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GOLDFEDER'S

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MODERN  
ELECTION  
LAW

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BALLOT ACCESS IN NEW YORK

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# BALLOT ACCESS IN NEW YORK

BY  
**Jerry H. Goldfeder**

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# CHAPTER 1

## GETTING ON THE BALLOT—INTRODUCTION

The rules that govern how a candidate gets on the ballot have become more liberalized in the last few years, and are fairly straightforward.<sup>1</sup> The Election Law sets out the requirements and the state and county Boards of Elections supplement the law with their own rules.<sup>2</sup> A candidate should consult political party rules as well.<sup>3</sup>

The candidate must start with the obvious first issue — identifying the election in which she hopes to run.<sup>4</sup> There are several kinds of elections.

Is she running in a general election, which is held in New York on the Tuesday after the first Monday in November?<sup>5</sup> This is an election in which voters actually *elect* a candidate to office. There are two ways of obtaining a place on the ballot in a general election: by designation of an established political party (either in a primary or by a party designation), or by nomination of an “independent body.”

Is the candidate running in a special election?<sup>6</sup> It is “special” because the can-

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<sup>1</sup> Election Reform Act of 1992 (L 1992, Ch. 79); Ballot Access Law of 1996 (L 1996, Ch. 709). See, e.g., *Johannesen v. Flynn*, 76 A.D.3d 710 (2d Dep’t. 2010) (error in the manner of collecting signatures “is unrelated to the genuineness of the signature”).

<sup>2</sup> See 9 NYCRR Part 6200; New York State Board of Elections, <http://www.elections.ny.gov>. Some local Boards have comprehensive rules; other do not. See, e.g., *Iocovozzi v. Herkimer County Bd. of Elections*, 76 A.D.3d 797 (4th Dep’t. 2010) (local Board had no rule regarding notice for Specifications of Objections).

<sup>3</sup> Party rules are required to be filed with the Board of Elections. N.Y. Elec. Law §2-114 (McKinney).

<sup>4</sup> Every potential candidate possesses different emotional resources for the campaign ahead, and the candidate must ask herself whether her skin is “thick enough” for what lies ahead. See, e.g., *Shulman v. Hunderfund*, 12 N.Y.3d 143 (2009) (anonymous charges did not constitute libel; Court urges candidate “to develop a thicker skin”).

<sup>5</sup> 2 U.S.C. §7 (1934); N.Y. Const. art. III, §8; N.Y. Const. art. IV, §1; N.Y. Const. art V, §1. Not all elections are held on this date of course. See N.Y. Elec. Law §§15-104, 15-106 (McKinney). See N.Y. Const. art. XIII, §8 (requires election of “city officers, including supervisors and of county officers” in odd-numbered years). Village elections and “special district” elections may be scheduled practically anytime. See William Greenawalt and David Koenigsberg, “Move Village Elections to November,” NY State Bar Association Journal (November/December 2006); see also Stewart Ain, “Special District Elections Raise Concerns,” N.Y. Times, Dec. 16, 2007. And special elections to fill vacancies are held pursuant to the relevant proclamations.

<sup>6</sup> N.Y. Elec. Law §6-114 (McKinney). There is, from time to time, some consternation as to whether or when a special election will be called to fill a vacancy for public office. When there is a vacancy in the state Legislature, for example, the Governor has discretion as to how to exercise his powers under Public Officers Law §42(3). *Alessi v. Pataki*, 21 A.D.3d 1141 (3d Dep’t. 2005) (Governor set the special election on the date of the primary election). Some think that the manner by which a vacancy in the office of Congress Member is filled is not clear: Public Officers Law §42 allows the Governor to call a special election or do nothing, allowing its vacancy to be filled at the next general election. See Jimmy Vielkind, “The Many, Many Scenarios for Replacing McHugh,” <http://www.politickerny.com> (June 2, 2009). However, the better view is that the United States Constitution requires the Governor to call a special election to fill a House vacancy. See U.S. Const. art I, §2, cl. 4; *Fox v. Paterson*, 715 F.Supp.2d 431 (W.D.N.Y. 2010). A proclamation announcing a vacancy and the date of a special election also triggers certain statutory deadlines for party caucuses and, for New York City municipal offices, petitioning. Potential candidates should, therefore, pay careful attention to the timing of the proclamation because, if caught unaware, precious time for an already truncated petition period can be lost. See *Nieves v. Centeno*, NYLJ, Oct. 22, 2002, at 20, col. 6 (Sup. Ct. Kings

didate elected on that day takes office immediately, and for the remainder of the term of the public official who has vacated the office.<sup>7</sup> In these elections there are no primaries, and established political parties designate a candidate to compete in the special election through party procedures.<sup>8</sup> Independent bodies may petition to place its candidates on the election ballot as well.

Is she running in a political party's primary election? This is an election in which voters enrolled<sup>9</sup> in an established political party designate a candidate to run in the general election. It is also an election in which voters enrolled in an established political party elect party officers.

Is she running in a non-primary "procedure" by a political party to designate its candidate for public office? This occurs at a convention or caucus held pursuant to the rules of the state party or party committee<sup>10</sup> to designate its candidate in state-wide elections<sup>11</sup> or special elections.<sup>12</sup>

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Co.), where the court held that the proclamation was "issued" as of the date signed by the Mayor even though it was not received by the City Clerk for three days. New York City Charter §25(b)(1).

<sup>7</sup> But see New York City Charter §25; N.Y. Pub. Off. Law §42(4-a) (McKinney).

<sup>8</sup> The statute providing for special elections without a primary election has been upheld, finding no constitutional rights have been violated. *Dorfman v. Berman*, 186 Misc.2d 415 (Sup. Ct. Albany Co. 2000). See also *Maldonado v. Pataki*, 2005 WL 3454714 (E.D.N.Y. 2005); *Shapiro v. Berger*, 328 F.Supp.2d 496 (S.D.N.Y. 2004).

<sup>9</sup> The Independence Party has a rule that permits registered voters who are not affiliated with any political party to vote in its primaries for certain public offices. This has been upheld by the courts. *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986); *Van Allen v. Democratic State Committee of New York*, 1 Misc.3d 734 (Sup. Ct. Albany Co. 2003).

<sup>10</sup> Candidates (and party leaders) must pay careful attention to the rules of the party or party committee. It cannot be stressed enough that the law relating to such designations, as well as the pertinent party rules, must be strictly adhered to. Otherwise, the designation is in danger of being nullified. See, e.g., *Gage v. Hammond*, 309 A.D.2d 1061 (3d Dep't. 2003) (the court held that both the notice of the meeting and the filing of the certificate of nomination were improper). See also *Scaturro v. Becker*, 76 A.D.3d 687 (2d Dep't. 2010) (failure to timely file a certificate of authorization is fatal defect).

Having said that, candidates should be alert to the fact that political party rules can sometimes be misleading, and attention to custom and practice is also necessary. For instance, according to the rules of the Democratic Party of New York County in effect in 1992, in the event of a vacancy in a public office that crossed county lines the party nomination for a special election was to be filled by the Chair of the New York County Committee and the Chair of the County Committee of the other county. In that year, Congressman Ted Weiss represented a district that was primarily in Manhattan but also included a large swath of Western Brooklyn. He died a day before the September primary (and won re-nomination). As a result, a special election was called to fill the remainder of his term. (The special election was held on the same date as the general election.) Despite the fact that the rules permitted two individuals, the Chairs of the New York and Kings County Committees, to select the Democratic nominee, the rules permitted and custom "required" that all of the county committee members representing the congressional district from New York County should meet to designate the party nominee. That was done. When the two Chairs formally met, their "decision" had been preordained by the county committee meeting of approximately one thousand party committee members in Manhattan. West Side Assembly Member Jerrold Nadler won the nomination at the New York County Committee meeting, and went on to be elected. Nadler's selection by the county committee in late September meant that he could no longer be a candidate for re-election to the Assembly, thus causing a vacancy in the Democratic nomination for that public office. As a result, in early October, the Democratic Party county committee of the Assembly District convened to choose a replacement. Elec. Law §6-148(3). Three Democratic Party District Leaders vied for the post, with Scott Stringer edging out Jerry Goldfeder and Bill Nuchow. Stringer went on to serve in the Assembly for thirteen years, now serves as Manhattan Borough President, and is a candidate in 2013 for Mayor of the City of New York. Goldfeder went on to practice and teach election law and to write this book. Bill Nuchow, now deceased, continued his work as a progressive labor leader.

<sup>11</sup> N.Y. Elec. Law §6-104 (McKinney). The fact that the law allows a party to designate a candidate for state-wide office through a convention procedure, obviating the necessity of petitioning, does not

## GETTING ON THE BALLOT—INTRODUCTION

The Election Law defines a political party as an entity that received at least 50,000 votes for Governor in the prior gubernatorial election.<sup>13</sup> In 2012, there are six political parties in New York: Democratic, Republican, Working Families, Conservative, Independence,<sup>14</sup> and Green. The Liberal Party lost its status as a political party in 2002 when its candidate for Governor failed to receive a sufficient number of votes. An “independent body,” a group that has not met the requirements of a political party (or, like the erstwhile Liberal Party, has failed to continue to satisfy the requirement to be a party), lacks the ability to nominate a candidate for the general election in a primary or at a convention. Instead, it must choose a name and symbol for itself and petition to get on the ballot in the general election.<sup>15</sup> The name and symbol of the group cannot be similar to an established party’s name or symbol, or that of another independent group that has previously filed a petition in a particular race.<sup>16</sup>

Thus a candidate can seek a place on the general election ballot by winning an established party’s designation or by obtaining an independent group’s ballot line in November. Only in certain circumstances, such as for elections for state-wide office or nomination in a special election, may a candidate become a political party’s designee for the general election through a state convention or party caucus.<sup>17</sup> Except for these circumstances, then, the general route is through a party primary, whose winner is automatically placed upon the general election ballot.

