller and, as such, will have to deploy voting machines and poll workers throughout the city just as it did for this past Tuesday's Primary Election.

In order to prepare for this additional election event in the extremely limited time provided, we may require that your agency keep those facilities being used as poll sites open beyond regular business hours, including nights and weekends, to deliver voting equipment. The BOE is scheduled to deliver the equipment between Thursday, September 24th through Monday, September 28th. I respectfully request your cooperation to ensure that the BOE is able to meet its statutory obligations and would appreciate if a member of your staff would contact my office as soon as possible to coordinate the delivery schedule.

Thank you again for all your help and support to help ensure the smooth coordination and conduct of elections in the City of New York and for your kind assistance with this matter. Please do not hesitate to contact me if you have any questions or if I can be of any assistance.

Sincerely,

Marcus Cederqvist
Executive Director

cc: Commissioners of Elections
George González, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Owens, Jr., Enforcement Counsel
John P. O'Grady, Chief Voting Machine Technician
Hon. Kevin Sheekey, Deputy Mayor for Government Affairs



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS

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

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

September 17, 2009

Hon. Adrian Benepe
Commissioner
New York City Parks Department
The Arsenal, Central Park
New York, NY 10021

Dear Commissioner Benepe:

Please be advised that the Board of Elections in the City of New York (BOE) is required to conduct a citywide Runoff Primary Election under State Law on Tuesday, September 29, 2009.

Article II, Section 6-162 of the New York State Constitution requires the BOE to conduct a Runoff Primary Election in instances when a candidate for Mayor, Public Advocate, or Comptroller fail to garner at least forty percent of the votes cast by enrolled members of the party in a Primary Election. The preliminary Election Day results indicate that the BOE will assuredly have to conduct such a Runoff Primary Election for the Public Offices of Public Advocate and Comptroller and, as such, will have to deploy voting machines and poll workers throughout the city just as it did for this past Tuesday's Primary Election.

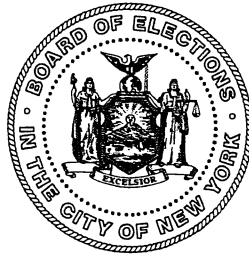
In order to prepare for this additional election event in the extremely limited time provided, we may require that your agency keep those facilities being used as poll sites open beyond regular business hours, including nights and weekends, to deliver voting equipment. The BOE is scheduled to deliver the equipment between Thursday, September 24th through Monday, September 28th. I respectfully request your cooperation to ensure that the BOE is able to meet its statutory obligations and would appreciate if a member of your staff would contact my office as soon as possible to coordinate the delivery schedule.

Thank you again for all your help and support to help ensure the smooth coordination and conduct of elections in the City of New York and for your kind assistance with this matter. Please do not hesitate to contact me if you have any questions or if I can be of any assistance.

Sincerely,


Marcus Cederqvist
Executive Director

cc: Commissioners of Elections
George González, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Owens, Jr., Enforcement Counsel
John P. O'Grady, Chief Voting Machine Technician
Hon. Kevin Sheekey, Deputy Mayor for Government Affairs



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
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EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

September 17, 2009

Hon. Martha K. Hirst
Commissioner
Department of Citywide Administrative Services
Municipal Building, One Centre Street, 17th Floor
New York, NY 10007

Dear Commissioner Hirst:


Please be advised that the Board of Elections in the City of New York (BOE) is required to conduct a citywide Runoff Primary Election under State Law on Tuesday, September 29, 2009.

Article II, Section 6-162 of the New York State Constitution requires the BOE to conduct a Runoff Primary Election in instances when a candidate for Mayor, Public Advocate, or Comptroller fail to garner at least forty percent of the votes cast by enrolled members of the party in a Primary Election. The preliminary Election Day results indicate that the BOE will assuredly have to conduct such a Runoff Primary Election for the Public Offices of Public Advocate and Comptroller and, as such, will have to deploy voting machines and poll workers throughout the city just as it did for this past Tuesday's Primary Election.

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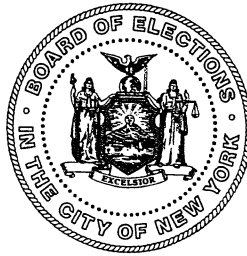
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Sincerely,



Marcus Cederqvist
Executive Director

cc: Commissioners of Elections
George González, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Owens, Jr., Enforcement Counsel
John P. O'Grady, Chief Voting Machine Technician
Hon. Kevin Sheekey, Deputy Mayor for Government Affairs



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
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JUDITH D. STUPP
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MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

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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.ny.us

September 17, 2009

Mr. Douglas Apple
General Manager
New York City Housing Authority
250 Broadway
New York, NY 10007

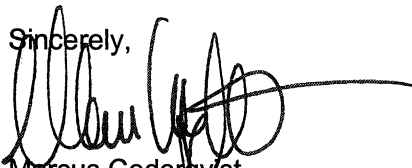
Dear Mr. Apple:

Please be advised that the Board of Elections in the City of New York (BOE) is required to conduct a citywide Runoff Primary Election under State Law on Tuesday, September 29, 2009.

Article II, Section 6-162 of the New York State Constitution requires the BOE to conduct a Runoff Primary Election in instances when a candidate for Mayor, Public Advocate, or Comptroller fail to garner at least forty percent of the votes cast by enrolled members of the party in a Primary Election. The preliminary Election Day results indicate that the BOE will assuredly have to conduct such a Runoff Primary Election for the Public Offices of Public Advocate and Comptroller and, as such, will have to deploy voting machines and poll workers throughout the city just as it did for this past Tuesday's Primary Election.

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Sincerely,

Marcus Cedervist
Executive Director

cc: Commissioners of Elections
George González, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Owens, Jr., Enforcement Counsel
John P. O'Grady, Chief Voting Machine Technician
Hon. Kevin Sheekey, Deputy Mayor for Government Affairs

POWELL LAW, P.C.
ATTORNEY AT LAW

FACSIMILE TRANSMITTAL SHEET

TO:	Steven H. Richman, Esq.	FROM:	Verena C. Powell
COMPANY:	Bd. of Elections in the City of New York	DATE:	9/21/2009
FAX NUMBER:	212-487-5342	TOTAL NO. OF PAGES INCLUDING COVER:	3
PHONE NUMBER:	212-487-5550	SENDER'S PHONE NUMBER:	(212) 267 1906
RE:	Letter to Judge M. Hirsch	YOUR REFERENCE NUMBER:	Orders to Show Cause

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Attached is the sent to Judge Hirsch.

County
RyZ

Verona C. Powell

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 SEP 21 PM 5:23

PLEASE NOTE:

The information contained in this facsimile message is privileged and confidential and is intended only for the use of individual named above and others who have been specifically authorized to receive such information. If the recipient is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this communication in error or if any problems occur with transmission, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE: [212] 267-1906.

Thank you.

Powell Law, P.C.
277 Broadway, 9th Floor
New York, New York 10007

212-267-1906 Telephone

212-267-1893 Facsimile

VIA FACSIMILE (718) 520-5010

September 21, 2009

The Honorable Judge Marcia P. Hirsch
Supreme Court, Queens County
125-01 Queens Boulevard
Kew Gardens, New York 114

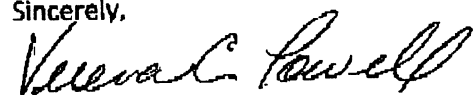
Re: Orders to Show Cause and Temporary Restraining Orders
Francesca Castellanos, et al v. Ydanis Rodriguez and the Bd. of Elections
Index No.: 25252/2009
Andy King v. Larry Seabrook and the Bd. of Elections in the City of New York
Index No.: 25253/2009

Dear Judge Hirsch,

As per our telephone conference this afternoon with counsel for all named parties, in reference to the above-listed Orders to Show Cause signed by the court on Friday, September 18, 2009 and returnable before you on Wednesday, September 23, 2009, I am effectively withdrawing both Orders to Show Cause at this time without prejudice to renew. Should new Orders to Show Cause be filed in either action, it is understood that the matters will be on calendar before you this Friday, September 25, 2009 at 10:30 a.m.

I acknowledge receipt of the Unofficial Election District canvasses for both the 10th Council District and the 12th Council District. I also recognize that voting machines in both districts will be released from the Temporary Restraining Order and the public counter reset to zero for use in the run-off election to be held Tuesday, September 29, 2009.

Sincerely,



Verena C. Powell
Counsel for Petitioners

2009 SEP 21 PM 5:23
RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

Page 2/J. Hirsch

cc: **Steven H. Richman, Esq. , Bd. of Elections in the City of New York**
Stephen E. Kitzinger, Esq., Asst. Corp. Counsel for the City of New York
Jerry Goldfedder, Esq., for Respondent Ydanis Rodriguez
Stanley K. Schlein, Esq., for Respondent Larry Seabrook



State of New York
STATE BOARD OF ELECTIONS

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

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

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

September 18, 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 September 17, 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 9/11/09-9/17/09

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 with the revised time line.

Contracting with Voting System Vendors

Status of tasks in this category: on schedule

- OGS continues to work with Dominion and OSC to finalize the contract assignment.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: on schedule

- Overall progress of testing :

Dominion appears to have resolved issues delaying testing. A strategy is in place to make up time to achieve the November 6th completion date. SysTest continues to report issues for both vendors as they occur, but also has developed efforts to recover lost time. The nature of issues and their respective resolutions will govern each vendor's ability to complete testing on time. At last week's board meeting it was reported that ES & S is ahead of Dominion in testing, but that both vendors are committed to working towards the on time and successful completion of testing.

- Weekly conference calls with SBOE, Vendors and SysTest continue.
- Plans for the portion of certification testing that will occur in a public venue have been scheduled for September 28 through October 2, in Albany.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: on schedule

- Counties that participated in the Pilot Program are reporting a very successful Primary Election Day with the exception of a few minor glitches with the new voting machines.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

The amendments to the New York code of Rules and Regulations adopted by the State Board to address the New York City BOE have been successfully submitted to the Secretary of State for publication and will be effective upon their publication in the State Register on September 30th.



State of New York
STATE BOARD OF ELECTIONS

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

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

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

September 11, 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 September 10, 2009.

Respectfully submitted,

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

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

NEW YORK STATE BOARD OF ELECTIONS

HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 9/4/09-9/10/09

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 with the revised time line.

Contracting with Voting System Vendors

Status of tasks in this category: on schedule

- OGS is continuing to work with Dominion and OSC to finalize the contract assignment. OGS continues to respond to requests for additional information from OSC. Most recently, OSC requested a copy of the pricelist with the Dominion name on it which OGS has requested from Dominion.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: on schedule

- Overall progress of testing :
 - A test of test deck training using WebEx has been successfully completed and can be used to train multiple counties at the same time.
 - Vendors and Systest have resolved issues that were delaying some test cases.
 - Conference calls with SBOE, Vendors, SysTest and NYSTEC continue to clarify and resolve any testing issues.

NEW YORK STATE BOARD OF ELECTIONS

Delivery and Implementation of Voting Systems & Devices

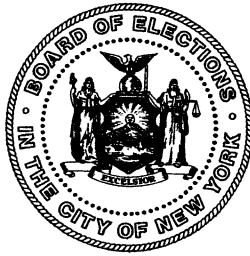
Status of tasks in this category: on schedule

- All counties are currently in possession of machines needed for primary election.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

After reviewing the public comments as to the new proposed regulation, 9 N.Y.C.R.R. 6217.5 (c), the Board adopted the new regulation at its September 10, 2009 meeting unanimously.



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
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IN
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MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

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DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

TROY JOHNSON
COORDINATOR
CANDIDATE RECORDS UNIT

NOTICE TO ALL RUNOFF CANDIDATES

September 16, 2009

**TO: All Persons who are Anticipated to be Candidates in the
September 29, 2009 Runoff 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>Friday, September 25, at 10:00 AM</u>
<u>Bronx</u>	<u>Friday, September 25, at 10:00 AM</u>
<u>Brooklyn</u>	<u>Friday, September 25, at 10:00 AM</u>
<u>Queens</u>	<u>Friday, September 25, at 10:00 AM</u>
<u>Staten Island</u>	<u>Friday, September 25, at 10:00 AM</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 29, 2009 Runoff on **Wednesday, September 23, 2009, between the hours of 9:00 A.M. and 12:00 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 29, 2009 Primary on **Wednesday, September 23, 2009, between the hours of 9:00 A.M and 12:00 P.M.**
[Note: This inspection will take place at the Borough Voting Machine Facility, not the Borough Office.]

3. CANVASS AND/OR RECANVASS OF VOTING 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 **Wednesday, October 7, 2009 at 10:00 A.M.** and will continue until such canvass/recanvass of all machines is completed.

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 **Wednesday, October 7, 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 **Wednesday, October 7, 2009, at 10:00A.M.**, 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.*

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

If you have any questions or require additional information, please contact the appropriate Chief Clerk/Deputy Chief Clerk in the respective borough. Thank you for your cooperation and understanding in these matters.