In order for the candidate to run in an established party’s primary election, she must be properly enrolled as a member of the party and eligible to run in the primary.<sup>18</sup> One exception to this rule is when the party authorizes a non-enrollee

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mean that a candidate who was not designated and must petition to obtain ballot status has had any rights violated. *McMillan v. New York Board of Elections*, 234 F.3d 1262 (2d Cir. 2000). Furthermore, any member of a political party—whether or not designated as the official candidate—may use the name and emblem of that party on the petitions she circulates when seeking a place on the party primary election ballot. *Donohue v. Neild*, 2002 WL 32071700 (Sup. Ct. Albany Co. 2002).

<sup>12</sup> Candidates should not assume that the method of nomination chosen by party leaders is correct, and should independently ascertain whether a nomination may be had by caucus, not a primary. *See, e.g., O’Brien v. Seneca County Board of Elections*, 22 A.D.3d 1036 (4th Dep’t. 2005) (court held that the nomination procedure was a nullity in that the elected office was a county office for which nomination must be by primary election, not caucus); N.Y. Elec. Law §§6-110, 6-119 (McKinney); *cf.* N.Y. Elec. Law §6-108 (McKinney).

<sup>13</sup> N.Y. Elec. Law §1-104(3) (McKinney).

<sup>14</sup> The Independence Party is not to be confused with voters who identify themselves as “independents,” having chosen to enroll in no political party when they register to vote.

<sup>15</sup> N.Y. Elec. Law §6-138 (McKinney).

<sup>16</sup> If the Board of Elections with whom the petition is filed considers that the name or symbol improperly mimics that of another independent body’s already-filed petition, the Board will permit the filer to modify it. If the offending name or symbol is not properly changed in a timely manner, the Board will do so. The object is to ensure that the voters are not confused. *Id.* On the other hand, if it too closely resembles the name or symbol of an established party, the petition will be invalidated. *DiResto v. Cornell*, 59 A.D.3d 643 (2d Dep’t. 2009).

<sup>17</sup> The other major exception concerns candidates for Justice of the Supreme Court, who are nominated for the general election by the political parties at judicial conventions. This procedure was found constitutional by the United States Supreme Court in *New York State Board of Elections v. Lopez-Torres*, 552 U.S. 196 (2008).

<sup>18</sup> N.Y. Elec. Law §6-120 (McKinney). New York is, for the most part, a “closed primary” state. An excellent discussion of the various kinds of primaries is found in *Tashjian v. Republican Party of Connecticut* 479 U.S. 208 (1986). In *Tashjian*, the Supreme Court of the United States held that a political party’s right of association, as protected by the First and Fourteenth Amendments of the Constitution of the United States, barred the state from prohibiting a party from inviting non-members who were not enrolled in another political party to vote in its primary election. The Independence Party



to be its candidate pursuant to properly adopted and filed rules. This procedure is colloquially named a Wilson-Pakula, after the authors of the relevant provision of the Election Law.<sup>19</sup> Another exception is a candidate for Judge: she may run in a primary election without being enrolled.<sup>20</sup>

Whether a member of the party or a legally authorized non-enrollee, candidates in party primaries must petition to get on the ballot, as must candidates from independent bodies seeking a place on the general election ballot — and most of New York's Election Law litigation involves this process.

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of New York has opted to do just that. It should be noted that *Tashjian* does not extend to non-enrollees who are members of another established political party. See *Clingman v. Beaver*, 544 U.S. 581 (2005) (where a party allows non-enrollees who are not members of another party to vote in its primaries, the free associational rights of members of the other parties are not violated). Whether or not a party chooses to invite independent non-enrollees into its primary, a state is forbidden to *compel* a political party to do so. *California v. Jones*, 530 U.S. 567 (2000) (banning state imposed blanket primaries). These cases have no bearing on whether a state can require or allow certain offices to be voted upon in non-partisan elections, where party enrollment is irrelevant.

<sup>19</sup> N.Y. Elec. Law §6-120 (McKinney). Of course, for a non-enrollee to be the candidate of a political party, the correct authorizations must be completed properly and filed timely. See, e.g., *Gross v. Hoblock*, 6 A.D.3d 933 (3d Dep't. 2004); *Potanoric v. French*, 65 A.D.3d 650 (2d Dep't. 2009); *Terranova v. Fudoli*, 66 A.D.3d 1530 (4th Dep't. 2009); *Scaturro v. Becker*, 76 A.D.3d 687 (2d Dep't. 2010).

<sup>20</sup> N.Y. Elec. Law §6-120(4); *Grancio v. Coveney*, 96 A.D.2d 917 (2d Dep't. 1983).

## CHAPTER 2

### IS THE CANDIDATE ELIGIBLE TO RUN?—THE RESIDENCY ISSUE

One of the very first issues a potential candidate should consider before circulating a petition to get on the ballot is whether she is eligible to run for the public office or party position she seeks. This usually involves the issue of whether she has lived in the district long enough.<sup>1</sup>

Thus, depending upon the office one is seeking, the candidate must consult various sources. A candidate for the United States Congress or the United States Senate must obviously consult the United States Constitution.<sup>2</sup> A candidate for the Executive officers in New York State (Governor, Lieutenant Governor, Attorney General and Comptroller)<sup>3</sup> as well as for the State Legislature (Member of Assembly and State Senator)<sup>4</sup> must consult the New York State Constitution and the Public Officers Law. A candidate for a municipal or county position (Mayor, City Council, County Executive, County Legislature, or even Town or Village Justice)<sup>4a</sup> must also consult the pertinent City or County Charter, if there is one.

Having consulted the relevant constitution or statute, the candidate should analyze whether she meets the requirements. Or, if the person is a potential candidate thinking about the issue sufficiently in advance of the election, she should consider what steps, if any, she may take to satisfy the requirements in time for the election.

Although the constitutional and statutory authorities are clear as to how long an elected official must reside in the state or locality in order to run or serve, the good news and bad news is there is no bright line test for residency. The Election Law is general, and the “standard” for residence, is fact-driven. Election Law §1–104(22) defines “residence” as the “place where a person maintains a fixed permanent and principal home and to which [s]he, wherever temporarily located, always intends to return.” A candidate can, therefore, satisfy this test in a variety of ways: by filing taxes from the subject address; by establishing service with a tele-

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<sup>1</sup> There are sometimes other issues, such as, for example, whether an attorney has been admitted to the bar long enough to run for Judge, or whether admission to the bar is a prerequisite to run for District Attorney. See *Brown v. Board of Elections*, 87 A.D.3d 947 (2d Dep’t. 2011) (candidate who is not admitted to the New York bar is ineligible to run for District Attorney).

<sup>2</sup> U.S. Const. art. I, §2, cl. 2 (House of Representatives); U.S. Const. art. I, §3, cl. 3 (Senate).

<sup>3</sup> N.Y. Const. art. IV, §2 (Governor and Lt. Governor); N.Y. Const. art. V, §1 (Attorney General and Comptroller). See *Meehan v. Lomenzo*, 27 N.Y.2d 600 (1970) (Attorney General candidate satisfies five-year requirement by “constructive residency”). Indeed, a modern approach to the meaning of residency may be presaged by several recent rulings by the Internal Revenue Service. See Jerry H. Goldfeder, “*The City Council’s Residency ‘Scandal’—Not So Simple*,” *www.NYDailyNews.com*, March 28, 2011.

<sup>4</sup> N.Y. Const. art. III, §7; N.Y. Pub. Off. Law, art. 2 (McKinney); *Powell v. Espada*, Index No. 110114/08 (Sup. Ct. N.Y. Co. 2008) (candidate for Assembly must be resident of New York State for five years); *Chaimowitz v. Calcaterra*, 76 A.D.3d 685 (2d Dep’t. 2010) (same for State Senate candidate).

<sup>4a</sup> In a case that is extraordinarily site-specific, the Appellate Division, Second Department upheld a statutory requirement that a Town Justice for Fishers Island in the Town of Southold must live on the Island. *Walsh v. Katz*, 17 N.Y.3d 336 (2011); See also *DeCaprio v. Rockland Co. Board of Elections*, N.Y.L.J., Aug. 8, 2011 (Sup. Ct. Rockland Co. 2011).

phone and a utility company; by signing a lease for, or mortgage or deed to, the property; by maintaining personal effects in the residence, such as clothes, furniture, dishes and the like; by registering a car or other vehicle from that home; by using a local dry cleaners or laundry, and regularly buying groceries from the local market; by demonstrating familiarity with the neighborhood; by sleeping there with a modicum of frequency; and, of course, by registering to vote from the domicile. While none of these indicia is talismanic, each act by the candidate, and all of her conduct taken together, constitutes evidence as to whether the residence is fixed and permanent, to which the candidate intends always to return. Residency requirements, however, should not be confused with eligibility to vote.

A challenger who seeks to show that the *bona fides* or duration of a candidate's residence does not meet the statutory standard has the initial burden in court. But once a *prima facie* case establishes that the candidate's claimed residence may not meet the broad test, the burden shifts and the candidate must demonstrate proper residency. Trial courts will expect to hear testimony from the candidate and other persons familiar with the candidate's life. In so doing, the trier of fact will particularly rely upon the credibility of the witnesses. The courts will also expect to receive substantiating documentary evidence.