Very truly yours,

Troy Johnson
Coordinator,
Candidate Records Unit

Attachments (Schedules A & B)

SCHEDULE A

Manhattan Borough Office

200 Varick Street – 10th Floor
New York, NY 10014
212 - 886-2100

Gregory Lehman, Chief Clerk
Timothy Gay, Deputy Chief Clerk

Bronx Borough Office

1780 Grand Concourse – 5th Floor
Bronx, NY 10457
718 – 960-0730

Dawn Sandow, Deputy Chief Clerk
Anna Torres, Deputy Chief Clerk

Brooklyn Borough Office

345 Adams Street – 4th Floor
Brooklyn, NY 11201
718 – 797-8800

Diane Haslett-Rudiano, Chief Clerk
Mary Rose Sattie, Deputy Chief Clerk

Queens Borough Office

126-06 Queens Blvd.
Kew Gardens, NY 11415
718 – 730-6730

Barbara Conacchio, Chief Clerk
Katherine A. James, Deputy Chief Clerk

Staten Island Borough Office

1 Edgewater Plaza – 4th Floor
Staten Island, NY 10305
718 - 876-0079

Sheila DelGiorno, Chief Clerk
Anthony Andriulli, Deputy Chief Clerk

SCHEDULE B

VOTING MACHINE FACILITIES

MANHATTAN

450 West 33rd Street
New York, NY 10001
212 – 465-0503

BRONX

BRONX (BMD only)

1780 Grand Concourse
Bronx, NY 10457
718 – 960-0730

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

Kings County Clerk's
Index No. 700035/09

To be argued by:
Stephen Kitlinger
(10 Minutes)

*Steven Richmond
Counsel
Bd of
Elections*

NEW YORK SUPREME COURT
APPELLATE DIVISION: SECOND DEPARTMENT

IN THE MATTER OF THE APPLICATION OF

ERLENE J. KING,

Petitioner-Respondent,

-against-

THE BOARD OF ELECTIONS IN THE CITY OF NEW
YORK,

Respondent-Appellant.

Case No.
2009-8426

*Com mtg
Fyz*

APPELLANT'S BRIEF

MICHAEL A. CARDOZO,
Corporation Counsel of
the City of New York,
Attorney for Respondent-
Appellant Board of Elections
100 Church Street,
New York, New York 10007.
(212) 788-1055

FRANCIS F. CAPUTO,
STEPHEN KITZINGER
of Counsel

September 9, 2009

STATEMENT PURSUANT TO CPLR 5531

NEW YORK SUPREME COURT
APPELLATE DIVISION: SECOND DEPARTMENT

IN THE MATTER OF THE APPLICATION OF

ERLENE J. KING,

Petitioner-Respondent,

-against-

THE BOARD OF ELECTIONS IN THE CITY OF NEW
YORK,

Respondent-Appellant.

Case No.
2009-8426

1. The index number of the case in the court below is 70035/09.
2. The full names of the original parties are as they appear above. The Court added the other candidates as parties, but did not amend the caption (Decision, p. 3).
3. The action was commenced in the Supreme Court, Kings County.
4. The proceeding was commenced by the filing of an Order to Show Cause on or about August 24, 2009. Issue was joined by the service of the affirmations in opposition on or about August 26, 2009.
5. Petitioner sought an order directing that her name be added to the absentee and military ballots.
6. This appeal is taken from the decision and order of Supreme Court, Kings County (Schmidt, J.) entered September 3, 2009.
7. This appeal is being taken on the original papers.

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DECISION BELOW.....	5
ARGUMENT	
BY THE DATE THIS PROCEEDING WAS BEGUN, AND CERTAINLY BY THE DATE THE ORDER APPEALED FROM WAS ENTERED, IT WAS IMPRACTICAL IF NOT IMPOSSIBLE TO CHANGE THE MILITARY AND ABSENTEE BALLOTS WITHOUT SIGNIFICANTLY CONFUSING VOTERS WHO HAD ALREADY MAILED IN THEIR BALLOTS, AND WITHOUT VIOLATING PROVISIONS OF THE ELECTION LAW.	6
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NEW YORK SUPREME COURT
APPELLATE DIVISION: SECOND DEPARTMENT

IN THE MATTER OF THE APPLICATION OF

ERLENE J. KING,

Petitioner-Respondent,

-against-

THE BOARD OF ELECTIONS IN THE CITY OF NEW
YORK,

Respondent-Appellant.

Case No.
2009-8426

APPELLANT' S BRIEF

PRELIMINARY STATEMENT

Petitioner Erlene J. King is a candidate in the 45th Council District primary election. The respondent Board of Elections in the City of New York ("Board") determined that her nominating petitions were invalid and accordingly did not place her name on the absentee and military ballots that were prepared a few days later. After those ballots had been printed and mailed by the Board, petitioner obtained a "Decision and Order" dated August 13, 2009, from Supreme Court, Kings County, directing the Board to validate petitioner's nominating petitions. It was not until August 24, 2009, that petitioner brought the instant proceeding to have her name added to the military and absentee ballots, some of which by that date had

already been returned to the Board by voters. By order entered September 3, 2009, Supreme Court, Kings County (Schmidt, J.) directed the Board to reprint and remail, with petitioner's name added, the absentee and military ballots. By notice of appeal dated September 4, 2009, the Board appealed, thus staying that order pursuant to CPLR 5519(a)(1).

QUESTIONS PRESENTED

1. Did Supreme Court abuse its discretion when it ordered the Board to reprint and remail "corrected" absentee and military ballots, when the evidence showed that to do so at that late date would be impractical, would cause significant confusion to recipients of the ballots who had already voted, and would conflict with provisions of the Election Law?

2. Did Supreme Court err in ordering that the "corrected" ballots be canvassed where it was executed by the same voter who previously executed and returned the original ballot in contravention of N.Y. Election Law § 9-104(1)(c)?

STATEMENT OF FACTS

On July 16, 2009, petitioner Erlene J. King filed her nominating petitions with the Board for the Democratic primary election in the 45th Council District. After that filing, the Board determined that there was a serious error and her petitions were therefore invalid. A rival candidate, Jumaane

Williams, also brought a proceeding challenging King's nominating petitions on a different ground, in a proceeding captioned Williams v. Board of Elections and King. That proceeding ended in an order dated August 13, 2009, and served on the Board on August 14, determining that King's petitions were valid and ordering the Board to add her name to the ballot.

Petitioner began the instant proceeding on August 24, 2009, seeking an order directing the Board to add her name to the military and absentee ballots. Petitioner claimed that she discovered her name was not on those ballots on August 20. King Affid. ¶12. Because petitioner failed to serve the other candidates running in the 45th Council District primary, the Supreme Court adjourned the hearing of the order to show cause to September 1, to enable petitioner to complete service. On September 1, petitioner still had been unable to serve one candidate, and the Court again adjourned the return date to September 3. Decision and Order, p. 3

The Board opposed the requested relief by affirmation of Assistant Corporation Counsel Elizabeth Wells, and affirmation of Steven Richman, General Counsel of the Board.

The Board argued that New York Election Law only requires that the absentee ballot be "as nearly as practical" in the same form as the ballot voted in the district on primary election day. N.Y. Elec. Law § 7-122(1)(a). Here, it was impractical for the Board to add petitioner's name, as

demonstrated by the timeline set forth in the Affirmation of Steven Richman.

Specifically, Mr. Richman's Affirmation demonstrated that the absentee ballots were ordered to be printed on August 7, 2009; the printing of the ballots began on August 8, 2009, and was completed four days later on August 12, 2009. Notably, the printing and delivery of the Kings County absentee ballots was completed and delivered by August 10, 2009. That same day, August 10, mailing of the absentee ballots to voters in Kings County began - three days prior to the Court's August 13 Order. See Richman Affirmation at ¶¶ 9-14.

Critical to the instant action and pursuant to New York Election Law, the Commissioners of Elections in the City of New York voted to print absentee ballots on August 5, 2009, well before the Court's Order of August 13, 2009. See N.Y. Elec. Law § 4-114; Richman Affirmation at ¶ 3.

By that vote, the Board determined which candidates were duly designated or nominated to be placed on the absentee ballot for the September 15, 2009 primaries. Richman Affirmation at ¶ 4. This determination of the Board is "final and conclusive." N.Y. Elec. Law § 7-122(4).

While a board of elections or a court of competent jurisdiction may determine after this "final and conclusive" determination that a candidate was improperly placed on an absentee ballot, resulting in votes for that candidate to not be

counted at the election, nothing in New York Election Law provides mechanisms under which a candidate may be added to the absentee ballot after the Board's determination. See *id.*

Moreover, to place petitioner on the military ballot would force the Board to violate other provisions of New York Election Law which regulate military ballots. Under the relevant provisions, military ballots for the upcoming primary election should be in the same form as absentee ballots and must have been mailed out no later than August 14, 2009. N.Y. Election Law § 7-123(2); §10-108. The Board complied with these statutory requirements.

Finally, New York Election Law mandates that if the Board receives more than one military, absentee or special ballot envelope from the same voter, "the one bearing the earlier date of execution shall be accepted and the other rejected." N.Y. Elec. Law § 9-104(1)(c). Applying this law, even if it were practical for the Board to distribute new absentee ballots, the effect of those ballots would be mooted where absentee voters already mailed-in their votes with the original absentee ballots.

DECISION BELOW

The Court held, citing a decision of this Court, Flake v. Board of Elections of New York City, 122 A.D.2d 94, 96 (2d Dept., 1986) that the Court had the power to order reprinting and remailing of absentee and military ballots if the challenge

is brought prior to the election. The Court then determined that it would be practicable for the Board to change the ballots in the instant case, arguing that the Board had done so years before in another election and the Board's action had been upheld by the First Department. Powers v. Donohue, 276 A.D. 2d 157, 160 (1st Dept., 2000), app den 75 N.Y.2d 769 (2000). The Court further held that no provision of law prevented issuance of a corrected military ballot even after the statutory 32 day period for mailing requirement of Election Law §10-108(1).

ARGUMENT

BY THE DATE THIS PROCEEDING WAS BEGUN, AND CERTAINLY BY THE DATE THE ORDER APPEALED FROM WAS ENTERED, IT WAS IMPRACTICAL IF NOT IMPOSSIBLE TO CHANGE THE MILITARY AND ABSENTEE BALLOTS WITHOUT SIGNIFICANTLY CONFUSING VOTERS WHO HAD ALREADY MAILED IN THEIR BALLOTS, AND WITHOUT VIOLATING PROVISIONS OF THE ELECTION LAW.

New York Election Law only requires that the absentee ballot be "as nearly as practicable" in the same form as the ballot voted in the district on primary election day. N.Y. Elec. Law § 7-122(1)(a). Because of the late date this proceeding was begun, and decided, it was not at all practicable for the Board to add petitioner's name, as demonstrated by the timeline set forth in the affirmation of Steven Richman.

Specifically, Mr. Richman's affirmation demonstrated that the absentee ballots were ordered to be printed on August

7, 2009; the printing of the ballots began on August 8, 2009, and was completed four days later on August 12, 2009. Notably, the printing and delivery of the Kings County absentee ballots was completed and delivered by August 10, 2009. That same day, August 10, mailing of the absentee ballots to voters in Kings County began - three days prior to the August 13 order restoring petitioner to the ballot.

Critical to the instant action and pursuant to New York Election Law, the Commissioners of Elections in the City of New York voted to print absentee ballots on August 5, 2009, well before the Court's Order of August 13, 2009. See N.Y. Elec. Law § 4-114. By that vote, the Board determined which candidates were duly designated or nominated to be placed on the absentee ballot for the September 15, 2009 primaries. This determination of the Board is "final and conclusive." N.Y. Elec. Law § 7-122(4).

Sections 10-108 and 10-116 of the Election Law made it clear that the content of the military ballots would be determined and that said ballots would be distributed prior to the conclusion of petitioner's validating proceeding. Section 10-108 mandates that military ballots be distributed for the Primary Election 32 days prior to the election and section 10-116 requires that the content of the military ballot be determined three days prior to the first day that military ballots are distributed. Those two statutes, read together,

required that the form and content of the military ballots be finalized 35 days prior to the Primary Election. This year, that date was August 11, 2009, two days prior to issuance of the order restoring petitioner to the ballot.

Section 7-123(2) requires that military ballots and absentee ballots be in the same form as one another. Accordingly, the Board determined the form and content of the absentee ballots at the same date as it did for the military ballots. This occurred on August 5, 2009.

Pursuant to section 8-406 of the Election Law, the Board commenced distribution of the absentee ballots following distribution of the military ballots. Such distribution commenced on or about August 10, 2009, three days prior to issuance of the Order in question.

While a board of elections or a court of competent jurisdiction may determine - after the Section 7-122(4) "final and conclusive" determination - that a candidate was improperly placed on an absentee ballot, resulting in votes being cast for that candidate not counted during the canvass, nothing in New York Election Law provides a mechanism under which a candidate may be added to the absentee ballot after the Board's determination. See *id.*

Indeed as demonstrated in the facts relevant here, adding an additional candidate to the absentee ballot after the Board has made its final and conclusive determination of which

candidates are duly designated for placement on the absentee ballot is simply an impractical, if not impossible, feat.

Moreover, to do so would force the Board to violate other provisions of New York Election Law that regulate military ballots. Under the relevant provisions, military ballots should be in the same form as absentee ballots and were required to have been mailed out no later than August 14, 2009. See N.Y. Election Law § 7-123(2); § 10-108. The Board complied with these statutory requirements, but would not have been able to do so had it reprinted the ballots following issuance of the Order.

Finally, New York Election Law mandates that if the Board receives more than one military, absentee or special ballot envelope from the same voter, "the one bearing the earlier date of execution shall be accepted and the other rejected." See N.Y. Elec. Law § 9-104(1)(c). Applying this law, even if it had been practicable for the Board to distribute new absentee ballots following issuance of the Order, the effect of those ballots would be mooted where absentee voters already mailed in their votes with the original absentee ballots. Furthermore, the sending out of multiple versions of these ballots would likely engender significant confusion.