Happily for the peripatetic candidate, courts have interpreted the Election Law as permitting a person to have more than one residence, provided that the one which the candidate designates is one where she has attachments that are significant and legitimate. Thus, a candidate having two residences may choose one with which she has legitimate, significant and continuing connections as her residence for purposes of the Election Law. The salient point is that the address from which she wishes to run, whether the candidate maintains one or more than one residence, must be genuine, and not a contrived residence simply to be able to run for office from a particular district.<sup>5</sup>

In most cases, a candidate for public office or party position must reside in the district from which she seeks election.<sup>6</sup> In some circumstances, candidates are not required to live within the district from which they run.<sup>7</sup> Some candidates are required to live in the district for a year prior to election;<sup>8</sup> some are required to

<sup>5</sup> See, e.g., *Johnson v. Simpson*, 43 A.D.3d 478 (2d Dep't. 2007) (upholding dual residences of 21st century couples); *Ritzer v. Espada*, 54 A.D.3d 280 (1st Dep't. 2008) (relying upon Decision of Justice Seewald, Index No. 260265/08 (Sup. Ct. Bronx Co. 2008)) ("in today's mobile society, an individual can maintain more than one bona fide residence"). See also *Willkie v. Delaware County Board of Elections*, 55 A.D.3d 1088 (3d Dep't. 2008) (*bona fide* attachments to "vacation home" community sufficient for voting purposes); *Mondello v. State Board of Elections* Index No. 2254/09 (Sup. Ct. Dutchess Co. 2009) (April 22, 2009) (application for absentee ballot mailed from New York City does not *per se* disqualify voter from casting ballot from genuine second home in Dutchess County; factual inquiry into *bona fides* of voting residence required); *Fingar v. Martin*, 68 A.D.3d 1435 (3d Dep't. 2009) (upholding standard). But see *Chaimowitz v. Calcaterra*, 76 A.D.3d 685 (2d Dep't. 2010) (trial judge, citing GOLDFEDER'S MODERN ELECTION LAW, came to the "reluctant opinion" that candidate's dual residence in New York and Pennsylvania defeated five year residency in New York).

<sup>6</sup> See N.Y. Const. art. III, §7; art. IX, §2(c) (1); N.Y. Pub. Off. Law §§3(1) and 30(1)(d) (McKinney).

<sup>7</sup> U.S. Const. art. I, §2, cl. 2 (Constitution does not prescribe more specific requirement for United States Representative than residency in the state from which she is elected); *Catapano v. Goldstein*, 45 N.Y.2d 810 (1978) (Judge of the Civil Court of the City of New York can live anywhere in the City irrespective of the location of the municipal court district); *Corbin v. Goldstein*, 64 A.D.2d 935 (2d Dep't. 1978) (Supreme Court judicial convention delegate not required to live in assembly district from which she runs; may live anywhere in the judicial district).

<sup>8</sup> N.Y. Const. art. III, §7 ("No person shall serve as a member of the legislature unless he or she . . . has been a resident . . . of the assembly or senate district for the twelve months immediately preceding his or her election. . . .") An exception is made in the same provision for legislative elec-

## IS THE CANDIDATE ELIGIBLE TO RUN?—THE RESIDENCY ISSUE

live there thirty days prior to the election.<sup>9</sup> Some need only establish residence on the day they are elected.<sup>10</sup> Thus, candidates are encouraged to review the provisions of the relevant county or city charter.<sup>11</sup> There is no requirement that the candidate reside in the district at the time of circulating or filing of petitions<sup>12</sup> — unless, by happenstance, she is required to live in the district for a period of time prior to the date of election that overlaps with the petitioning period. So, for example, if the candidate does not live in a district when contemplating running for an office, but is not required to do so until elected, then the candidate is not required to take any steps to comply with legal residence unless and until a primary election is won and the general election draws near. On the other hand, if residence is required in a district, for example, one year prior to the election, then a farsighted candidate must take certain steps to establish a legitimate residency well in advance of the petition circulation period.

In short, a candidate must be alert to these distinctions — in order to know how to qualify for an office; and in order to know how to fend off a challenge to one's petitions.

In all circumstances, however, the address stated on the candidate's petition must be true at the time the petition is circulated. Otherwise, the candidate, even if she does not need to establish residency prior to election, is vulnerable to a claim of fraud, and can be thrown off the ballot.<sup>13</sup>

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tions in reapportionment years. In that circumstance, the candidate is required to be a resident of the county encompassing the district for twelve months prior to the election. The legislative candidate is also required to have been a resident of New York State for five years preceding the election. *See Bourges v. LeBlanc*, 98 N.Y.2d 418 (2002) (New York State constitution requires candidate to have continuously resided in New York for the five years immediately preceding election); *Shafer v. Dorsey*, 43 A.D.3d 621 (3d Dep't. 2007) (Albany County Charter §202 requires county legislator to reside in district one year prior to assuming office); *Adamczyk v. Mohr*, 87 A.D.3d 833 (4th Dep't. 2011) (§3-4 of the Charter of the City of Buffalo requires one year residency prior to election or appointment to Common Council).

<sup>9</sup> *See, e.g.*, §C2-3(A) of the Monroe County Charter (candidates for County Legislature must reside in the county and legislative district from which they seek election at least thirty days prior to election).

<sup>10</sup> Compare §C2-3(A) of the Monroe County Charter with §C4-3 of the Yonkers City Charter. *See Marino v. Board of Elections of Westchester County*, 199 A.D.2d 505 (2d Dep't. 1993). Sometimes, like in New York City, a charter is silent on the issue, necessitating the candidate to review the New York Constitution (art. III, §7) or the Pub. Off. Law (§3(1)), which require that a candidate satisfy residency requirements on the day they are elected.

<sup>11</sup> *See, e.g., Weidman v. Starkweather*, 80 N.Y.2d 955 (1992) (analyzing the interplay of provisions of N.Y. Pub. Off. Law §3(1) (McKinney), N.Y. Elec. Law §6-122 (McKinney), and Monroe County Charter §C2-3(A), the last of which requires "that candidates for County Legislature reside in the County and legislative district in which they seek election at least 30 days prior to the election."); *Clark v. McCoy*, 196 A.D.2d 607 (2d Dep't. 1993) (no provision in New York City Charter mandating residence prior to date of election); *Marino v. Board of Elections of Westchester County*, 199 A.D.2d 505 (2d Dep't. 1993) (Yonkers City Charter requires residence at time of election). Current New York City Council Member Mathieu Eugene famously attempted to contest settled law that election to his seat required residence on election day, arguing, instead, that he could establish residency on the date he was sworn in. His view was unfounded, however, and he could not take office until a new election was held. *See Ray Rivera*, "Late Move-in Imperils Victor of Candidate in Council Race," N.Y. Times, February 24, 2007.

<sup>12</sup> *See Weidman v. Starkweather*, 80 N.Y.2d 955 (1992); N.Y. Elec. Law §6-122 (McKinney).

<sup>13</sup> Two recent examples underscore this point. In *Bastone v. Cocco*, 230 A.D.2d 950 (3d Dep't. 1996), a candidate for United States Congress was found to have fabricated a residence within the district although a member of the House of Representatives may live anywhere in the state. Either the candidate did not know this or merely wanted her political bases covered. In any event, after she testified at length, the Court found that

"Beyond her own assertions that this apartment is her permanent residence, Cocco was able to proffer only her voter registration card . . . and her printed letterhead stationery as documentation of her residence at the Arlington Avenue apartment. Cocco produced no mail that had been addressed to her at that address prior to the commencement of this proceeding, nor did she have a personal bank account or a driver's license listing it as her residence, her driver's

Candidates sometimes attempt to “create” a residence within a district if required to live there, or, even if not required to live there, to avoid political embarrassment of not being able to vote for one’s self.<sup>14</sup> There is nothing improper

license having been issued in Virginia. Under questioning, Cocco displayed little familiarity with [her alleged residence], was unable to describe the view therefrom, did not know the building’s custodian or any of the other residents, apart from her stepfather, and, with the exception of her recent participation in the social activities of a nearby church, was unfamiliar with the neighborhood surrounding the building. . . . Inasmuch as petitioners sustained their burden of proving that Cocco, whose testimony [the] Supreme Court found to be “incredible and unworthy of belief”, has no “legitimate, significant and continuing attachments” (Election Law §1-104[22]) to the address listed as her residence on the designating petition [citations omitted] the court’s order granting petitioners’ application to invalidate Cocco’s designating petition is affirmed.”

Similarly, in *Eisenberg v. Strasser*, 1 Misc.3d 299 (Sup. Ct. Kings Co.), *aff’d*, 307 A.D.2d 1053 (2d Dep’t.), *aff’d*, 100 N.Y.2d 590 (2003), the Court of Appeals affirmed the decision to invalidate a New York City Council candidate’s petitions on the ground that he listed a false address. He, too, was not required to reside in the district at the time he circulated or filed his petitions. Indeed, in this case, the address which was stated on the petition was not in the district, and yet the candidate was found to have committed fraud in listing an improper address. The Supreme Court ruling, upon which the affirmances were based, held as follows:

“[H]e only occasionally slept [at the claimed residence]. . . . The testimony adduced at trial and the relevant subpoenaed documents produced — including [the candidate’s] driver’s license, car leases, federal tax returns, property deeds, a utility bill for the period of July 11 through August 12, 2003, an application for the New York State property tax relief program known as the “STAR” program — demonstrate that [another residence] is [the candidate’s] permanent and principal residence in Kings County. Notably, [he] has failed to produce a number of subpoenaed documents, including New York State income tax returns, property leases, and phone, gas, electricity and cable bills for both premises. To the extent that [he] has failed to produce these documents, and offers no plausible excuse for the failure to do so, an adverse inference is taken that had such documents been produced they would have supported [the challengers’] position that [the candidate] did not reside at the [claimed residence] for Election Law purposes [citations omitted]. . . . Moreover, [the candidate] never testified that he regards the [claimed residence] as his permanent home to which it is his intention to return. Nor has [he] presented any evidence from which one can reasonably infer any such intention on his part [citations omitted].”

The lesson of *Eisenberg*, as *Bastone*, is that, irrespective of the residency requirements for a particular office, that which is stated on a candidate’s petitions must be her *bona fide* residence. Otherwise, the candidate is vulnerable to disqualification on the ground of fraud.