The Court below failed to consider the timeline presented by the Board when it determined that it would be practicable to reprint the military and absentee ballots. The Court noted that a qualified military voter may request a

military ballot up to seven days before an election, but it is unrealistic to think that military voters who may be stationed halfway around the world would receive the ballot, and be able to mail it back, within seven days. The Court also failed to consider that the Board must reprint the entire ballot inviting confusion for those who have already voted.

Moreover, a blanket holding that the Board must reprint ballots anytime when a candidate is later added to the ballot is problematic, particularly given that the First and Second Departments heard arguments on election matters on August 18, and the Court of Appeals heard arguments on August 25, all of which followed the date upon which state law mandated the distribution of the ballots in question. Moreover, a particular ballot, which comprises many election contests, could be affected several times if different races are impacted by judicial decisions.

The Court's reliance on Matter of Powers v. Donohue, 276 A.D.2d 157 (1st Dept., 2000), app den. 95 N.Y.2d 769 (1st Dept. 2000) was misplaced. The Court there did not order that corrected absentee ballots be utilized, but deferred to a decision of the Board to do so, in that case, stating that "it is preferable that questions concerning electoral procedures be resolved by officials at the local level, wherever possible, and not in the Courts." *Id.*, at 160. In the instant proceeding,

the Board has determined, with the benefit of experience, that it is too late to correct the absentee and military ballots.

Flake v. Board of Elections of New York City, 122 A.D.2d 94 (2d Dept., 1986) was cited by the Court below for its dicta that if the petitioner there had acted sooner (eight days before the election) "it appears there was sufficient time for a court to rectify the omission". *Id.*, at 96. This Court clearly was not stating that eight days, or any particular period, is always sufficient to utilize corrected absentee and military ballots.

The Court below also failed to consider that Petitioner contributed, at least in part, to the delay in issuance of the order under review. After being ordered back on the ballot on August 13, Petitioner waited until August 24 to bring the instant proceeding, and then caused further delay, up to September 3, when she failed to serve the other candidates in her primary race.

CONCLUSION

THE ORDER APPEALED FROM SHOULD BE
REVERSED, AND AN ORDER ENTERED
DISMISSING THE PROCEEDING IN ITS
ENTIRETY.

Respectfully submitted,

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

BY: Francis F. Caputo
FRANCIS F. CAPUTO
Deputy Chief, Appeals Division

FRANCIS F. CAPUTO,
STEPHEN KITZINGER,
of Counsel.

CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 N.Y.C.R.R. § 670.10.3(f) that this brief was prepared on a computer, using Courier New 12, doubled-spaced. The entire brief, including portions that may be excluded from the word count pursuant to 22 N.Y.C.R.R. § 670.10.3(a)(3), contains 2493 words.

Dated: New York, New York
September 9, 2009



MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Attorney for
Respondent-Appellant Board
of Elections
100 Church Street, Room 6-169
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/9/09

JOSE ADAMES,

Plaintiff,

09 Civ. 7698 (JGK)

- against -

ORDER

RICHMAN, ET AL.,

Defendants.

JOHN G. KOELTL, District Judge:

In this action, the plaintiff seeks to be returned to the ballot for Mayor and to delay the election for Mayor. He seeks to be placed on the ballot for the primary election for Mayor, or failing that, for the general election.

This action is dismissed with prejudice in view of the prior order of Judge Kaplan in Adames v. Bloomberg, 08 CV 3804, dated January 14, 2009, in which Judge Kaplan dismissed that case and ordered: "Further, plaintiff is hereby permanently enjoined and restrained from commencing any action in any federal court (excluding only any appeal he may take to the United States Court of Appeals for the Second Circuit from this order or the judgment to be entered hereon) relating to his claim that he should be mayor of the City of New York." The Court also notes that, by order filed June 18, 2009, the Court of Appeals dismissed the plaintiff's appeal in that case because it lacked an arguable basis in law or fact.

John G. Koeltl
JGK



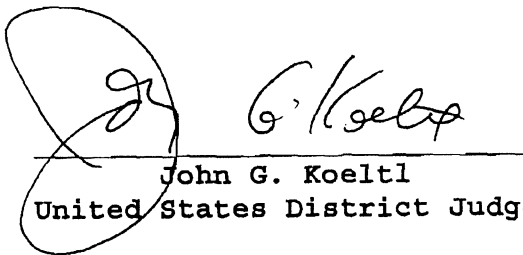
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IN THE CITY OF NEW YORK

The plaintiff is also reminded of Judge Kaplan's further order: "Any violation of this order may constitute a criminal contempt of this Court for which he may be criminally prosecuted and, in the event of conviction, fined and/or imprisoned."

The current case is plainly in violation of Judge Kaplan's prior order which is clear and unambiguous. This case is therefore **dismissed with prejudice**. The Clerk is directed to enter judgment dismissing this case with prejudice and closing the case on the docket.

SO ORDERED.

Dated: New York, New York
September 9, 2009



John G. Koeltl
United States District Judge

2009-030302

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

Commb
#92
JH

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

2009-07528

DECISION & ORDER ON MOTION

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

(Index No. 21141/09)

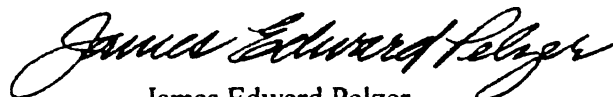
Motion by the appellant, in effect, for leave to reargue an appeal from a final order of the Supreme Court, Queens County, dated August 11, 2009, which was determined by decision and order of this court dated August 20, 2009.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied.

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

ENTER:



James Edward Pelzer
Clerk of the Court

September 10, 2009

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

**OFFICE FOR THE SELF-REPRESENTED
REQUEST FOR JUDICIAL INTERVENTION**

UCS - 840 (REV 1/2000)

Comments
KJZ

SUPREME COURT

NEW YORK COUNTY

INDEX NO. 09/12962

DATE PURCHASED 9/11/09

For Clerk Only
013856

PLAINTIFF(S) : In the Matter of the Application of

KEVIN COENEN

DEFENDANT(S) :

Board of Elections

IAS entry date

Judge Assigned

RJI Date

Date issue joined: _____ Bill of Particulars served (Y/N): Yes No

NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)

- | | |
|--|--|
| <input type="checkbox"/> Request for preliminary conference | <input type="checkbox"/> Notice of petition (return date _____) |
| <input type="checkbox"/> Note of issue and/ or certificate of readiness | Relief sought _____ |
| <input type="checkbox"/> Notice of motion (return date _____) | <input type="checkbox"/> Notice of medical or dental malpractice action (specify _____) |
| Relief sought _____ | <input type="checkbox"/> Statement of net worth |
| <input checked="" type="checkbox"/> Order to show cause (clerk enter return date _____) | <input type="checkbox"/> Writ of habeas corpus |
| <input type="checkbox"/> Other ex parte applications (specify _____) | <input type="checkbox"/> Other (specify _____) |

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NATURE OF ACTION OR PROCEEDING (Check ONE box only)

MATRIMONIAL

- Contested -CM
 Uncontested -UM

COMMERCIAL

- Contract -CONT
 Corporate -CORP
 Insurance (where insurer is a party, except arbitration) -INS
 UCC (including sales, negotiable instruments) -UCC
 *Other Commercial -OC

REAL PROPERTY

- Tax Certiorari -TAX
 Foreclosure -FOR
 Condemnation -COND
 Landlord/Tenant -LT
 *Other Real Property -ORP

OTHER MATTERS

- * -OTH

TORTS

- Malpractice**
- Medical / Podiatric -MM
 Dental -DM
 *Other Professional -OPM
 Motor Vehicle -MV
 *Products Liability -PL
 Environmental -EN
 Asbestos -ASB
 Breast Implants -BI
 *Other Negligence -OTN
 *Other Tort (including Intentional) -OT

SPECIAL PROCEEDINGS

- Art.75 (Arbitration) -ART75
 Art.77 (Trusts) -ART77
 Art.78 -ART78
 Election Law -ELEC
 Guardianship (MHL Art. 81) -GUARD81
 *Other Mental Hygiene -MHY99
 *Other Special Proceeding -OSP

YES

NO

Municipality: (Specify Board of Elections)

YES

NO

Public Authority: (Specify _____)

YES NO

Does this action/proceeding seek equitable relief?

Does this action/proceeding seek recovery for personal injury?

Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonial and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJI to filing of Note of Issue):

Expedited: 0-8 months

Standard: 9-12 months

Complex: 13-15 months

Contested Matrimonial Cases Only: (Check and give date)

Has summons been served? No Yes, Date _____

Was a Notice of No Necessity filed? No Yes, Date _____

ATTORNEY(S) FOR PLAINTIFF(S):

Self Rep.*	Name	Address	Phone #
<input checked="" type="checkbox"/>	KEVIN COENEN	16 Smith Street Newburgh NY 11767	914 933 603
<input checked="" type="checkbox"/>	<i>[Signature]</i>		933 6
<input type="checkbox"/>			

ATTORNEY(S) FOR DEFENDANT(S):

Self Rep.*	Name	Address	Phone #
<input type="checkbox"/>			
<input type="checkbox"/>			

*Self Represented: parties representing themselves, without an attorney, should check the "Self Rep." box and enter their name, address, and phone # in the space provided above for attorneys.

INSURANCE CARRIERS:

RELATED CASES: (if NONE, write "NONE" below)

Title	Index #	Court	Nature of Relationship
X NONE			

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS. NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: X 9/11/09

X *[Signature]*
(Signature)

X KEVIN COENEN
(Print or type name)

PETITIONER(S) KEVIN COENEN
(Attorney for) Self-Represented (Pro-Se)

[Print in **black** ink all areas in bold letters. Other spaces are for Court use].

EX PARTE MOTION TERM
At ~~I.A.S.~~ Part _____ of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse therefore, 60 Centre Street, New York, N.Y., on the 11 day of September, 2009

SHERRY KLEIN HEITLER

PRESENT: HON. _____
Justice of the Supreme Court

KEVIN COENEN
[fill in name(s)] Plaintiff(s)
- against -

Index Number
112962/09

Board of Elections
[fill in name(s)] Defendants(s)

ORDER TO SHOW CAUSE
IN CIVIL ACTION

Upon reading and filing the affidavit(s) of KEVIN COENEN
[your name(s)], ^{verified} sworn to on 9/11, 2009

[date Affidavit in Support notarized], and upon the exhibits attached to the affidavit,

[Identify Exhibits below. List additional Exhibits on separate page.]

Exhibit A - _____

RECEIVED
G.O. BOARD OF ELECTIONS
IN THE CITY OF NEW YORK
2009 SEP 11 P 6:50

Let the party or attorney in opposition show cause at I.A.S. Part 19, Room 252 of this Court, to be held at the Courthouse, 60 Centre Street, New York, N.Y., on the 18th day of Sept, 2009 at 9:30 o'clock in the forenoon or as soon as such party or attorney may be heard why an order should not be made, providing the following relief:

[briefly describe what you are asking the Court to do]: Return my name
KEVIN COENEN to the Ballot for the November 2009
General election for the public office of
Mayor

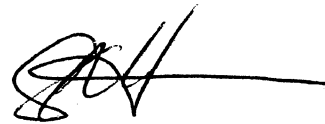
~~to the bill.~~

for the reasons that [briefly describe the reasons why you should be granted what you are requesting]

The Board of Elections decided to take my name off of the ballot due to insufficient number of signatures without actually counting them (Prima Facie). There wasn't a challenge by an opponent and any test is inaccurate. Therefore in the interests of a fair and Democratic election the people should decide and be given a choice.

Sufficient cause appearing therefore, let personal service of a copy of this order, the affidavit in support, and all other papers upon which this order is granted, upon all other parties to this action or their attorneys, who have appeared in this action, on or before the 11th day of Sept, 2009 be deemed good and sufficient. An affidavit or other proof of service shall be presented to this Court on the return date directed in the second paragraph of this order.

ENTER



J. S. C.

[Print in black ink all areas in bold letters.]

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

-----x
KEVIN COENEN
[fill in name(s)] Plaintiff(s)/Petitioner(s)
- against -

Index Number

112962109

AFFIDAVIT T Petition
IN SUPPORT

Board of Elections
[fill in name(s)] Defendant(s)/Respondent(s)
-----x

STATE OF NEW YORK
COUNTY OF New York ss:

KEVIN COENEN [your name], being duly

sworn, deposes and says:

1. I am the plaintiff / petitioner / defendant / respondent [circle one] in this matter. I make this affidavit in support of this motion for an order [Describe what you are asking the Court to do. This relief must also be stated in the Notice of Motion or Order to Show Cause.]

The Board of elections decided to take my name off of the ballot due to insufficient number of signatures without actually counting them (Prima facie) there wasn't a challenge by an opponent and any test is inaccurate. Therefore in the interests of a fair and Democratic election the people should decide and be given a choice.

2. I believe the Court should grant this motion because [Explain why you should be granted what you are requesting. Explain any Exhibits (documents) you submit . Add more pages if needed.]

Prima Facie is an appearance and since the Board of elections failed to actually count the signatures of the citizens of New York and no challenge was presented. The weight test is insufficient and inaccurate. The Board of Elections is acting in an unconstitutional manner representing the challenger and any objectors and since there aren't any to speak of Ballot Status Should be granted

Lined area for text entry.

3. A prior application has not has [circle one] been made for the relief now requested. [If you made this application before in this or any other court, describe where, when, the result and why you are making it again. Attach copies of previous decisions.]

Lined area for text entry.

WHEREFORE, I respectfully request that this motion be granted, and that I have such other and further relief as may be just and proper.

Sworn to before me on the day of September, 2009
Richard B. Minor
Notary Public

Kevin Coenen
[sign your name in front of a Notary]
KEVIN COENEN
[print your name]

RICHARD B. MINOR
Notary Public, State of New York
Reg. No. 01MH6147382
Qualified in New York County
Commission Expires June 15, 2010

FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS



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

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR
GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR
PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

TROY JOHNSON
COORDINATOR
CANDIDATE RECORDS UNIT

9/8/2009

Kevin Peter Coenen Jr.
16 Smith Street
Nesconset, NY 11767

PET. #(s):

NY09920

SPEC. #(s):

PARTY: The Only Hope For Change

Dear Candidate Kevin Peter Coenen Jr.:

At the hearings on nominating petitions held 9/8/2009, please be advised that the following will not appear on the ballot for the General Election 2009 - 11/03/2009 since the petition did not comply with the New York State Election Law and/or the Rules of the Board of Elections.

Mayor Citywide

Very truly yours,

Commissioners of Elections

VERIFICATION

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

Kevin Coenen

[YOUR NAME], being duly sworn,

deposes and says: That I am the petitioner in this proceeding, that I have read the foregoing petition and know the contents thereof; that the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief; and that as to those matters I believe them to be true.

[Signature]

Petitioner

[SIGN YOUR NAME BEFORE A NOTARY PUBLIC]

Sworn to before me this 11 day of September 2009

[Signature]
Notary Public

RICHARD B. MINOR
Notary Public, State of New York
Reg. No. 04M16147382
Qualified in New York County
Commission Expires June 15, 2012

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*****NOTICE OF ENTRY*****

Sir/Madam:

Please take notice that the within is a (certified) true copy of a
_____ duly entered in the office of the clerk of

the within named court on the _____ day of _____, 200

Dated: _____ Yours, etc
Attorney for: _____ Petitioner/
Respondent
Office and Post
Office Address

To: _____
Attorney(s) for _____

*****NOTICE OF SETTLEMENT*****

Sir/Madam:

Please take notice that an _____
of which the within is a true copy will be presented for settlement

to the Hon _____, one of the Justices

of the within named court at _____, 200 at _____ AM/PM

Dated: _____, 200 Yours, etc

Petitioner _____

To: _____
Attorney(s) for _____

INDEX NUMBER 09112962

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

KEVIN COHEN

Plaintiff / Petitioner

- against -

Board of Elections

Defendant / Respondent,

To the best of my knowledge, information and belief
formed after an inquiry reasonable under the circumstances,
the presentation of these papers and the contentions therein
are not frivolous as defined in subsection (c) of section 130-1.1
of the Rules of the Chief Administrator (22NYCRR).

Sign Name: _____

Print Name: KEVIN COHEN

Address: 16 SP 12 Street

ALBANY NY

11767

Telephone _____

Service of a copy of the within is hereby admitted

Dated: _____, 200

Attorney for _____

2004 SEP 11 10 59

CLERK OF THE
SUGAR HILL
COUNTY OF NEW YORK

County
Pg 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X

OSARETIN IGHILE,

Plaintiff,

- against -

BOARD OF ELECTIONS IN THE
CITY OF NEW YORK,

Defendant.

**AFFIRMATION OF
STEPHEN KITZINGER IN
OPPOSITION TO ORDER
TO SHOW CAUSE**

Index No. 700036/2009

-----X

STEPHEN KITZINGER, being an attorney admitted to practice before the courts of this State, hereby affirms under the penalties of perjury:

1. I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendant New York City Board of Elections (the "Board"). As such, I am familiar with the facts of this case.

2. This proceeding concerns an attempt to validate plaintiff's independent nominating petition (the "Petition") by which she seeks placement on the ballot for the public office of the Member of the City Council for the November 3, 2009 General Election.

3. The Board properly determined that the Petition was invalid on its face and, as a consequence, plaintiff's name would not appear on the ballot.

4. Annexed hereto as Exhibit A is a true and correct copy of the letter dated August 27, 2009, to Ighile that the Petition had been preliminarily determined to be invalid and notifying her of her opportunity to provide evidence and/or information tending to refute this preliminary determination. It also gave her notice of the hearing at which this preliminary determination would be considered by the Board and that she would be offered an opportunity to contest such at the hearing.

5. Annexed hereto as Exhibit B is a true and correct copy of the Board's notice dated September 8, 2009, advising Ighile that the Board determined that the Petition was invalid and, as a consequence, that her name would not appear on the ballot.

Dated: New York, New York
September 16, 2009



STEPHEN KITZINGER

EXHIBIT A



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS

BOARD OF ELECTIONS

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

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

STEVEN H. RICHMAN
GENERAL COUNSEL
Tel: (212) 487-5338
Fax: (212) 487-5342
E-Mail:
srichman@boe.nyc.ny.us

August 27, 2009

Gretchen Young
(Candidate/Contact Person)

Candidate's Name: Osaretin Ighile

Independent Body: The Underserved Party

Office: New York City Council

District: _____

Dear Sir or Madam:

The Board of Elections in the City of New York reviews each Cover Sheet and Petition filed with it to insure compliance with the New York State Election Law. On occasion, the Board's staff may preliminarily determine that one or more elements of the cover sheet or petition fails to comply with the requirements of the New York State Election Law and said failure is not subject to a cure under Section 6-134(2) of the Election Law.

Rule E1 of the Board's Independent Nominating Petition Rules for 2009 provides that: "The Board shall notify the candidate or designated contact person in writing of the Board's preliminary finding of a Prima Facie defect and advise the candidate/contact person that he/she may appear at the Board's hearings on said petitions to contest such preliminary finding."

In this instance, the Board's preliminary determination of a Prima Facie Defect is that the candidate named above is, according to the Board's records:

_____ Petition on its face, appears to have insufficient signatures to qualify candidate for the ballot

- Petition Filed Late
- No Certificate of Acceptance Filed
- Certificate of Acceptance Filed Late
- Over-designation
- Petition does not specify the name of the Independent Body that is seeking to nominate the candidate
- Petition does not specify/identify the public office that the candidate is seeking to be nominated for
- Petition does not specify/identify the district that the candidate is seeking to be nominated in**
- Petition does not specify/identify the candidate's place of residence
- Other: _____

If you have information or evidence to the contrary, you may submit it to the Board, prior to the hearing date set forth below or at the hearing. If you wish to submit it to the Board, you should file it by delivering the evidence/information in person at the Board's Executive Offices, 32 Broadway, 7th Floor, Borough of Manhattan, New York between the hours of 9 AM and 5 PM, Monday through Fridays (except legal holidays).

The Commissioners of Elections in the City of New York will conduct a hearing on this Prima Facie matter as well as specifications of objections to independent nominating petitions on **TUESDAY, SEPTEMBER 8, 2009 at 1:30 PM.** All Prima Facie matters will be heard at the beginning of the Board's Calendar of Hearings on Independent Nominating Petitions. This hearing will be held in the **Commissioners' Hearing Room, 42 Broadway, 6th Floor, Borough of Manhattan, New York.** The Rules and Procedures set forth in Part J of the Board's Designating Petition Rules will govern this hearing.

Please note that the Commissioners of Elections may remove a candidate's name from the ballot, if it finds that the preliminary finding of a Prima Facie defect is correct.

Very Truly Yours,

THE BOARD OF ELECTIONS IN
THE CITY OF NEW YORK

EXHIBIT B

FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS



BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004-1609
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MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

TROY JOHNSON
COORDINATOR
CANDIDATE RECORDS UNIT

9/8/2009

Osaretin Ighile
183 Clifton Place
Brooklyn, NY 11216

PET. #(s):

KG09237	KG09238	KG09239
---------	---------	---------

SPEC. #(s):

--

PARTY:

Dear Candidate Osaretin Ighile:

At the hearings on nominating petitions held 9/8/2009, please be advised that the following will not appear on the ballot for the General Election 2009 - 11/03/2009 since the petition did not comply with the New York State Election Law and/or the Rules of the Board of Elections.

Petitioned for an office that is not up for election

Very truly yours,

Commissioners of Elections

County
R 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X

OSARETIN IGHILE,

Plaintiff,

Index No. 700036/2009

- against -

BOARD OF ELECTIONS IN THE
CITY OF NEW YORK,

Defendant.

-----X

**BOARD OF ELECTIONS IN THE CITY OF
NEW YORK'S OPPOSITION TO THE ORDER
TO SHOW CAUSE.**

Defendant Board of Elections in the City of New York (the "Board") submits this memorandum in opposition to petitioner Osaretin Ighile ("Ighile") validating petition seeking to validate her independent nominating petition (the "Petition") by which she seeks placement on the ballot for the public office of the Member of the City Council, apparently from the 35th Council District.¹ Petitioner acknowledges that the Petition failed to state from which district she sought to run, but that such failure does not matter as she listed her address on the Petition, which is sufficiently descriptive such that it would be clear to the signatories to the Petition from which District she sought to run. The failure to list the District is a fatal defect that is not subject to cure because it fails to state the public office for which she seeks election.

¹ Neither the Order to Show Cause nor the first paragraph of the supporting affidavit states that she seeks to be placed on the ballot for election from the 35th Council District. The second paragraph of the supporting affidavit alleges that "read as a whole," the Petition was "sufficiently informative to show that the district involved was District 35." Ighile Affidavit, ¶ 2. Upon information and belief, no verified petition was filed with regard to this proceeding.

FACTS

On or about August 18, 2009, Ighile filed an independent nominating petition purporting to nominate her for the public office of “City Council” on the “Underserved Party” party line for the November 3, 2009 General Election. *See* Papers filed on commencement of Proceeding, Petition Sheet No. 115. The description of the public office set forth on the Petition is “City Council.”

On or about August 27, 2009, the Board of Elections sent Ighile a prima facie defect notice stating that the Petition was flawed, giving her an opportunity to present evidence or information to challenge and refute the noted defect. *See* Kitzinger Affirmation, Exhibit A. The Board, at its duly noticed meeting on September 8, 2009, sustained the prima facie defect and determined that Ighile’s name would not appear on the ballot. The Board sent Ighile notice of this determination by letter dated September 8, 2009. *See* Kitzinger Affirmation, Exhibit B.

ARGUMENT

THE BOARD PROPERLY DETERMINED THAT THE PETITION WAS INVALID.

Pursuant to N.Y. Election Law § 6-140, an independent nominating petition is required to state the public office to which the putative candidate seeks election. N.Y. Election Law § 6-140(1)(a). The Petition stated only the body to which she sought election – that is, the City Council – not from which Council District. Ighile’s claim that the Petition was sufficiently clear to show that the “District involved” was the 35th Council District because that is the district in which her address exists, is without merit. There is no evidence that any signatory to the Petition would have any idea that 183 Clifton Place, Brooklyn, NY, is in the 35th Council District. Initially, it is worth noting – and the Court may take judicial notice – that Brooklyn is home to 16 of the 51 City Council Districts. That alone, makes this case distinguishable from the upstate cases cited by Ighile that related to elections for town and/or countywide offices. It also makes it clear that the address alone is insufficient to identify the public office being sought as Member of the City Council from the 35th Council District.

Because a candidate for election to the City Council need only be a resident of the district from which elected on election day, the fact that the putative candidate’s residence is in a certain district does not compel a determination that she would be seeking election from that same district. N.Y. Public Officers L. § 3(1). This failure to clearly identify the Council District from which one seeks election also allows for a certain amount of gamesmanship by candidates. In the absence of a district designation, the public cannot know who would have standing to object to a petition. The public has a right to have putative candidates clearly identify the public office to which they seek election in order that they, as voters, have the ability to exercise their rights to challenge a petition. For example, had an objection been filed against the Petition by a

voter residing within the 35th Council District, Ighile could have simply claimed that she was a candidate for election in the 34th Council District. As a consequence of that claim, the objector would be without standing to object and the candidate would be on the ballot as a candidate from the 34th Council District. Of course, voters in the 34th Council District would have had no reason to believe that she was seeking election from that district at the time the Petition was filed. This, too, also ignores the practical difficulties of administering an election when the petitions fail to identify the geographic region from which one seeks election, such as how is the Board supposed to determine how to record the filing of the Petition. In sum, Ighile seeks to read the requirement of listing the geographic designation out of the title of the Public Office that is required to be stated on the face of a petition.

Because the Petition could legally relate to any one of the 51 Council Districts – the Petition was, in fact, defective, and the Board acted properly in striking her name from the ballot.

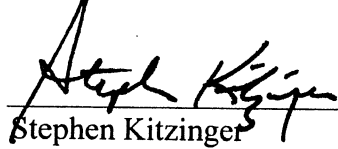
CONCLUSION

Because the Board properly determined that the Petition was facially invalid, the Board of Elections in the City of New York respectfully requests that this Court enter an order denying the instant petition and for such other and further relief as is just and proper.

Dated: New York, New York
 September 16, 2009

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for the Respondent
100 Church Street, Room 2-126
New York, New York 10007
(212) 788-0849

By: _____


Stephen Kitzinger
Assistant Corporation Counsel

Com Mt
Ky 1

September 11, 2009

MOTION

1 Mo. No. 2009-1060
In the Matter of Anna R. Lewis,
 Appellant,
 v.
Lydia Hummel,
 Respondent,
The New York City Board of
Elections,
 Respondent.

Motion for leave to appeal denied.

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

*County
Kyz*

2009 SEP 10 PM 5: 15

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

D24410
C/hu

Argued - September 10, 2009

AD3d

PETER B. SKELOS, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
SHERI S. ROMAN, JJ.

DECISION & ORDER

2009-08426

In the Matter of Erlene J. King, respondent, v Board
of Elections in City of New York, appellant.