These cases also underscore how residency cases are fact-driven, and the importance of adducing credible testimonial and documentary evidence in support of a claimed residence. *See, e.g., Fernandez v. Monegro*, 10 A.D.3d 429 (2d Dep’t. 2004) (“Where there is conflicting testimony, the resolution of the conflict lies within the province of the trial court, as the finder of fact, and should not be disturbed on appeal unless ‘it is obvious that the court’s conclusion could not be reached under any fair interpretation of the evidence’ [citation omitted].”); *Diamondstone v. Connor*, 32 A.D. 482 (2d Dep’t. 2006) (“The trial court, which had the advantage of viewing the witnesses and listening to their testimony, was in the best position to assess credibility and reconcile conflicting testimony [citation omitted].”) *But see Robinson v. Sharpe*, 32 A.D.3d 488 (2d Dep’t. 2006) (reversing the Supreme Court finding on residency). *See also Thompson v. Karben*, 295 A.D.2d 438 (2d Dep’t. 2002), again demonstrating the importance of evidence:

“The [challengers] adduced insufficient proof to support the conclusion that Karben did not reside at [his claimed residence], 15 Josell Court, despite the fact that he also maintains a connection with the house he owns at 18 Charlotte Drive. On the other hand, Karben submitted copies of his 2002 vehicle registration, 2000 and 2001 federal income tax returns, 2002 property tax bill, a May 2001 paycheck stub, and 2000 and 2001 retirement account statements all showing his address as 15 Josell Court. He also testified that he has been a signatory on the mortgage of 15 Josell Court since 1999, that he keeps personal belongings at that address, and that his family’s “intention is \* \* \* to be at 15 Josell Court. That’s what we think is going to work for our family over the long haul [although] at the present time we are maintaining two residences.”

*See also Johnson v. Simpson*, 43 A.D.3d 478 (2d Dept. 2007) (those challenging a candidate’s residence must sustain their burden by clear and convincing evidence).

<sup>14</sup> Pierre Salinger, who had served as President John F. Kennedy’s press spokesperson, was appointed to the United States Senate from California in August of 1964. Just four months later, he ran for a full term and had not established residency long enough to be able to vote in his own election. George

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about this *as long as the created residence is legitimate*.<sup>15</sup> If an opponent suspects that the residence is bogus, a claim to invalidate the candidate's petition (and thus her candidacy) will be brought, and the candidate will have to testify. If the created residence is legitimate, obviously there is nothing to worry about. If not, however, the candidate is subject to being thrown off the ballot, as well as criminal prosecution for perjury and filing a false instrument.<sup>16</sup> If the candidate is a lawyer, she can be disbarred, and, in any event, civil fines, public opprobrium and a criminal record are all real possibilities. It is one thing to legitimately create a second residence for the purpose of qualifying for the ballot and an elected office. It is quite another to commit a fraud. Running for office puts a candidate under the kind of scrutiny that compels honesty — for its own sake of course, and to avoid the dire consequences that might result if deceit occurs.

Two final points, one should not confuse residency requirements with voting requirements. There are instances where a candidate is eligible to seek office and

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Murphy, Salinger's opponent, effectively urged voters not to vote for a candidate "who can't vote for himself." Salinger lost the election. Perhaps to inoculate herself against the same carpetbagger charge leveled against Salinger thirty years earlier, congressional candidate Darlene Cocco attempted to establish residency in the district from which she wanted to run. She suffered defeat as well, although her fate was sealed not at the polls, but in the courts. *Bastone v. Cocco*, 230 A.D.2d 950 (3d Dep't. 1996). In the special election to fill Senator Kirsten Gillibrand's congressional seat, Jim Tedisco ran as the Republican candidate even though he did not live in the district. A Congress Member can live anywhere in the state, and thus this was not an issue. The only downside for him was that he could not vote for himself. Similarly, David Weprin, the Democratic Party candidate seeking the House seat vacated by Anthony Weiner, also did not live in the congressional district; he lost to Republican Bob Turner, who made an issue of Weprin's being unable to vote for himself.

<sup>15</sup> See N.Y. Elec. Law §1-104(22) (McKinney); *People v. O'Hara*, 96 N.Y.2d 378, 385 (2001) ("The crucial determination whether a particular residence complies with the requirements of the Election Law is that the individual must manifest an intent [to reside there], coupled with physical presence 'without any aura of sham'" [quoting *Matter of Gallagher v. Dinkins*, 41 A.D.2d 946, 947... (2d Dep't. 1973)]); *Willis v. Suffolk County Bd. of Elections*, 54 A.D.3d 436 (2d Dep't. 2008) (intention to move to a residence without actual implementation of doing so is insufficient). See also *Fernandez v. Monegro*, 10 A.D.3d 429 (2d Dep't. 2004) (trial court owed deference in testing credibility of witnesses); but see *Stavisky v. Koo*, 54 A.D.3d 432 (2d Dep't. 2008) (reversing Supreme Court on residency issue).

<sup>16</sup> See *People v. O'Hara*, 96 N.Y.2d 378 (2001). John O'Hara appears to have been the first person to be criminally tried for voting from an improper address. One Benjamin Ramos had been indicted by the Bronx District Attorney for his "failure to establish legal residence inside a voting district." *Id.*, fn. 3 (dissent). That indictment was dismissed by the Supreme Court, and the Appellate Division affirmed. See *People v. Ramos*, 223 A.D.2d 495 (1st Dep't. 1996). Indeed, O'Hara was tried three times, the first resulting in a conviction that was reversed and remanded for a new trial, and the second trial resulting in a deadlocked jury. After a third trial O'Hara was convicted of one count of false registration under N.Y. Elec. Law §17-104(4) (McKinney), five counts of illegal voting under N.Y. Elec. Law §17-132(3) (McKinney) and one count of offering a false instrument for filing under N.Y. Penal Law §175.35 (McKinney). O'Hara, a lawyer, was also disbarred. In the years since O'Hara's conviction, the *New York Daily News* has editorialized in favor of other District Attorneys following the lead of Kings County DA Charles "Joe" Hynes, Jr., urging them to prosecute other elected officials who appear not to reside where claimed. There have been no successful prosecutions for this kind of conduct. Indeed, the wayward elected official is also subject to a *quo warranto* proceeding by the New York State Attorney General, which if successful, would strip the official of her position. N.Y. Exec. Law §63-b (McKinney). On May 14, 2007, the disgraced John O'Hara announced that as soon as he completed his 1500th hour of community service he had immediate plans: "Tuesday, 3 o'clock, I'm going to the Board of Elections to register to vote," he said. Alex Ginsberg, "Vote Fraudster's 1500-Hour Debt," N.Y. Post, May 14, 2007. Mr. O'Hara's application to be reinstated to the bar was granted on October 6, 2009, and, according to press reports, the Appellate Division's Committee on Character and Fitness two-person subcommittee said in its recommendation that "The [sub]committee has grave doubts that Mr. O'Hara did anything that justified his criminal prosecution. . . ." Will Yakowicz, "Hynes Slapped for Wrongful Prosecution of O'Hara," The Brooklyn Paper, October 14, 2009. On October 24, 2011, the Daily News, as it had previously urged Governor David A. Paterson, called on Governor Cuomo to pardon O'Hara.

serve if elected even if not eligible to vote for herself.<sup>17</sup> Secondly, New York is not alone in high-profile challenges to a candidate's residency: recall the trial of now-Mayor Rahm Emanuel (D-Chicago) when he was compelled to provide evidence of his personal belongings in the basement of his house in Chicago although he had rented it out while serving as President Obama's Chief of Staff in Washington D.C.<sup>18</sup>

Assuming, therefore, that a candidate is eligible to run for a particular office, let us now turn our attention to the petition process.

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<sup>17</sup> Cf. *Chaimowitz v. Calcaterra*, 76 A.D.3d 685 (2d Dep't. 2010).

<sup>18</sup> See *Maksym v. Board of Election Commissioners of City of Chicago*, 242 Ill.2d 303 (2011).

## CHAPTER 3

### GETTING ON THE BALLOT: THE PETITIONING PROCESS

When a candidate's petition signatures are filed with the Board of Elections, they are presumed valid. Competitors, however, very often analyze the petitions quite carefully with an eye toward challenging their legitimacy in an effort to knock the candidate off the ballot. A good way a candidate can protect her candidacy from a successful petition challenge is to submit at least three or four times the required number of signatures.<sup>1</sup> The best way a candidate can protect her candidacy, however, is to comply fastidiously with the New York State Election Law and the pertinent Board of Elections Rules.

What follows is a summary of the salient laws and rules to get on the ballot — and to stay on the ballot.

#### A. Timing is Everything

The period within which a candidate may petition to secure a place on the ballot is set by the New York State legislature for a certain period prior to a primary or general election or after a proclamation is issued announcing a special election.<sup>2</sup> The candidate may petition only on and during those dates, and must file the petitions timely. These prescribed dates are strictly enforced.

If, for example, the first day a candidate may circulate petitions is June 9th, no signature may be taken prior to that date. Supporters of the candidate who are circulating the petitions must strictly adhere to this timeline — otherwise the candidate will surely suffer the consequences. Probably the best antidote to overzealous or unethical supporters is to distribute a candidate's petitions no earlier than the eve of the first day to petition.