(Index No. 70035/09)

In a proceeding, in effect, pursuant to Election Law § 16-104, inter alia, to direct the Board of Elections in the City of New York to include the petitioner's name as a candidate on absentee ballots 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, 45th Council District, and to reprint the absentee ballots, the Board of Elections in the City of New York appeals from a final order of the Supreme Court, Kings County (Schmidt, J.), dated September 3, 2009, which, among other things, granted the petition and directed it to include the petitioner's name as a candidate on the subject absentee ballots and to reprint those absentee ballots accordingly.

ORDERED that the final order is reversed, on the law, without costs or disbursements, the petition is denied, and the proceeding is dismissed.

Under the circumstances of this case, the petition must be denied and the proceeding must be dismissed, as meaningful relief cannot be afforded in accordance with the Election Law (*see* Election Law § 7-122[1][a]; *Matter of Hunter v Orange County Bd. of Elections*, 1 NY3d 813; *Matter of Breitenbach v Heffernan*, 245 App Div 374, *affd* 268 NY 718).

SKELOS, J.P., COVELLO, ANGIOLILLO and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

September 10, 2009

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

Counts
Pg 7

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

MARQUEZ CLAXTON

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

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

Index No.: 21060/09
Motion
Dated: 9/8/09
Seq. No.: 3
Cal. No.: 1

RECEIVED:
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 SEP 11 PM 12:27

-----x
The following papers numbered 1 to 9 read on this motion by
petitioner, brought by Order to Show Cause, to punish respondents,
Commissioners of Elections of the Board of Elections in the City of

New York for civil and criminal contempt of court and such punishment consisting of fine or imprisonment or both, according to law.

	PAPERS <u>NUMBERED</u>
Order to Show Cause - Affidavits - Exhibits.....	1 - 5
Answering Affidavits - Exhibits.....	6 - 8
Reply Affidavits - Exhibits.....	9

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

In this special election proceeding petitioner sought an order declaring valid the petition designating him 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. By decision dated August 17, 2009, this Court determined that certain signatures on the designating petition in question were valid. The Court's decision therefore declared the designating petition valid and directed that the Board of Elections of the City of New York place the name of the petitioner on the appropriate ballot for the Democratic Primary Election to be held on September 15, 2009.

The motion herein, brought by order to show cause, seeks an order punishing respondent 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 (hereinafter referred to as the "Board of Elections") for civil and criminal contempt of court. In support of the instant motion, petitioner's attorney affirms that on August 24, 2009, it came his attention that notwithstanding the Court's August 17, 2009 order directing that petitioner's name be placed on the appropriate ballot, the respondent Board of Elections restored petitioner's name only to the machine vote but did not do so with respect to the absentee ballots, military ballots and special ballots. Counsel for petitioner additionally affirms that correspondence, dated August 25, 2009, was delivered to the Board of Elections demanding that petitioner's name be placed on absentee ballots, military ballots and special ballots and that the Board, by letter dated August 26, 2009, refused to do so. Petitioner contends, *inter alia*, that the refusal of the Board of the Elections to place petitioner's name on the absentee ballots, military ballots and special ballots is in disobedience

and willful contempt of the Court's August 17, 2009 order. As relief, petitioner seeks the cancellation of all absentee, special and military ballots relating the primary election for the 31st City Council District to be held on September 15, 2009 which fail to have the name of petitioner printed thereon and an order punishing the Board of Elections for contempt.

In opposition to the motion herein, counsel for the respondent Board of Elections suggests, in his affirmation, that his client did not understand the meaning of that portion of the Court's August 17, 2009 order which directed that the petitioner's name be placed on the "appropriate ballot." Counsel for respondent Board of Elections argues that the Court's order is ambiguous because it does not specifically state whether or not "appropriate ballot" includes absentee, military or special ballots. Counsel for respondent Board of Elections also contends that even if the Court's order had been construed to extend to the absentee, military and special ballots, the Board of Elections could not have complied with the order in view of various provisions of the Election Law.

The Court's order dated August 17, 2009 directing that the Board of Elections place the name of the petitioner on the appropriate ballot clearly sought to have the intent of all voters implemented, to protect the integrity of the election process and to ensure a fair primary election. Thus, the Court rejects the contention of respondent Board of Elections as to ambiguity. However, based upon the record and the totality of the circumstances, including the mandates set forth in Election Law §§ 7-122 and 7-123, the Court finds that the evidence adduced by petitioner does not support a finding of contempt against respondent Board of Elections. This Court must therefore deny the remedies sought by petitioner. The Court notes that in accordance with the aforementioned provisions of the Election Law it is without the authority to provide petitioner with any meaningful remedy under these circumstances.

Accordingly, it is

ORDERED AND ADJUDGED that petitioner's motion to punish respondent 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 for civil and criminal contempt of court is denied in its entirety.

Dated: September 10, 2009

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

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

2009 SEP -8 PM 4: 09

HON. DANIEL

J.S.C.

By Robert M. ...
At Part of the
Supreme Court of the State of New
York held in and for the County of
New York on
September 4, 2009.

County
NYI

P R E S E N T: HON.
J.S.C. Name of Justice if matter assigned _____X

Index No. 40 2244 (09)

:Walter Iwachiw

Plaintiff.

**ORDER TO SHOW CAUSE
FOR TEMPORARY
RELIEF**

:

-against-

::NYC Board of Elections

Defendant. :

-----X

Upon reading and filing the annexed affidavit of Walter Iwachiw, the (Plaintiff) in this action.

sworn to on Sept 3, 2009, ~~together with the Statement of Net Worth, sworn to on Sept~~

~~3 2009~~, and all other papers attached to this

Order to Show Cause, and a Summons with Notice (or Summons and Complaint)*

LET NYC Board of Elections, (Defendant), show cause before this Court

at Part 19 Room 254 thereof to be held at the Courthouse located at

60 Centre Street, New York, New York on Sept 11th, 2009

at 9:30 a.m. or as soon thereafter as the parties can be heard,

WHY an Order should not be made and entered *enjoining the NYC Board of Elections from eliminating
Walter Iwachiw as a candidate for the office of Mayor for the City of New York.*

' Granting such other and further relief as the Court may deem just and proper.

SUFFICIENT REASON APPEARING THEREFOR,

[Handwritten mark]

~~ORDERED~~ that a Temporary Order of Protection shall issue this date in favor of

against _____

Terms/conditions

~~of such Order are set forth on the attached Temporary Order of Protection.~~

ORDERED, that pending the hearing of the instant application and the further Order of this Court, The NYC Board of Elections and NYC except as otherwise directed by the Court and during the pendency of this action, shall preserve the ballot access of Walter Iwachiw as a candidate for the office of Mayor for the City of New York in the November 3, 2009 General Election. That the Board of Elections must include Walter Iwachiw as a candidate on all printed material and online lists till the full adjudication of this action,

mat
be

ORDERED, that ^{personal} service of a copy of this Order to Show Cause, the papers upon which it is granted and the ~~Temporary Injunction, if any~~, (together with a Summons with Notice or Summons and Complaint). be made ^{by mail upon Steve Richman} NYC Brd of Election ^{corporation} ~~at 32 Broadway NYC NY and NYC Counsel Micheal Cardoza 100 Church Street NYC NY~~ on or before

Sept 4, 2009, be deemed good and sufficient service.

ENTER,

mat
Justice of the Supreme Court

HON. WALTER J. ...
J.S.C.

At Part ____ of the
Supreme Court of the State of New
York held in and for the County of
_____ on
_____, 200__.

P R E S E N T: HON.
J.S.C. Name of Justice if matter assigned
-----X

Index No. _____

407 077 / 09

:Walter Iwachiw
Plaintiff,

^{deput}
Affirmation in support of
order to show cause

:
-against-
:NYC Board of Elections
Defendant. :

-----X

STATE OF NEW YORK)

:ss..

COUNTY OF New York

Walter Iwachiw, being duly sworn depose(s) and say(s):

I received the attached Preliminary Determination on Sept 2, 2009.
The NYC Board of Elections determined in the primary cycle of 2009 that on its face the petitions submitted were sufficient on its face. The NYC Board of Elections determined in the General election cycle of 2009 that on its face the same petitions submitted were not on its face sufficient reversing the prior finding. *No Petition Application has been made to this or any other court for the relief sought herein.*
Walter Iwachiw, seeks reinstatement as a candidate due to violence and threats of violence during the campaign which impaired the ability to gather signatures due to fear or retaliation and seeks equitable relief from the court. At least three threats were made and Walter Iwachiw called the Department of Justice asking for an election monitor and suspended signature collection, in the interest of safety.

Walter Iwachiw

State of New York
County of New York

Sworn to before me this
31st day of Sept. 2009

MARGARET A. SCHWARTZ
Notary Public, State of New York
Reg. No. 04SC6152068
Qualified in New York County
Commission Expires Aug. 23, 2010

Margaret A. Schwartz

[Print in **black** ink all areas in bold letters . Both pages **must** be completed. This summons **cannot** be used for divorce actions.]

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

SUMMONS WITH NOTICE

-----x
WALTER Iwaschew

Index Number

402 244 / 09

[your name(s)] Plaintiff(s)

- against -

Date Index Number

purchased 9-3, 2009

NYC Bd of Election, NYC

[name(s) of party being sued] Defendant(s)

-----x

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to appear in this action by serving a notice of appearance on the plaintiff(s) at the address set forth below, and to do so within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer or appear, a judgment will be entered against you by default for the relief demanded below.

Dated: 9-3, 2009
[date of summons]

Walter Iwaschew
[sign your name(s)]

WALTER Iwaschew
[print your name(s)]

48-35 41 St
Sunnyside NY 11104

[your address(es), telephone number(s)]

Defendant(s) NYC Counsel
NYC Bd of Election

100 Chancel St NYC NY
3rd Floor NYC NY

[address(es) of party being sued]

Notice: The nature of this action is [briefly describe the nature of your case against the defendant(s), such as, breach of contract, negligence]:

election case - restore Walter Iwaschew to
Ballot

The relief sought is [briefly describe the kind of relief you are asking for, such as, money damages of \$25,000]

equitable relief

Should defendant(s) fail to appear herein, judgment will be entered by default for the sum of 4 million [amount of money demanded], with interest from the date of Nov 3 2009 [date from which interest on the amount demanded is claimed] and the costs of this action.

Venue:

Plaintiff(s) designate New York County as the place of trial. The basis of this designation is

[check box that applies]:

- Plaintiff(s) residence in New York County
- Defendant(s) residence in New York County
- Other [See CPLR Article 5]: _____

At Part ____ of the
Supreme Court of the State of New
York held in and for the County of
_____ on
_____, 200__.

P R E S E N T: HON.
J.S.C. Name of Justice if matter assigned
-----X
Index No. _____

:Walter Iwachiw

Plaintiff,

Complaint

-against-
:NYC Board of Elections
Defendant. :
-----X

The presumptive rule and weight test are applied in an arbitrary and capricious manner by the NYC Board of Election creating an atmosphere in the election cycle which promotes violence toward candidates, shop keepers and supporters that try to gain ballot access outside the Democratic and Republican Parties.

That atmosphere of violence and retaliation has apparently forced the WFP to use ADN to gather signatures while meeting the stringent campaign finance laws, which limit the contributions to 400.00 for businesses doing business with the city and to 4,950.00 for individuals.

The combined effect of campaign spending laws, violence toward third party campaigns and arbitrary and capricious application of rules violates the U.S. Constitution and NYS Constitution by impairing equitable access to third party candidates and favors the Democratic and Republican party candidates.

In 2001 George Spitz was permitted by the NYC Board of Election to become a Candidate for Public Office by not subjecting his petitions to prima facie defect.

The NYC Board of Elections determined in the primary cycle of 2009 that on its face the petitions

submitted were sufficient on its face. The NYC Board of Elections determined in the General election cycle of 2009 that on its face the same petitions submitted were not on its face sufficient reversing the prior finding.

In the Gerson Court proceedings the NYC Board of Elections stated they don't count pages and signatures but rather rely on a weight test, which the very same petitions passed in the Primary cycle on 2009.

The letter from the NYC Board of Elections denying ballot access dated August 31, 2009 is arbitrary and capricious and violates equity in ballot access for the candidate, party and seeks to defranchise the voters constitutional rights.

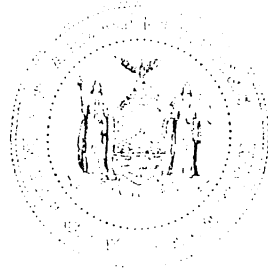
Walter Iwachiw, seeks reinstatement as a candidate due to violence and threats of violence during the campaign which impaired the ability to gather signatures due to fear or retaliation and seeks equitable relief from the court.

Walter Iwachiw Sept 3, 2009

FREDETRIC M. UMAMI
PRESIDENT

JULIE DE'ELI
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANO
JAMES JOSEPH SAMPEL
NANCY MOTTOLA-SCHACHEL
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STOPP
COMMISSIONERS



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

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE
DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

TROY JOHNSON
COORDINATOR
CANDIDATE RECORDS UNIT

Walter Iwachiw
48-35 41 Street
Sunnyside, NY 11104

August 31, 2009

Candidate: **Walter Iwachiw**

Independent Body: **Camelots**

Office: **Mayor**

District: **NYC**

Dear Sir or Madam:

The Board of Elections in the City of New York reviews each Cover Sheet and Petition filed with it to insure compliance with the New York State Election Law. On occasion, the Board's staff may preliminarily determine that one or more elements of the cover sheet or petition fails to comply with the requirements of the New York State Election Law and said failure is not subject to a cure under Section 6-134(2) of the Election Law.