That being said, candidates are strongly encouraged to have their supporters solicit signatures at the very beginning of the petition period. The reason is that the law provides that a voter may sign a petition for only one candidate running

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<sup>1</sup> The number of signatures required for designating petitions and nominating petitions are prescribed by statute. N.Y. Elec. Law §6-136 (McKinney) (designating petitions); N.Y. Elec. Law §6-142 (McKinney) (nominating petitions); N.Y. Elec. Law §§6-204(2) and 6-206(4) (McKinney) (village elections). In the City of New York, the number of signatures required for designating and nominating petitions are the same, and they are lower than the state law would otherwise prescribe. NYC Charter §1057-b. Under these statutes, the candidate must obtain either the law's stated number or, in the case of designating petitions, "five per centum . . . of the then enrolled voters of the party" residing in the pertinent political unit, "whichever is less"; or, in the case of nominating petitions, "five per centum of the total number of votes cast for governor at the last gubernatorial election" in the pertinent political unit. Thus, in addition to reviewing the Election Law, the candidate is advised to ascertain the voting data to calculate the lower number of signatures required. The most efficacious way of doing this is to contact the appropriate Board of Elections. And once a Board has issued its calculations as to how many registered voters and party enrollees there are in a political jurisdiction, it is under no obligation to update these figures during the petition period. *Rossetti v. Lopez*, 33 Misc.3d 295 (Sup. Ct. Westchester Co. 2011) (Board need not re-calculate number of petition signatures required beyond its April 1st Voter Registration Lists); *see also Feustel v. Rich*, Index No. 10-17876 (Sup. Ct. Suffolk Co. May 19, 2010) (petition required 5% of voters, not "registered" voters).

<sup>2</sup> N.Y. Elec. Law §§6-158(1) and 6-158(9) (McKinney).



for a particular office.<sup>3</sup> For example, if there are five candidates seeking a party's designation, then all are vying for the same enrolled members' signatures. Once a signature is obtained, that person cannot sign a competitor's petitions. If she does, then only the first one will count. If a voter signs petitions on the same day for two candidates competing for the same office, neither signature will count.<sup>4</sup> Therefore, it is imperative to collect signatures as early as possible.

Petitions are due during a four-day period.<sup>5</sup> They cannot be filed or mailed later than that period — if so, it is considered a "fatal defect" and the candidate will not be on the ballot.<sup>6</sup> Filings must be done in person unless mailing is permitted.<sup>7</sup> If by person, the petitions must be clocked in by the deadline; if mailed, they must be postmarked by the filing deadline.<sup>8</sup>

Once the candidate has filed her petitions, she has fulfilled all requirements to obtain a place on the ballot. The petitions are presumptively valid, and, unless her petitions are challenged, the candidate may move forward with her campaign.

<sup>3</sup> N.Y. Elec. Law §§6-134(3) and 6-138(1) (McKinney). See *Keenan v. Chemung County Board of Elections*, 43 A.D.3d 623 (3d Dep't. 2007) (signature on designating petition will not count if voter previously signed competitor's petition, even if first petition invalidated); *Mastrantone v. Chirico*, 87 A.D.3d 645 (2d Dep't. 2011) (same).

<sup>4</sup> N.Y. Elec. Law §§6-134(3) and 6-138(2) (McKinney).

<sup>5</sup> N.Y. Elec. Law §§6-158(1) and 1-106 (McKinney). But see N.Y. Elec. Law §6-158(9) (McKinney).

<sup>6</sup> "The failure to file any petition or certificate relating to the designation or nomination of a candidate for party position or public office or to the acceptance or declination of such designation or nomination within the time prescribed by the provisions of this chapter shall be a fatal defect." N.Y. Elec. Law §1-106(2) (McKinney) (emphasis supplied). See, e.g., *Thomas v. New York State Board of Election*, 44 A.D.3d 1155 (3d Dep't. 2007) (certificate of nomination filed untimely when deposited in mailbox on last day to file when not picked up or postmarked until the following day).

<sup>7</sup> N.Y. Elec. Law §1-106(1) (McKinney).

<sup>8</sup> A legion of cases stands for the proposition that Boards of Elections have properly disqualified petitions that are postmarked or delivered untimely. There is no latitude by the Board, though personnel will accept late petitions as a ministerial matter. Furthermore, courts have no discretion to alter this rule. See, e.g., *Bristol v. Chiavaroli*, 54 A.D.2d 72 (4th Dep't. 1976) ("The failure to file timely the required petitions or certificates is a fatal defect, and the courts are without discretionary power to excuse such a defect [citations omitted]."); *Raimone v. Sanchez*, 253 A.D.2d 506 (2d Dep't. 1998) ("The absence of a postmark on the envelope as required by statute was a 'fatal defect' under Election Law §1-106(2) [citations omitted]."); *Montes-Amaya v. Suffolk County Board of Elections*, 33 A.D.3d 946 (2d Dep't. 2006) (petition volume was not "filed" timely in that it was received by the United States Post Office a day late); *Fischer v. Suffolk County Board of Elections*, 76 A.D.3d 657 (2d Dep't. 2010) (it is no excuse that the Post Office is unexpectedly closed). See also *Esiason v. Washington County Bd. of Elections*, 220 A.D.2d 878 (3d Dep't. 1995). However, if it can be shown that ministerial errors were to blame for a document submitted timely but not properly clocked in, then the candidate might be able to overcome what would otherwise be a fatal defect. See *Green v. DiNapoli*, 96 N.Y.2d 910 (2001):

"Failure to file within the time required is a fatal defect (Election Law §1-106[2]). DiNapoli was required to file his certificate of acceptance with the Board of Elections on or before July 16, 2001. It is undisputed that he timely presented the certificate to an appropriate official at the Board of Elections shortly after 9:30 A.M. on July 16, but that the Board of Elections did not at that time endorse the certificate with the day, hour or minute of receipt. It is further undisputed that the official intended to time-stamp the certificate later that day, but never did so, and that a separate book entry indicating timely receipt of the document was made. Green contends that the endorsement is an indispensable component of filing and that this lack of endorsement was a fatal defect. DiNapoli argues that the endorsement by the Board is not a responsibility fairly placed on a candidate and that the certificate here was delivered early in the day to the appropriate Board employee and was, therefore, properly filed. Supreme Court rejected Green's challenge. The Appellate Division reversed and invalidated DiNapoli's designating petition and certificate of acceptance, holding that the failure to strictly comply with the statute was a fatal defect. This was error. In the circumstances presented, DiNapoli satisfied the filing requirement of Election Law §6-144. The lack of an endorsement due to the Board's oversight does not constitute a fatal defect."

Moreover, if the petitions are filed too early, they might likewise be rejected. *Rutherford v. Jones*, 128 A.D.2d 978 (3d Dep't. 1987). But see *Serrano v. Cuttita*, 159 A.D.2d 328 (1st Dep't. 1990) (petitions filed earlier than 9 am on the last day not improper).

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However, if the candidate has been circulating petitions to run in a primary election for the party in which she is not enrolled, there is an additional step: she must file an “Acceptance” of the designation.<sup>9</sup> The same is true if the candidate is running as an “independent” in a special or general election.<sup>10</sup> Without a valid Acceptance under these circumstances, the candidate’s name will not appear on the ballot.

Of course, an Acceptance must be filed timely.<sup>11</sup>

### B. The Petition as a Legal Document

The petition that a candidate circulates to run for her political party’s nomination for public office is called a designating petition.

The petition that a candidate circulates as an independent to have her name placed on the ballot in the general election or special election is called a nominating petition.<sup>12</sup>

Article 6 of the Election Law provides the necessary information that is required for such petitions. Therefore, it is possible for a candidate to review the law and the sample form that the Board of Election provides, and print her own petitions. This, of course, would save the candidate the expense of going to a printer. However, if a candidate decides to go to a printer, it is strongly recommended to use one with experience in printing petitions. This will allow the candidate the significant comfort of knowing that it is highly likely that the petitions were properly printed.

Nevertheless, even if a candidate does engage the services of a professional printer, she or staff must carefully review the “proof.” Mistakes can cost a candidate her place on the ballot.<sup>13</sup>

### C. The Requirements

#### 1. Party and Symbol

The petition must include the political party whose designation the candidate seeks. For established parties, this is easy. For those seeking nominations of independent bodies, the candidate or her supporters must create a name and symbol, but these names and symbols may not resemble those of existing parties or other independent bodies whose petitions have already been filed for that election. Independent candidates are, therefore, advised to create names and symbols that are unique, and that avoid any confusion by the voters. If there is an issue of similarity with another independent body, the Board or a competitor may require the candidate to create a new name or symbol. In the event that the candidate fails to do so, the Board has the authority to substitute a new name or symbol. If the inde-

<sup>9</sup> N.Y. Elec. Law §6-146 (McKinney).

<sup>10</sup> *Id.*

<sup>11</sup> N.Y. Elec. Law §6-158 (McKinney). Of course, a Declination must be filed in a timely way as well, and the person undertaking the filing must pay close attention to ensure that no unexpected obstacle stands in the way. *Goodell v. Parment*, 76 A.D.3d 1169 (4th Dep’t. 2010).

<sup>12</sup> Unfortunately, the Election Law uses these terms interchangeably and inconsistently.

<sup>13</sup> Testimony or an affidavit by a printer as to a minor error can sometimes salvage a mistake, but if the information on a petition is mandatory, the burden is on the candidate to comply with the law. *See, e.g., Alamo v. Black*, 51 N.Y.2d 716 (1980). If, on the other hand, there is substantial compliance with petition requirements, mistakes on the petition as a result of a printing error will be excused *Rancourt v. Magill*, 87 A.D.3d 656 (2d Dep’t. 2011); *Rancourt v. Kennedy*, 87 A.D.3d 654 (2d Dep’t. 2011); *Anjos v. Carvin*, 87 A.D.3d 638 (2d Dep’t. 2011).

pendent body's name or symbol resembles an established party's, no cure is permitted, and the petition will likely be invalidated.<sup>14</sup>

## 2. *The Candidate's Name*

In proofreading the petition before it is printed, the candidate must check that her name is spelled properly. The Board of Elections will place the candidate's name on the ballot exactly how it appears on the petition that is filed.

The petition should state the candidate's name as it appears on her voter registration card at the Board of Elections. However, the candidate may choose to use a nickname on her petition if she thinks most people know her by that name.<sup>15</sup> Examples of this abound. During the 2004 Democratic party primary for president of the United States, Congressman Richard Gephardt circulated petitions in New York under the name Dick Gephardt. This was acceptable in that it did not cause any confusion as to the candidate's identity and because the nickname was obviously not intended to defraud the public.

Indeed, from time to time there is litigation over the legitimacy of the name used by the candidate on her petition. The issue is of no small matter. The practice of nicknames was challenged many years ago when Martin Markowitz, then running for the New York State Senate, used "Marty," and, more recently, a Russian-born New York City Council candidate used his anglicized name of Tony Eisenberg rather than his then-legal name of Anatoly Eyzenberg. Both were permitted to do so as consistent with common law usage.<sup>16</sup>

In a related matter, supporters must have the permission of a candidate before they use her name on the petition. And if a candidate is printing joint petitions with candidates running for other offices, she needs their permission to circulate on their behalf as well.<sup>17</sup>

<sup>14</sup> See N.Y. Elec. Law §6-138(3) (McKinney). Note well that the "cure procedure" is limited to names of independent bodies that resemble other independent bodies, not those that resemble political parties. *DiResto v. Cornell*, 59 A.D.3d 643 (2d Dep't. 2009). See also *McMillan v. New York State Board of Elections*, 2010 WL 4065434 (E.D.N.Y. 2010) (No. 10-CV-2502 JG/VVP) (party name abbreviated to "Rent is 2 Damn High").

<sup>15</sup> In special elections, where political parties do not have primaries and, instead, designate their candidates pursuant to the party's rules, Certificates of Nominations are filed rather than petitions. In that these Certificates must accurately reflect the candidate's name on registration records, a candidate must request the Board to put her nickname on the ballot. For instance, Assembly Member Y. Phillip Goldfeder (no relation to the author of this treatise, but a client and friend) was nominated by the Democratic Party in a special election held in September 2011. The Certificate of Nomination, of course, referred to the candidate's name as it appeared on his registration. Seeking to be listed on the ballot as he is known — without his first initial — Goldfeder submitted an affidavit to the Board of Elections saying that he was known as Phillip and requested that the Board print the ballot as such.

<sup>16</sup> *Gumbs v. Markowitz*, 143 A.D.2d 235 (2d Dep't. 1988) ("We reject the petitioner's contention that the [Markowitz] designating petition must be invalidated because the candidate used the familiar form of his proper first name [citation omitted]. We find that there was no showing that the candidate's use of the name "Marty Markowitz" on the designating petition rather than "Martin Markowitz" was intended to mislead potential signatories."); *Eisenberg v. Strasser*, 1 Misc.3d 299 (Sup. Ct. Kings Co.), *aff'd*, 307 A.D.2d 1053 (2d Dep't.), *aff'd*, 100 N.Y.2d 590 (2003) (the Court of Appeals "agree[d] with the Appellate Division majority and dissent that, under these circumstances, there is no reason to disqualify the candidate for using the name "Tony Eisenberg," rather than "Anatoly Eyzenberg," on his designating petition."). The rule of thumb is that nicknames are permissible as long as there is no showing that the candidate intended to confuse signers or voters and no showing that any of the voters were actually confused or misled. See also *Reagon v. LeJeune*, 307 A.D.2d 1015 (2d Dep't. 2003) (although the candidate was commonly known with the appellation "Jr." by town officials and local media, there was no showing that he intended to mislead the voters by omitting "Jr." on his petitions); *Innamorato v. Friscia*, Index No. 80042/07 (Sup. Ct. Richmond Co. 2007).

<sup>17</sup> See, e.g., *Parrilla v. Kremar*, 64 A.D.2d 942 (2d Dep't. 1978) (designating petition invalidated where candidates' names were used without their consent); *Fischer v. Peragine*, NYLJ, Aug. 18, 2004, at 19, col. 3 (Sup. Ct. Nassau Co.) ("Where the names of persons are put on the ballot as candidates

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Furthermore, a petition may list the names of multiple candidates only if each candidate files her petitions with the same Board of Elections.<sup>18</sup>

Finally, the statute was recently amended to prohibit “petitions for the same public office or party position in different political subdivisions [from being] combined in the same petition.”<sup>19</sup>

### 3. Public Office or Party Position

The candidate must state the true and full name of the public office or party position that is sought. Experienced printers are aware of the correct name, but a prudent candidate should check with the Board of Elections.

If there is a district number, it should be included, such as State Senate District No. 30 or New York City Council District No. 43. If there is a vacancy number, it, too, must be included. For example, those running for New York City Civil Court Judge must include the correct “vacancy number.” The general rule is the office must be stated with precision and clarity.<sup>20</sup>

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without their consent there is a “fraud” committed on the voters of the same party [citations omitted.]”). See also *Grumbach v. Orange County Bd. of Elections*, 43 A.D.3d 477 (2d Dep’t. 2007); *Wos v. Ashworth*, 16 Misc.3d 1134A (Sup. Ct. Rensselaer Co. 2007).

<sup>18</sup> *Moskaluk v. Simpkins*, 54 A.D.3d 533 (3d Dep’t. 2008).

<sup>19</sup> N.Y. Elec. Law §6-134(1). But see *Liguori v. Ambro*, 77 A.D.3d 664 (2d Dep’t. 2010) (County Court Judge candidate cannot be penalized if State Senate candidates violate statute); *Losquadro v. Suffolk County Board of Elections*, 77 A.D.3d 667 (2d Dep’t. 2010) (Assembly candidates from different districts were on different sheets).

<sup>20</sup> See *Bliss v. Nobles*, 297 A.D.2d 457 (3d Dep’t. 2002):

“It is settled that the name of the public office or party position sought must be clearly set forth on the designating petition [citations omitted]. Describing the public office as “Assembly District 115” is not, in our view, “‘sufficiently informative . . . so as to preclude any reasonable probability of confusion’ or . . . [deception to] the signers, voters or board of elections” [citations omitted], where, as here, more than one title of public office is elected from the designated geographic territory [citations omitted]. Unlike other cases where an omission of either the geographic territory or title of public office sought could be discerned by recourse to the designating petition as a whole, we do not find that the required information omitted here could be adequately gleaned [citations omitted].”

See also *Ighile v. Board of Elections in the City of New York*, 66 A.D.3d 899 (2d Dep’t. 2009) (omission of City Council district number requires invalidation of petition); *Williams v. Westchester County Board of Elections*, 65 A.D.3d 653 (2d Dep’t. 2009) (omission of term of office requires invalidation in that “two or more offices having the same title are to be filled for different terms” [Elec. Law §6-134(1)]); *Levine v. Turco*, 43 A.D.3d 618 (3d Dep’t. 2007) (“reasonable possibility of confusion certainly exists”); *Hayes v. New York State Board of Elections*, 32 A.D.3d 660 (3d Dep’t. 2006) (name of office confusing). But see *Cerreto v. Sunderland*, 307 A.D.2d 1004 (2d Dep’t. 2003) (designating petition for Republican Party position of Member of the Westchester County Republican Committee for the 90th Assembly District, Town of Cortlandt, omitted the town; “However, the petition, read as a whole, was sufficiently informative to show that the town involved was the Town of Cortlandt [citations omitted].”); *McGowan v. Warren County Board of Elections*, Index No. 52701/09 (Sup. Ct. Warren Co.) (August 11, 2009) (failure to identify the Town for which party position designating petition was circulated did not require invalidation in that information can be gleaned from entirety of the petition); *Coluccio v. Fox*, 286 A.D.2d 552 (3d Dep’t. 2001):

“Election Law §6-132(1) requires that each sheet of a designating petition state the office or position sought by the candidate. The description will be deemed adequate so long as it is “sufficiently informative under section 6-132 . . . so as to preclude any reasonable probability of confusing or deceiving the signers, voters or board of elections” [citations omitted]. A determination of whether a description is “sufficiently informative” turns on the inclusion of two integral components—the title of the elective office and the geographic boundaries of the area represented by the office [citations omitted]. While a correct identification of the title of the office has been held to be of critical importance, the failure to satisfy the geographic component will not necessarily require invalidation of the designating petition if there is other information contained therein, e.g., the address of the candidate, that would dispel “any reasonable probability of confusion” (*Matter of Dunlea v. New York State Bd. of Elections* [275 A.D.2d 589 (3d Dep’t. 2000)]). Here, [the candidate’s] designating petition correctly identifies the office sought as “Member of Common Council, City of Albany”. We are unpersuaded by petitioner’s con-

Sometimes, the name of an office is colloquially understood by one name, but, in actuality, the name of the office is different. For example, in Brooklyn, the party office of Assembly District Leader does not exist. That position is actually known as State Committee Member. Candidates who have failed to check the “Party Call,”<sup>21</sup> which lists the party positions to be elected at the primary, and have mistakenly circulated designating petitions for the position of District Leader, have been rudely surprised when their petitions were invalidated.<sup>22</sup> Once again, prudence dictates careful review of pertinent laws and rules lest a candidate be thrown off the ballot.<sup>23</sup>

#### 4. Residence

The candidate's residence—at the time the candidate is circulating the petition—must be stated fully and correctly on the petition. It is advisable not to abbreviate names, and words such as “Street,” “Road” and “Avenue” must be included.<sup>24</sup>

tention that references to the “15th District” would cause confusion with the “15th Legislative District” in the County of Albany. The 15th Ward in the City of Albany forms no part of the 15th Legislative District. [Footnote] Moreover, [the candidate's] address appears at the top of each page of the petition and the office which she seeks is the sole election currently taking place out of the 15th Ward. Under such circumstances, the misdescription of the geographical area is not likely to cause confusion among the petition signers, the voters or the Albany County Board of Elections [citation omitted].