Rule E1 of the Board's Independent Nominating Petition Rules for 2009 provides that: "The Board shall notify the candidate or designated contact person in writing of the Board's preliminary finding of a Prima Facie defect and advise the candidate/contact person that he/she may appear at the Board's hearings on said petitions to contest such preliminary finding."

In this instance, the Board's preliminary determination of a Prima Facie Defect is that the candidate named above is, according to the Board's records:

Candidate not registered or not eligible to vote (Board's Avid Code # _____)

Candidate not enrolled in political party on petition

Petition on its face, appears to have insufficient signatures to qualify candidate for the ballot

No Certificate of Acceptance Filed

No Certificate of Authorization Filed

Certificate of Acceptance Filed Late

Certificate of Authorization Filed Late

Over-designation

Petition does not specify/identify the office that the candidate is seeking to be nominated for

Petition does not specify/identify the district that the candidate is seeking to be nominated in

Petition does not specify/identify the candidate's place of residence

315 sheets total; 5 signature slots per sheet - potential for only 1,575 signatures. 7,500 Signatures required. Petition on its face appears to lack the amount of signatures needed to qualify.

(OVER)

CRU

ou have information or evidence to the contrary, you may submit it to the Board, prior to the
ring date set forth below or at the hearing. If you wish to submit it to the Board, you should file
/ delivering the evidence/information in person at the Board's Executive Offices, 32 Broadway,
Floor, Borough of Manhattan, New York between the hours of 9 AM and 5 PM, Monday through
ays (except legal holidays).

Commissioners of Elections in the City of New York will conduct a hearing on this Prima Facie
ter on

WEDNESDAY, September 8, 2009 at 1:30PM.

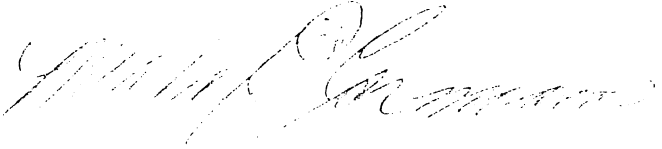
**s hearing will be held in the Commissioners' Hearing Room, 42 Broadway, 6th Floor,
orough of Manhattan, New York.**

Rules and Procedures set forth in Part J of the Board's Independent Nominating Petition Rules
govern this hearing.

ase note that the Commissioners of Elections may remove a candidate's name from the ballot, if
nds that the preliminary finding of a Prima Facie defect is correct.

Very truly yours,

The Board of Elections in the City of New York

By: 

County
KY

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

-----x

WALTER IWACHIW,

Plaintiff,

Index No. 09/402022

- against -

Justice Edward H. Lehner

NEW YORK CITY BOARD OF ELECTIONS,

Defendant.

-----x

**BOARD OF ELECTIONS IN THE CITY OF
NEW YORK'S OPPOSITION TO THE ORDER
TO SHOW CAUSE.**

Defendant Board of Elections in the City of New York (the "Board") submits this memorandum in opposition to plaintiff Walter Iwachiw's ("Iwachiw") validating petition seeking to validate his independent nominating petition (the "Petition") by which he seeks placement on the ballot for the public office of the Mayor of the City of New York for the November 3, 2009 General Election. Iwachiw's petition was determined by the Board to be defective in that it appeared, on its face, to be impossible to contain a sufficient number of valid signatures to warrant placement on the ballot.

Iwachiw comes to this Court complaining that the Board acted arbitrarily and capriciously in determining that the Petition was invalid because it did not similarly determine that his designating petition, purporting to designate him as a candidate for the Republican Party nomination for the public office of Mayor of the City of New York, was facially deficient.

FACTS

On or about August 18, 2009, Iwachiw filed an independent nominating petition purporting to nominate him for the public office of Mayor on the “Camelots” party line for the November 3, 2009 General Election. *See* Kitzinger Affirmation, Exhibit A. Pursuant to section 6-142(2)(b) of the Election Law, the Petition was required to contain not less than 7,500 valid signatures. The Board, upon reviewing the petition pursuant to Rule E1 of the Independent Nominating Petition Rules for 2009, determined that it was mathematically impossible for the Petition to contain a sufficient number of signatures as it contained only 315 sheets, each of which contained space for only five signatures. *See Id.* As a result, on or about August 31, 2009, the Board sent Iwachiw notice of this defect, giving him an opportunity to present evidence or information to challenge and refute the noted defect. *See* Kitzinger Affirmation, Exhibit B. The Board, at its duly noticed meeting on September 8, 2009, sustained the prima facie defect and determined that Iwachiw’s name would not appear on the ballot. The Board sent Iwachiw notice of this determination by letter dated September 8, 2009. *See* Kitzinger Affirmation, Exhibit C.

ARGUMENT

THE BOARD ACTED WITHIN ITS AUTHORITY WHEN IT DETERMINED THAT THE PETITION WAS FACIALLY INVALID.

Under N.Y. Election Law § 6-154(2), defendant Board is “empowered to make rules in reference to the filing and disposition of such [challenged nominating] petition, certificate, objections and specifications.” N.Y. Election Law § 6-154(2). In accordance with this provision, the Board of Elections adopted the following rule as Rule E1. of its Independent Nominating Petition Rules for 2009:

The Board of Elections reviews each Cover Sheet and Petition to insure compliance with the New York State Election Law. On occasion, the Board determines that it appears that a Cover Sheet and/or Petition, on its face, fails to comply with the requirements of the New York State Election Law and is not subject to a cure under Section 6-134(2) of the Election Law. In that event, the Board shall notify the candidate or designated contact person in writing, of the Board’s preliminary finding of a Prima Facie defect and advise the candidate/contact person that he/she may appear at the commencement of the Board’s hearings on said petitions to contest such preliminary finding. Such review, preliminary finding and final determination shall be without prejudice to the Board’s subsequent determination of objections and specifications of objections filed pursuant to the provisions of the Election Law and these Rules.

Independent Nominating Petition Rules For 2009, Rule E1., available at <http://vote.nyc.ny.us/pdf/documents/boe/Adopted2009IndependentNominatingPetitionRules.pdf>.

Pursuant to this rule, the Board’s staff reviewed the Petition and related cover sheet to determine whether or not they were prima facie valid. The Board’s staff, as part of its this review, noted that the Petition contained only 315 pages, with each page containing space for only five

signatures. In accordance therewith, the Board's staff concluded that the Petition could contain, at most, 1,575 signatures, well short of the 7,500 signatures required by section 6-142(2)(b) and preliminarily determined that the Petition was invalid on its face. Iwachiw proffered no information or evidence to the Board tending to refute this determination, as was his right. Therefore, in conformity with the Election Law and the Board's Independent Nominating Petition Rules, the Board ruled that the Petition was invalid and that Iwachiw's name would not appear on the November 3, 2009 General Election Ballot.

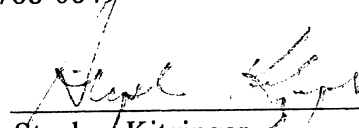
CONCLUSION

Because the Board, acting within its statutory grant of authority, properly determined that the Petition was facially invalid, the Board of Elections in the City of New York respectfully requests that this Court enter an order denying the instant petition and for such other and further relief as is just and proper.

Dated: New York, New York
 September 10, 2009

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for the Defendant
100 Church Street, Room 2-126
New York, New York 10007
(212) 788-0849

By:



Stephen Kitzinger
Assistant Corporation Counsel

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

-----X
WALTER IWACHIW,

Plaintiff,

- against -

NEW YORK CITY BOARD OF ELECTIONS,

Defendant.
-----X

**AFFIRMATION OF
STEPHEN KITZINGER IN
OPPOSITION TO ORDER
TO SHOW CAUSE**

Index No. 09/402022

Justice Edward H. Lehner

STEPHEN KITZINGER, being an attorney admitted to practice before the courts of this State, hereby affirms under the penalties of perjury:

1. I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendant New York City Board of Elections (the "Board"). As such, I am familiar with the facts of this case.

2. This proceeding concerns an attempt to validate plaintiff's independent nominating petition (the "Petition") by which he seeks placement on the ballot for the public office of the Mayor of the City of New York for the November 3, 2009 General Election.

3. The Board properly determined that the Petition was invalid on its face and, as a consequence, plaintiff's name would not appear on the ballot.

4. Annexed hereto as Exhibit A is a true and correct copy of the first sheet from one of the eight volumes comprising the Petition. Its form is representative of the remaining sheets of the Petition in that it contains space for only five signatures. The Petition itself will be made available and provided to the Court on the return date of the order to show cause.

5. Annexed hereto as Exhibit B is a true and correct copy of the Board's notice dated August 31, 2009, to Iwachiw that the Petition had been preliminarily determined to be invalid and notifying him of his opportunity to provide evidence and/or information tending to refute this preliminary determination. It also gave him notice of the hearing at which this preliminary determination would be considered by the Board and that he would be offered an opportunity to contest such at the hearing.

6. Annexed hereto as Exhibit C is a true and correct copy of the Board's notice dated September 8, 2009, advising Iwachiw that the Board determined that the Petition was invalid and, as a consequence, that his name would not appear on the ballot.

Dated: New York, New York
September 10, 2009

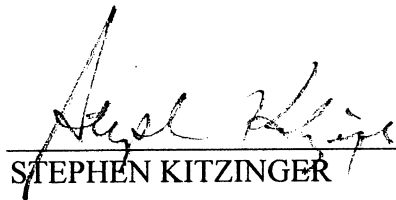

STEPHEN KITZINGER

EXHIBIT A

INDEPENDENT NOMINATING Petition Sec. 6-140, Election Law

I the undersigned, do hereby state that I am a duly registered voter of the Political Unit for which a nomination for public Office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and I do hereby nominate the following named person as a candidate for election to public office to be voted for at the election to be held on the Nov 3, 2009, and that I select:
 Name of Candidate: Walter Iwaschew Public Office: Mayor Place of Residence: 48 35 41 Street Sunnyside, New York 11104
 I do hereby appoint: C. Walsh 39-20 Grocpoint Ave. Sunnyside, New York 11104 P. Simonian 39-42 48 Street Sunnyside, New York 11104 P. Munoz 83 45 Victor Ave Elmhurst New York 11373 as a committee to receive orders in accordance with provisions of the election law. In witness whereof I have heretunto set my hand, the day and year placed opposite my signature. White 8/12/09

Name of Signer (signature required)		Residence	Enter Town or City except in NYC enter County
1. Date 7/20/09	Printed Name <u>Missy Stuman</u>	<u>63 N 3120 St</u>	<u>Kings</u>
	signature <u>[Signature]</u>	<u>Bklyn NY 11211</u>	<u>Kings</u>
2. Date 7/20/09	Printed Name <u>Evelyn Th Aguirre</u>	<u>967 Metropolitan</u>	<u>Kings</u>
	signature <u>[Signature]</u>	<u>Bklyn NY 11211</u>	<u>Kings</u>
3. Date 7/20/09	Printed Name <u>FEODOR DABELON</u>	<u>11-15 40 ST, 11218</u>	<u>Kings</u>
	signature <u>[Signature]</u>	<u>Bklyn NY 11218</u>	<u>Kings</u>
4. Date / /	Printed Name		
	signature		
5. Date / /	Printed Name		
	signature		

Witness to complete one of the following:

1.) Statement of Witness (This is for a Registered NYC voter collecting signatures from another NYC Registered Voter.)
 I, (name of witness) David Wang State: I am a duly qualified voter of the State of New York and am an enrolled voter of the Republican Party.
 I now reside at (residence address) 35 40 75 ST Jackson Heights NY 11372
 Each of the individuals whose names are subscribed to this petition sheet containing (fill in number) signatures, subscribed the same in my presence on the dates above indicated and identified himself to be the individual who signed this sheet.
 I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.
 Date 8/12/09 Signature of Witness [Signature]
WITNESS IDENTIFICATION INFORMATION: The following information for the witness named above must be completed prior to filing with the board of elections in order for this petition sheet to be valid.
 Town or city New York NY

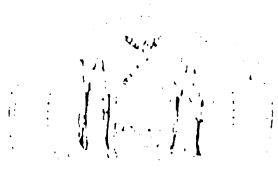
County Queens
 2.) NOTARY PUBLIC OR COMMISSIONER OF DEEDS (This is for NYS notaries to collect signatures from any party based on registration at the top of the form)
 On the dates above indicated before me personally came each of the voters whose signatures appear on this petition sheet containing (fill in number) signatures, who signed same in my presence and who, being by me duly sworn, each for himself, said that the foregoing statement made and subscribed by him, was true.
 Date _____ Signature and Official Title of Officer Administering _____
 Oath _____ stamp _____

Sheet No: 1

IN THE BO OF ELECTIONS
 OF THE CITY OF NEW YORK
 2009 AUG 18 PM 11:39

EXHIBIT B

THE DEPUTY CLERK
 THE BOARD
 OF ELECTIONS
 40-35 41 Street
 Sunnyside, NY 11104
 RONA LUCILLE ADALDO
 RICHARD L. BLOOM, CLERK POLITICAL
 JAMES JOSEPH SAGHIE
 FRANCESCO L. SCIALOJA, SECRETARY
 THOMAS SHER
 LEONARD SHER
 GEORGE C. SOUMAS
 JUDITH S. STUBBINS
 CLERK BOARD OF ELECTIONS



BOARD OF ELECTIONS
 OF
 THE CITY OF NEW YORK
 EXECUTIVE OFFICE - MIDTOWN
 NEW YORK, NEW YORK 10001
 TEL: 212-312-3300
 FAX: 212-312-3309

MARCUS CEDEHOVSKI
 EXECUTIVE DIRECTOR
 GEORGE GONZALEZ
 DEPUTY EXECUTIVE
 DIRECTOR
 PAMELA GREEN PERKINS
 ADMINISTRATIVE MANAGER
 TROY JOHNSON
 COORDINATOR
 CANDIDATE RECORDS UNIT

Walter Iwachiw
 40-35 41 Street
 Sunnyside, NY 11104

August 31, 2009

Candidate: **Walter Iwachiw**

Independent Body: **Camelots**
 Office: **Mayor**
 District: **NYC**

Dear Sir or Madam:

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- Certificate of Acceptance Filed Late
- Certificate of Authorization Filed Late
- Over designation
- Petition does not specify/identify the office that the candidate is seeking to be nominated for
- Petition does not specify/identify the district that the candidate is seeking to be nominated in
- Petition does not specify/identify the candidate's place of residence

315 sheets total; 5 signature slots per sheet - potential for only 1,575 signatures. 7,500 Signatures required. Petition on its face appears to lack the amount of signatures needed to qualify.