[Footnote.] Our decision in *Matter of Bouldin v. Scaringe*, (133 A.D.2d 287, *lv. denied* 70 N.Y.2d 604) is distinguishable. There, a candidate for Albany County Legislator from the 3rd Legislative District improperly designated the geographical area as the 3rd Ward. Confusion could have resulted in that instance because all of the 3rd Ward in the City of Albany, as well as part of the 4th Ward, are located within the 3rd Legislative District.’’

Justice Martin Schoenfeld provided an expansive analysis of the issue in *Dotson v. New York City Board of Elections*, 2001 WL 1537689 (Sup. Ct. N.Y. Co. 2001) by allowing a candidate for the New York City Council to defeat a challenge to his petitions which omitted the identifying number of the Council district:

“In *Matter of Korman v. Green*, 145 Misc 2d 34 (Sup Ct, Bronx County 1989), *affd* without opn, 153 AD2d 539 (1st Dept), Justice Lewis Friedman refused to invalidate a designating petition indicating the office sought as “Judge of the Civil Court of the City of New York, Bronx County, Assigned Vacancy #12” even though the petition failed to indicate whether the candidate was seeking election to a “countywide” seat or a “district” seat. As stated by Justice Friedman, “a petition is not invalid [even] if part of the description of the public office is omitted so long as the petition as a whole is intelligible and not misleading.” 145 Misc 2d at 36. . . . [Thus, in addition to mistakes relating to the geographical component,] Courts have also excused defects in the “title” component of the “public office” designation.”

Candidates are on notice, however, of Justice Schoenfeld's statement, albeit in *dicta*, that:

“Whether flaws in a designating petition are the fault of the candidate or the candidate's printer is immaterial.”

See also *Odett v. Walsh*, 76 A.D.3d 771 (3d Dep't. 2010) (“New York State Assembly–122nd District” adequately identified the public office for which candidate was running); *Hicks v. Walsh* 76 A.D.3d 773 (3d Dep't. 2010) (companion case).

In a case addressing the unique requirement that candidates for Governor and Lt. Governor appear as a ticket on the general election ballot, see *Thompson v. Cohn*, 77 A.D.3d 1016 (3d Dep't. 2010) (independent nominating petition for Governor invalidated where there was no candidate for Lt. Governor).

<sup>21</sup> The Party Call is the official list of public offices and party positions to be elected in a forthcoming election. It can and should be obtained from the local Board of Elections.

<sup>22</sup> *Packer v. Board of Elections*, 207 A.D.2d 513 (2d Dep't. 1994).

<sup>23</sup> The court's decision in *Packer* notwithstanding, the same result occurred to would-be “District Leader” candidates in *Kaloshi v. New York City Bd. of Elections*, 2002 WL 31051530 (E.D.N.Y. 2002).

<sup>24</sup> Inconsequential errors that do not mislead or confuse signers or voters will generally not lead to the invalidation of a petition, but a prudent candidate will want to avoid litigation by zealous scrutiny

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The candidate should list the address at which she actually lives at the time she begins to circulate the petition, not the address to where she intends to move. Otherwise, the address stated may be fairly characterized as fraudulent, and a candidate may be knocked off the ballot.<sup>25</sup> Needless to add, apart from inadvertent error, the address stated should be the candidate's true residence.<sup>26</sup>

### 5. The Committee to Fill Vacancies

This Committee is colloquially known as the "committee on vacancies," but the actual name conveys its purpose. Should the candidate, after filing her petition, decide not to run (by filing a "Declination"<sup>27</sup>), or if the candidate is declared disqualified as a result of improper residency or other eligibility issue,<sup>28</sup> the Committee may name a replacement for the candidate.<sup>29</sup> Within certain time limitations, the Committee may also do so if the candidate dies or is otherwise disqualified.<sup>30</sup>

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of the petition's "proofs." See, e.g., *Pericak v. Hooper*, 207 A.D.2d 1003 (4th Dep't. 1994) ("61 Reed St." was on the petition instead of the accurate "61 Reed Ave."); *McKenna v. Power*, 24 Misc.2d 65 (Sup. Ct. N.Y. Co. 1956) ("202-12 50th St., Bayside, New York" was on the petition instead of the accurate "202-12 50th Avenue").

<sup>25</sup> Even if the candidate intends to move during the petitioning period, the petition must reflect her residence at the time the petitions are being circulated. N.Y. Elec. Law §6-132(1) (McKinney). But see *McManus v. Relin*, 286 A.D.2d 855 (4th Dep't. 2001) (court refused to invalidate *Subscribing Witness's* signatures where he provided address of where he intended to move, not his residence at time of circulation):

"Where, as here, the Election Law violation does not involve the 'substantive requirements of witness eligibility' and 'there is no implication of fraud, resort to strict construction should be avoided if it would lead to injustice in the electoral process or the public perception of it' [citations omitted]. Given the fact that both addresses are within the correct political subdivision and in the absence of any indication of fraud, we conclude that the [trial] court erred in invalidating the designating petitions. . . ."

The question remains whether the courts would apply this liberal analysis to a *candidate* who stated her intended residence rather than her actual address on the petition.

If the candidate moved during the petition process, and her original address was stated on the petitions, would the courts invalidate that petition as having a false address when filed? The courts would undoubtedly be guided by the facts, and would note the absence of an affirmative duty to notify the Board of Elections of one's change in residence within a county or N.Y.C. See N.Y. Elec. Law §5-208 (McKinney) (providing for transfer of registration by completing an Affidavit Ballot on the day of voting).

Mistakes on addresses have not been fatal if the totality of the facts and circumstances evidences the absence of any fraud. *Curley v. Zacek*, 22 A.D.3d 954 (3d Dep't. 2005) (Subscribing Witness was also the candidate); *Toporek v. Beckwith*, 32 A.D.3d 684 (4th Dep't. 2006). See also *Finklestein v. Cree*, 2003 WL 21994050 (Sup. Ct. Tompkins Co. 2003) (court refused to disqualify a candidate whose petitions stated the wrong town, pointing out that the error was neither misleading nor confusing and that the statute did not require the information anyway).

<sup>26</sup> The issue of a candidate's true residence is addressed in greater detail in Chapter 2, *supra*.

<sup>27</sup> See N.Y. Elec. Law §6-146 (McKinney).

<sup>28</sup> See, e.g., *Chaimowitz v. Calcaterra*, 76 A.D.3d 685 (2d Dep't. 2010); *Handel v. Moertz*, 2010 NY Slip Op 32464(U) (Sup. Ct. Suffolk Co. September 8, 2010).

<sup>29</sup> The Committee to Fill Vacancies must, of course, follow proper procedures in fulfilling this role. See N.Y. Elec. Law §§6-148 and 6-158(3) (McKinney). See, e.g., *Landry v. Mansion*, 65 A.D.3d 803 (3d Dep't. 2009) (certificate of authorization must comply with statutory prescription). *Landry* also stands for the proposition that if a major party's sole candidate is disqualified, the Court may exercise its discretion to order an Opportunity to Ballot.

<sup>30</sup> N.Y. Elec. Law §6-158(3) (McKinney); *Parete v. Hunt*, 287 A.D.2d 777 (3d Dep't. 2001) (substitution following declination pursuant to Hatch Act prohibition); *Espada v. Diaz*, 98 N.Y.2d 715 (2002) (where candidate was disqualified but neither the petition nor the petition gathering process was tainted by fraud, Committee to Fill Vacancies could substitute another candidate); *Hunter v. New York State Board of Elections*, 32 A.D.3d 662 (3d Dep't. 2006) (substitution cannot be made for candidate whose Wilson-Pakula authorization was not filed properly); *Turdik v. Bernstein*, 87 A.D.3d 748 (2d Dep't. 2011) (Committee cannot fill a vacancy if petition is invalidated; Committee cannot name same person who appeared on the petition).

Thus, the candidate might wish to choose close political allies as members of her Committee, though a candidate frequently chooses a Committee simply to demonstrate the geographic and political breadth of her support.

The Election Law no longer requires that petitions include a Committee to Fill Vacancies, and its absence from a petition has no adverse effect on the candidate — except, of course, to deprive the supporters of the candidate with an opportunity to replace the candidate should it become necessary or desirable.<sup>31</sup>

To be a legally valid Committee on a designating petition, it must consist of three members who are enrolled in the same political party as the candidate, and who may reside anywhere in the state.<sup>32</sup> A Committee on a nominating petition must consist of three voters who reside within the political unit.<sup>33</sup> The Committee members' addresses must, of course, be truthfully and accurately stated on the petition.

If the candidate chooses to have a Committee, it is prudent to name more than the required three members.<sup>34</sup> Even though the candidate or staff is encouraged to use due diligence in researching the eligibility of the Committee members and their respective voting addresses, mistakes often happen during the petition-printing process. Thus, an expanded Committee provides a cushion to make certain that a duly constituted Committee has been named. On the other hand, the Committee should not be too large. In the event that the Committee must fulfill its legal obligation to substitute a candidate, a majority of members is required to meet and act. Therefore, the group should not be too numerous or geographically diverse.

## 6. The “Signature Section” of the Petition

The section of the petition sheet that contains the places for voters to sign is, of course, the body of the petition. There must be a place for the date, the signature,

<sup>31</sup> N.Y. Elec. Law §6-134(8) (McKinney). The Legislature's decision to eliminate the necessity of a Committee to Fill Vacancies on a designating petition extends to the Committee on nominating petitions as well. See N.Y. Elec. Law §6-138 (McKinney). This should not be confused with the Legislature's decision not to eliminate the Committee to Receive Notices on a petition for an Opportunity to Ballot. See N.Y. Elec. Law §6-166 (McKinney); *Werner v. Castiglione*, 286 A.D.2d 553 (3d Dep't. 2001):

“Although Election Law §6-166(2) provides that the form for the appointment of a Committee to Receive Notices shall be the same as the form for the appointment of a Committee to Fill Vacancies in a designating petition, the two committees, as a substantive matter, serve entirely separate and distinct purposes. Accordingly, we conclude that the absence of a Committee to Receive Notices is not subject to the provision of the Election Law which excuses the absence of a Committee to Fill Vacancies.”