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The Commissioners of Elections in the City of New York will conduct a hearing on this Prima Facie defect on

ESDAY, September 8, 2009 at 1:30PM.

The hearing will be held in the Commissioners' Hearing Room, 42 Broadway, 6th Floor, Borough of Manhattan, New York.

The Rules and Procedures set forth in Part J of the Board's Independent Nominating Petition Rules govern this hearing.

Please note that the Commissioners of Elections may remove a candidate's name from the ballot, if it is determined that the preliminary finding of a Prima Facie defect is correct.

Very truly yours,

The Board of Elections in the City of New York

By:

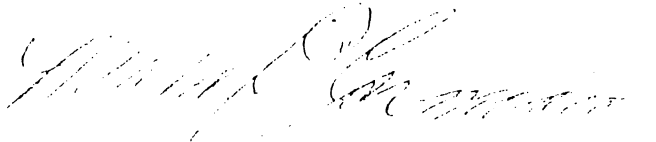


EXHIBIT C

FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS



BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004-1600
(212) 467-5300
FAX (212) 467-5349
www.vote.nyc.ny.us

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

TROY JOHNSON
COORDINATOR
CANDIDATE RECORDS UNIT

9/8/2009

Walter Iwachiw
48-35 41 Street
Sunnyside, NY 11104

PET. #(s):

NY09993	NY09994	NY09995	NY09996	NY09997	NY09998
NY09999	NY091000				

SPEC. #(s):

[Empty rectangular box for specification numbers]

PARTY: Cameolts

Dear Candidate Walter Iwachiw:

At the hearings on nominating petitions held 9/8/2009, please be advised that the following will not appear on the ballot for the General Election 2009 - 11/03/2009 since the petition did not comply with the New York State Election Law and/or the Rules of the Board of Elections.

Mayor Citywide

Very truly yours,
Commissioners of Elections

*Comments
Pg 1*

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

-----X

INDEX NO.
111509/2009

IN THE MATTER OF THE APPLICATION OF

ANNA R. LEWIS,

Petitioner - Respondent,

ORDER WITH
NOTICE OF
ENTRY

-against-

LYDIA HUMMEL,

Respondent-Appellant,

-and-

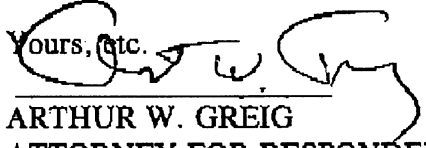
THE NEW YORK CITY BOARD OF ELECTIONS,

Respondent-Respondent

-----X

PLEASE TAKE NOTICE that the within is a true copy of an Order (APPELLATE DIVISION, FIRST DEPARTMENT) duly filed and entered in the Office of the Clerk of the Supreme Court of the State of New York, New York County on the 8TH day of SEPTEMBER, 2009.

Dated: New York, New York
September 9, 2009

Yours, etc. 
ARTHUR W. GREIG
ATTORNEY FOR RESPONDENT-
APPELLANT
401 Broadway, Suite 1902
New York, N.Y. 10013
(212) 941-0230

2009 SEP -9 PM 1:07
RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

TO: NYC BOARD OF ELECTIONS
32 BROADWAY, 7TH FLOOR
NEW YORK, N.Y. 10004

MARTIN E. CONNOR, ESQ.
61 PIERREPONT STREET # 71
BROOKLYN, N.Y. 11201

Gonzalez, P.J., Andrias, Catterson, Acosta, Renwick, JJ.

1018

In re Anna R. Lewis,
Petitioner-Respondent,

Index 121509/09

-against-

Lydia Hummel,
Respondent-Appellant,

The New York City
Board of Elections,
Respondent.

Arthur W. Greig, New York and Darrell L. Paster, New York, for
appellant.

A. Joshua Ehrlich, Albany, for Anna R. Lewis, respondent.

Judgment, Supreme Court, New York County (Edward H. Lehner,
J.), entered August 28, 2009, unanimously reversed, on the law
and the facts, without costs and petitioner's motion to validate
the petition denied.

Supreme Court abused its discretion in rejecting the
credibility determinations of the Special Referee. Furthermore,
there was insufficient evidence of record to validate the thirty-
nine "D'Ornellas" signatures.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: SEPTEMBER 8, 2009



CLERK

2009 SEP -9 PM 1:07

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 :
 BROTHER T. WILLIAMS BEY, NIYYIRAH EL, :
 LINCOLN SALMON, JUAN ANTONIO MARTINEZ, :
 SR., S. JUAN ANTONIO MARTINEZ, JR., :
 SONYA SIMMONS, JOYCE NIX, et al., :
 Plaintiffs, :
 :
 -v- :
 :
 THE COMMISSIONERS OF ELECTIONS :
 CONSTITUTING THE BOARD OF ELECTIONS IN :
 THE CITY OF NEW YORK, :
 Defendant. :
 :
 -----X

09 Civ. 7560 (DLC)

MEMORANDUM
OPINION & ORDER

Appearances:

Pro Se Plaintiff:

Brother T. Williams Bey
c/o 305 E. 170th Street
Bronx, NY 10454

For All Other Plaintiffs:

Neil Grimaldi
2260 Bruckner Avenue
Bronx, NY 10461

For Defendants:

Michael A. Cardozo
Stephen Kitzinger
New York City Law Department
100 Church Street, Room 2-126
New York, NY 10007

John Owens, Jr.
Board of Elections, City of New York
32 Broadway, 7th Floor
New York, NY 10004

DENISE COTE, District Judge:

Plaintiffs are voters who have sued the Commissioners of the New York City Board of Elections ("Board") after the Board removed their preferred candidates from the official ballot in the Democratic Party primary elections for New York City Council to be held on September 15, 2009. Plaintiffs request an injunction ordering the Board to restore their names to the ballot. For the following reasons, the request for an injunction is denied.

BACKGROUND

Plaintiffs assert a claim under 42 U.S.C. § 1983 alleging violations of their constitutional right to due process stemming from litigation in state court in which the New York Supreme Court, Bronx County, invalidated the designating petitions of Mark Escoffrey-Bey and Israel Martinez -- candidates for City Council in Districts 16 and 17, respectively -- and ordered the Board to remove these two candidates from the ballot by separate orders of August 14, 2009. The Appellate Division affirmed the Supreme Court's decisions as to both candidates on August 19 and August 20, 2009, and the New York Court of Appeals thereafter denied leave to appeal.

Plaintiffs assert that two judges involved in the state court litigation, Supreme Court Justice Robert G. Seewald and

Appellate Division Justice Louis Gonzalez, failed to recuse themselves despite the existence of a substantial conflict of interest. Specifically, plaintiffs allege that the judges were biased in favor of the objectors to the candidates' designating petitions because of the judges' purported dependence on, and involvement in, the Bronx Democratic Party. Plaintiffs in this action were not participants in the state court action, but allege that their due process rights were therein violated based on their resulting inability to vote for the candidates of their choice. Plaintiffs now seek an injunction in this Court ordering the Board to contravene the orders issued by New York Supreme Court and to restore the names of Mr. Escoffrey-Bey and Mr. Martinez to the ballot.

DISCUSSION

A party moving for an injunction against government action taken in the public interest pursuant to a statutory or regulatory scheme -- as is the case with the Board's removal of candidates' names from the ballot in compliance with a state court order -- must demonstrate that two circumstances exist. The first is that the injunction "is necessary to prevent irreparable harm to the movant." Hoblock v. Albany County Bd. of Elections, 422 F.3d 77, 97 (2d Cir. 2005). The second is that "the movant is likely to succeed on the merits." Id. Moreover,

where, as here, the party is seeking a mandatory injunction rather than a prohibitory injunction, a plaintiff must meet the elevated standard of a "clear and substantial likelihood of success." Id.

This Court has an independent duty to inquire into the existence of subject matter jurisdiction. One important aspect of subject matter jurisdiction is standing. To have standing to bring a claim, a plaintiff must satisfy several conditions. First, the plaintiff must have suffered, or be under the "actual and imminent" threat of suffering, an "'injury in fact' that is concrete and particularized." Summers v. Earth Island Inst., ___ U.S. ___, 129 S. Ct. 1142, 1149 (2009). Second, the injury must be "fairly traceable" to the challenged conduct of the defendant. Id. Third, the court must have means available to "prevent or redress the injury." Id. Plaintiffs bear the burden of demonstrating that they have standing to request the relief that they seek. Id.

In this case, the due process violation alleged by plaintiffs -- namely, the failure of two state court judges to recuse themselves from proceedings in which they purportedly had ulterior political motivations that controlled their decision -- appears to be an injury that only the participants in the state court litigation, Mr. Escoffrey-Bey and Mr. Martinez, would have standing to pursue. Of course, the candidates themselves would

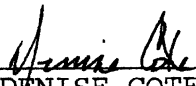
not be able to bring an action for an injunction in federal court, either, because the Rooker-Feldman doctrine would bar their suit. See Lance v. Dennis, 546 U.S. 459, 460 (2006) ("The Rooker-Feldman doctrine prevents the lower federal courts from exercising jurisdiction over cases brought by state-court losers challenging state-court judgments rendered before the district court proceedings commenced." (citation omitted)). As such, the proper avenue for addressing the allegation that the New York state judges were required to recuse themselves is for the candidates to seek appeal by writ of certiorari from the United States Supreme Court. Given these questions regarding plaintiffs' standing, and the other serious legal infirmities identified by the defendant, the plaintiffs have failed to show a substantial likelihood of success on the merits.

CONCLUSION

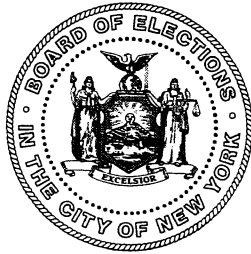
The August 28, 2009 request for preliminary injunctive relief is denied.

SO ORDERED.

Dated: New York, New York
September 4, 2009



DENISE COTE
United States District Judge



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
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DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

BOARD OF ELECTIONS

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

MEMORANDUM

To: Chief and Deputy Chief Clerks
Executive Office Managers

From: George González, Deputy Executive Director

Re: Mandatory Overtime – Run-Off Election

Date: September 11, 2009

cc: Commissioners of Elections
Marcus Cederqvist, Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Ward, Finance Officer
Dorothy Delayo, Director of Personnel
Nicholas Zimmitti, President, CWA Local 1183

The next two weeks presents us with a great opportunity to show the City of New York that this Board of Elections, working together, can meet the challenge presented by a Primary and Run-Off Primary that has to be conducted within a fourteen day period. As we have done in the past, each of us will share the burdens of making democracy work! It is in that spirit that I must provide the following guidance.

In anticipation of the possible Run-Off Election scheduled for Tuesday, September 29, 2009, the following mandatory overtime schedule is being implemented effective Wednesday, September 16, 2009 until the certification of the Primary Election. The scheduled hours of operation for both the Borough Offices and Voting Machine Facilities will be from 8:00 A.M. to 9:00 P.M. Monday

BOARD OF ELECTIONS

through Friday and from 9:00 A.M. to 5:00 P.M. on Saturdays and from 10:00 A.M. to 5:00 P.M. on Sundays.

We may be required to modify the above schedule based on unanticipated developments. We will try to provide as much advance notice of such changes as possible.

The following is a list of tasks that must be completed in order to determine if a Run-Off Election is necessary:

1. *Organization of Election Materials (Returns of Canvass, Emergency and Affidavit Ballots, Poll Books, etc.)* – the Borough Managers will assign as many teams as necessary to ensure that the Election Materials being returned to the Borough Offices by the NYPD after the close of polls are placed in ED/AD order. This task includes keeping a log of any missing items that are not returned by the Police.
2. *Number of Affidavit and Emergency Ballots* – No later than 9:00 A.M. on Wednesday morning, September 16, 2009, the Borough Managers will submit to Executive Management, the breakdown by Assembly District of the total number of Affidavit and Emergency Ballots. (This information is needed for the Special Commissioners Meeting – see item # 4 below).
3. *Opening the Backs of the Voting Machines* – the voting machines will be returned to your respective Voting Machine Facilities beginning on Wednesday, September 16, 2009 and all machines should be at returned no later than Thursday, September 17, 2009. The Borough Managers will instruct the VMF Supervisors that the Voting Machine Facility must remain open until your entire Borough's machines are returned. As per Commissioners direction given at their meeting held on September 1, 2009, bi-partisan teams of BOE staff shall open the back storage portion of the voting machines to retrieve any incorrectly placed poll books, emergency and affidavit ballots and any other materials needed to conduct the paper ballot canvass. The Commissioners also directed that the front doors of each voting machine and the backboard remain sealed to protect the integrity of the voting machines until the public recanvass on Friday (see e-mail from yours truly dated September 2, 2009).

BOARD OF ELECTIONS

11. *Voter History* – after the completion of the canvass of the votes cast in the Primary (no later than Wednesday, September 23rd 2009) the Borough Managers will assign sufficient staff to record voter history for the September 15, 2009 Primary Election. This task has to be completed by the close of business on Monday, September 28, 2009.
12. *Additional Tasks* – As per discussion at the Special Chiefs Meeting held on Friday, August 21st 2009, the Borough Managers should follow-up in reminding the contacts at the Public and Private Sites of the possible election as well as storage of the tables and chairs.

At the end of each day, the Borough Managers will transmit a status report to Executive Management with a summary of the total number of voting machines/paper ballots canvassed during the day and the number of machines/ballots remaining to be canvassed.

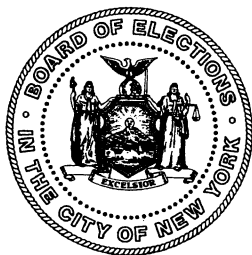
The Board's MIS Department will provide sufficient coverage during all hours of operation at any BOE facility. The Director of MIS will be issuing a schedule of staff coverage which will be distributed to all Managers (Executive and Borough Offices).

The Commissioners will determine at their meeting on Tuesday, September 22, 2009 whether a Run-Off Primary Election will be conducted and which candidates will be in that Run-Off. Therefore, we need to complete the tasks listed above by the close of business on Monday, September 21, 2009.

Please share this information with all of your staff members.

If you have any questions or require additional information, please feel free to contact me.

Fe1



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPAL
NANCY MOTTOLA-SCHACHER
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J.P. SIPP
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JUDITH D. STUPP
COMMISSIONERS

BOARD OF ELECTIONS

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September 10, 2009

TO: ✓ The Commissioners of Elections

FROM: Steven H. Richman, General Counsel *SR*

COPIES: Marcus Cederqvist, George Gonzalez, Pamela Perkins, Steven Denkberg, Charles Webb, Rosanna Rahmouni, Christopher Matos, Dianna Scopelliti;
Chief Clerk and Deputy Chief Clerk – BROOKLYN

Stephen Kitzinger, Esq., New York City Law Department
Lester Paverman, Esq., New York City Police Department

RE: **DESIGNATION OF SPECIAL ELECTION PART –
PRIMARY DAY – SEPTEMBER 15, 2009 in KINGS COUNTY**

Attached hereto for your information and appropriate action is a copy of Administrative Transfer Order 82 (ATO 82) issued on September 9 2009, by the Hon. Fern A. Fisher, Deputy Chief Administrative Judge of the Unified Court System for New York Courts establishing a Special Election Term in Kings County for the September 15, 2009 Primary Election.

ATO 82 establishes a Special Term for Election Matters in the Supreme Court, Civil Branch, KINGS County, Second Judicial District for the Primary Election to be held on Tuesday, September 15, 2009.

The above-referenced Special Election Term will sit at the Board's Brooklyn Borough Office. Please make the appropriate arrangements to accommodate the Justices of the Supreme Court and their support personnel.

Note to the Chief and Deputy: If the assigned Justice does not appear at the scheduled time, please contact my office immediately so that appropriate notifications to the Deputy Chief Administrative Judge's office can be made and the situation addressed forthwith.

Thank you for your cooperation in this matter. If you have any questions, please call me.

Attachment



STATE OF NEW YORK
UNIFIED COURT SYSTEM
111 CENTRE STREET
NEW YORK, NEW YORK 10013
646-386-4200

ANN PFAU
CHIEF ADMINISTRATIVE JUDGE

FERN A. FISHER
DEPUTY CHIEF ADMINISTRATIVE JUDGE
NEW YORK CITY COURTS

ADMINISTRATIVE TRANSFER ORDER 82

Pursuant to the authority vested in me, I hereby temporarily designate a Special Term, of the Supreme Court, Civil Branch, Kings County, Second Judicial District, for the Primary Election to be held on Tuesday, September 15, 2009, to hear and determine all cases arising under the Election Law relating to eligibility for voting, and do assign the following Supreme Court Justices to hold such Special Term for Election Matters, in addition to their other assignments.

KINGS COUNTY
Board of Elections
345 Adams Street, Brooklyn, New York 11201

6:00 A.M. to 2:00 P.M.

HON. KATHY J. KING

2:00 P.M. to 9:00 P.M.

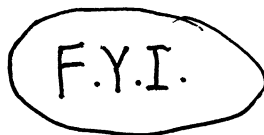
HON. LOREN BAILY-SCHIFFMAN

Dated: New York, New York
September 9, 2009

FERN A. FISHER
Deputy Chief Administrative Judge
New York City Courts

2009 SEP 10 PM 1:57

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

The New York Times

September 10, 2009

EDITORIAL

The Business of Voting Machines

Diebold announced last week that it has sold its United States voting machine division to its main rival, Election Systems & Software.

Given Diebold's troubling record, it is hard to lament its departure from American elections, but this sale could make a bad situation worse. Regulators should take a hard look at the anticompetitive implications. And Congress, the states and cities need to push a lot harder for fundamental reforms in the voting machine business and the way Americans vote.

Diebold has long been the company that critics of electronic voting love to hate. The company has been accused of illegally installing uncertified software and of making machines that, at least sometimes, drop votes. The company raised serious doubts about its objectivity when Diebold's then-chief executive wrote a fund-raising letter expressing his dedication to delivering Ohio for President George W. Bush in 2004. Ohio, of course, was one of the states using Diebold voting machines.

The combination of the Election Systems & Software and Diebold American voting machine divisions raises classic antitrust concerns. Election Systems & Software, which has also been criticized for making unreliable machines, would be the nation's largest voting machine maker by far. And states and cities, which have long complained about the low quality and high cost of the machines, would have less choice or bargaining power.

Government at all levels must do more to promote competition. It is important that machines are certified for use only after they pass rigorous testing. But the current state certification processes are so expensive and drawn-out that they are a significant barrier to entry.

More fundamentally, Congress, the states and cities should look for ways to have governments own and manage their voting machines, as the reform group FairVote has advocated. It makes no sense to allow private companies to count votes using secret, proprietary software. The federal government and the states should also require that all electronic voting machines produce a paper record of every vote and mandate random hand counts to ensure the reliability of the results.

Even if this business deal deserves to be blocked, it will take a lot more than that to fix the broken voting machine industry.

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Community
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Mike Bloomberg Unveils Plan For Automatic Voter Registration & Weekend Voting



September 10, 2009



Today, Mike Bloomberg announced his "Easy to Vote & Easy to Run" plan to transform the City's election system over the next four years. The plan will make it easier for New Yorkers to participate in the democratic process by reforming New York's antiquated ballot access laws to enable more candidates to run for office and give unaffiliated voters greater ability to participate in the democratic process, creating a New York City "Democracy Index" to assess the administration of elections in New York City, and urging Congress to pass laws that enable automatic registration of all eligible voters and to move Election Day from Tuesday to the weekend.

Since taking office in 2002, Mayor Bloomberg has been a vocal advocate for election reform. After the 2004 presidential election, the Mayor created the Election Modernization Task Force to provide guidance to the Board of Elections on new voting machine implementation, phone and Internet voter assistance, poll worker training, and other issues. Many Task Force recommendations were incorporated into 2005 State legislation, ensuring the City received federal funds to comply with new voting machine regulations. Today's announcement builds on the Mayor's record of accomplishment.

"For far too long, our election system has been plagued with antiquated rules and procedures that effectively limit its fairness and effectiveness," said Mayor Bloomberg. "This plan will enable more New Yorkers to engage in the democratic process by making it easier for them to run for office and easier for them to vote."

Key Elements of Mike's "Easy to Vote & Easy to Run" Plan:

*Create a "Democracy Index" to Reform NYC's Election System: The city's "Democracy Index" will include metrics that assess the effectiveness of the election administration process, focusing on easily comprehensible and quantifiable performance outputs related to registration, voting and tabulation, rather than complicated policy inputs. For example, the index will measure how long voters must wait in line and how long it takes for voter registrations to be processed.

*Make 311 NYC's Voting Hotline: Mayor Bloomberg will work with the City's Board of Elections to enable 311 to field all election-related requests for information, including questions regarding poll site location, absentee ballots, and complaints about election administration or fraud.

*Support National Voter Registration Modernization: To boost voter turnout while making our election administration less costly and more efficient, Mayor Bloomberg will support the federal effort to automatically register all eligible voters, also known as "Voter Registration Modernization." This important reform would save the Board of Elections time and money that it can then put towards preparing for Election Day.




*Support Federal Effort to Institute Weekend Voting: To make it easier for voters to exercise their right and to increase voter turnout, Mayor Bloomberg will call on Congress to pass the Weekend Voting Act, sponsored by Senator Herb Kohl of Wisconsin and Congressman Steve Israel of Long Island, which seeks to shift Election Day from Tuesday to Saturday and Sunday. In polls, one quarter of eligible voters who failed to vote blamed scheduling difficulties.

*Halve the Signature Requirement for the Petitioning Process: In order to make it easier for candidates to qualify for a spot on the ballot, the Mayor proposes changing State election law to halve the number of signatures required to the lesser of (a) 2.5% of the party voters in the district or (b) half of the current number required under State law.

*Streamline Ballot Access Requirements: After consulting with good government groups, the Mayor will propose State legislation that would significantly simplify and streamline petition requirements by eliminating the arcane, technical rules that currently exist. The legislation will set a higher threshold for disqualifying petitions and candidates, and streamline the process for correcting errors.

*Open Up Petitioning Process to Independent Voters: Independent voters represent nearly 20% of the electorate and are the fastest growing group of voters in the city. To enable them greater participation in the political process, the Mayor proposes changing state law to enable independent voters to gather and sign petitions for candidates that are members of a political party.

(YWN Desk - NYC)

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Paterson Watch: Disabled blast veto of two bills

September 20, 2009 by JAMES T. MADORE / james.madore@newsday.com

The disabled are criticizing Gov. David A. Paterson for vetoing two bills last week.

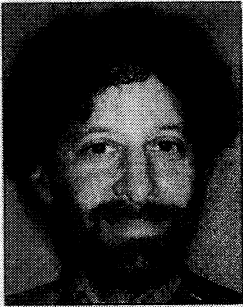
One measure required all polling places to be accessible to the handicapped within six months. The other outlawed discrimination by state and local governments with regard to access to services.

"Even the best ideas must be accomplished in a way that is consistent with practical realities and with a recognition of the financial constraints in which the state and local governments presently find themselves," Paterson said. He vowed to improve voting access in New York City within the year.

Paterson, who is blind, said the second bill failed to define some terms and could open the state to lawsuits.

Christine Zachmeyer of the Independent Living Council was dismayed, saying "it is unconscionable and highly ironic that a governor with a disability has vetoed these bills."
James T. Madore in Albany

[< back to article](#)



BE OUR GUEST: NEAL ROSENSTEIN, government reform coordinator

State and city unready for voting machine headaches

I took both my kids to the polls with me last Tuesday, to take part in a historic primary. Historic? I don't mean the historic low turnout or unprecedented loss of so many incumbent Council members. It was historic because it was probably the last chance I'd have to let my kids pull that big red lever inside our voting machines before they're all replaced next year.

Unfortunately, I'm worried that the state and city aren't doing enough to make sure that replacement goes as smoothly as it should.

After November's election, optical scan voting — where ballots are marked with a pen and inserted into a scanner for tabulation — is coming to the city. Forty-eight counties across the state have already begun to make the switch this year, complying with a federal court order to replace the levers. Optical scan offers many advantages, provides a genuine paper trail in case of close races and should help reduce lines. But a lot has to happen before the changeover to help make sure that voters aren't disenfranchised when the switch is made.

For starters, we need action in Albany to make sure all those paper ballots are properly audited and counted. Public confi-

dence in election results will depend on confidence the scanners worked properly. That means the state Board of Elections has to listen to auditing experts now, and develop protocols that guarantee votes were counted properly. So far, the board's proposals fall far short of that goal.

The state board should also be faulted for directing counties to turn off a feature that would alert voters if they missed or "undervoted" a ballot. That's ludicrous. We have a scanner that can remind voters they forgot to vote for City Council or President and they want it turned off? They appear more interested in making their work easier and pinching pennies than encouraging participation and accurate results.

Action is also needed here in the city. NYPIRG urges the next mayor to do more than simply point the finger at Albany or Washington when calling for reforms. Plenty can be done here at home by the city and city Board of Elections. Here are two ideas for starters:

We need better poll workers. While most poll workers are competent, hardworking and dedicated, it's clear that many don't know the rules or should be replaced. The city should grant non-essential employees comp time for the primary if they work at

the polls (many already get the General Election off.) This would greatly expand the pool of Election Day workers, cut down on the need to rely on patronage appointments by the parties and lead to a qualified pool of workers whose savvy could be crucial to operate the new voting systems.

The board must modernize. The city and Board of Elections are to be commended for vastly improving the board's Web site and using 311 to help handle Election Day calls. But it's time for them to take additional common sense steps like automatically providing voters with a sample ballot on their Web site and whether they're eligible to vote in a primary. Right now, it's more likely to see the city and board sniping at each other than working together to help voters. The city may also need to supplement the board's voter education campaign with more resources. Imagine the confusion at poll sites if voters aren't properly informed of the machine changeover.

The clock is ticking; we've got a year. Albany and the city need to start now to ensure we'll be ready for the big change in the way we vote.

Neal Rosenstein is Government Reform Coordinator for New York Public Interest Research Group, NYPIRG.

A lot has to be done before the change.