Indeed, when an Opportunity to Ballot petition is challenged in court, the case will be dismissed if members of the Committee to Receive Notices are not named and served. See, e.g., *Cass v. Krakower*, 13 N.Y.3d 118 (2009); *Myers v. Baisley*, 13 N.Y.3d 727 (2009). But see *Pagones v. Irizarry*, 87 A.D.3d 648 (2d Dep't. 2011) (Committee member moved during petition process; in absence of fraud or intention to mislead, would not invalidate Opportunity to Ballot petition).

<sup>32</sup> N.Y. Elec. Law §6-132(1) (McKinney).

<sup>33</sup> N.Y. Elec. Law §6-140(1)(a) (McKinney).

<sup>34</sup> See N.Y. Elec. Law §6-148(4) (McKinney). The New York City Board of Elections recently invalidated a Certificate of Substitution filed on behalf of Guillermo Linares (after Miguel Martinez declined the Democratic Party designation for the New York City Council) on the ground that one of the three members of Martinez's Committee to Fill Vacancies was not a *bona fide* resident of the State of New York at the address indicated on the petition. As a result, Ydanis Rodriguez was successful in the primary and then elected to the Council. Several days after his declination, Martinez pled guilty to stealing. Thomas Zambito, et al., “Manhattan City Councilman Miguel Martinez Admits He Stole Tens of Thousands of Taxpayer Dollars,” N.Y. Daily News, July 16, 2009, available at [http://www.nydailynews.com/ny\\_local/2009/07/16/2009-07-16\\_martinez\\_admits\\_he\\_stole\\_tens\\_of\\_thousands.html](http://www.nydailynews.com/ny_local/2009/07/16/2009-07-16_martinez_admits_he_stole_tens_of_thousands.html) A year later, Linares was elected to the New York State Assembly.

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the signer's address and the signer's town or city, or, within New York City, county.<sup>35</sup>

There is no requirement as to the number of lines for signers. Traditionally, there are spaces for ten or fifteen signatures, but any number can be used, and not all must be filled in on the same date. In any event, the spaces must be numbered. Some candidates, in an effort to thwart challengers, print petitions with room for only one name per page. Their volumes are bulky, but perfectly legal.

It is optional to have a space for the signer's name to be printed, usually underneath the signature.<sup>36</sup> The advantage to having the signer's printed name on the petition is so that the person circulating the petition need not record the signer's name on a "back-up" sheet. A candidate wants to have the signer's printed name so that she has the name for follow-up political communications. An additional reason is that if the signature is illegible or barely legible, and an opponent challenges the validity of the signature, the candidate can identify the signer.<sup>37</sup> Of course, a disadvantage to having a space on the petition for the printed version of the signer's name is that it provides an opponent with easy identification of the signer for the purpose of checking her registration and enrollment in a challenge to the petition. Another disadvantage is that the more information asked for on a petition, the greater opportunity there is for error.

The signer's full address must be included, and, although abbreviations are permissible, proper "prefixes," such as "East" or "West," and "suffixes," such as "Street" or "Boulevard," must be included in the address. The reason, of course, is to ensure that there is no uncertainty as to the signer's residence. After all, there are many addresses that, without the proper prefix or suffix, could be from various different locations. For instance, a signer living on 9th Street in Brooklyn, New York, might live on East, West, South or North 9th Street. Of course, if there is sufficient information to find the signer and identify the correct residence, the sig-

<sup>35</sup> N.Y. Elec. Law §§6-130, 6-132 and 6-140 (McKinney). This information is required. *See, e.g., DiSanzo v. Addabbo*, 76 A.D.3d 655 (2d Dep't. 2010) (omitted or incorrect date invalidates signature); *DeBerardinis v. Sunderland*, 277 A.D.2d 187 (2d Dep't. 2000) (lack of date invalidates signatures; cannot be cured after petitioning period); *Ptak v. Erie County Board of Elections*, 307 A.D.2d 1072 (4th Dep't. 2003) (incorrect town invalidated signatures). *See also Stoppenbach v. Sweeney*, 98 N.Y.2d 431 (2002), where the Court of Appeals held:

"Section 6-130 of the Election Law provides that 'a designating petition must set forth in every instance the name of the signer, his or her residence address, town or city (except in the city of New York, the county), and the date when the signature is affixed.' Because, in a number of instances, the petition signers did not accurately set forth the town, the candidate did not have sufficient signatures. We adhere to our precedent in *Matter of Frome v Board of Elections of Nassau County* (57 NY2d 741, 742-743 [1982]; see also *Matter of Zobel v New York State Bd. of Elections*, 254 AD2d 520 [1998]) that compliance with the statute is required, as it constitutes a matter of substance and not of form. An amendment of the statute such as candidate seeks is for the Legislature to make. Moreover, in 1996, the Legislature amended section 6-130 by, among other things, eliminating the requirement of designating wards, election districts and assembly districts. Significantly, it left intact the provision requiring the designation of towns and cities (L 1996, ch 709, §1-a)."

The Court went on to distinguish *Molinari v. Powers*, 82 F.Supp.2d 57 (E.D.N.Y. 2000), which, unlike *Stoppenbach*, involved a constitutional challenge to the rule in a ballot access case for the Republican party nomination for President of the United States. *See also Stark v. Kelleher*, 32 A.D.3d 663 (3d Dep't. 2006) (omission of signer's town or city fatal defect). *But see Gonzales v. Lavine*, 32 A.D.3d 483 (2d Dep't. 2006) (omission of or incorrect hamlet within the signer's town does not invalidate signature in that such information is surplusage).

<sup>36</sup> N.Y. Elec. Law §6-134(13) (McKinney).

<sup>37</sup> Signatures that are not legible, and, therefore, cannot be shown to replicate the voter's signature on her registration card, will be invalidated. *Hall v. Heffernan*, 185 Misc.2d 742 (Sup. Ct. Richmond Co. 1945).



nature is valid as long as the signer's registration card can be located and the signature matches.<sup>38</sup>

The law provides that if a voter moves from one residence to another within a county (or within the City of New York), she does not have to re-register with the Board of Elections.<sup>39</sup> All she needs to do is to report to her new polling place on Election Day and vote by Affidavit Ballot. This act constitutes a re-registration, and the Board of Elections will adjust their records.

If, on the other hand, a voter moves from one county to another, her prior registration will be considered a nullity whether or not the local Board of Elections has formally cancelled the registration.<sup>40</sup>

Given the fact that the signer must provide on the petition her *current* address,<sup>41</sup> the actual current address of the signer stated on the petition may very well not be the address in the records maintained by the Board of Elections. Nevertheless, it is the signer's current, actual address when signing the petition that must be stated.

Should this address be challenged, the signer can personally or by affidavit advise the Board of Elections or court about her move in order to preserve the validity of the signature.<sup>42</sup>

### 7. Statement of Witness

Below the signature lines, the person who circulates the petition on behalf of the candidate must be completely identified. Just as the candidate and the signers must have their correct names and addresses stated on the petition, so, too, must the Subscribing Witnesses have their correct information inserted.<sup>43</sup> In addition, a Subscribing Witness's name must be printed,<sup>44</sup> and the number of signatures on the page must be included in the body of the Subscribing Witness Statement.<sup>45</sup>

<sup>38</sup> Unintentional errors in the address are not necessarily fatal. If the correct information can be presented to the Board of Elections or the court, or if it can be gleaned from the other information on the petition, the signature will usually not be invalidated. However, candidates should vigorously seek to avoid having to explain away preventable errors that might endanger the viability of their petitions.

<sup>39</sup> "[T]he board of elections shall transfer the registration and enrollment . . . for any voter who casts a ballot in an affidavit ballot envelope which sets forth [the voter's] new address." N.Y. Elec. Law §5-208(1) (McKinney).

<sup>40</sup> *Coopersmith v. Ortutay*, 76 A.D.3d 651 (2d Dep't. 2010).

<sup>41</sup> The statute requires the signer of a designating petition to state that her "place of residence is truly stated." N.Y. Elec. Law §6-132(1) (McKinney). In the provision pertaining to nominating petitions, the statute requires the signer to state that her "present place of residence is truly stated." N.Y. Elec. Law §6-140 (McKinney). This slight difference in language appears to be a distinction without a difference. In any event, the address can be filled in after the person signs the petition. *DiMarino v. Maher*, 76 A.D.3d 653 (2d Dep't. 2010).

<sup>42</sup> The law does not directly address how to reconcile the requirement of stating one's current, actual residence on the petition and the ability to change one's registration by simply showing up at the new polling site and voting by Affidavit Ballot. N.Y. Elec. Law §5-208 (McKinney). Boards of Elections allow the signer to provide an affidavit as to the change of address. Although there is no express authority for this practice, common sense and statutory extrapolation support the practice. See N.Y. Elec. Law §6-134 (McKinney). Section 6-134(12) permits the signer three days following receipt of a specific objection to the use of a post office address to submit proof that it is her accepted address. See *Ligamari v. Norris*, 275 A.D.2d 884 (4th Dep't. 2000) (stating this rule). Section 6-134(10) provides that the provisions of §6-134 shall be "liberally construed." Thus, given the requirement of §§6-132(1) and 6-140, and the allowance permitted in §5-208, a signer should be able to employ the procedure of §6-134(12) to fend off a challenge to an otherwise valid signature.

<sup>43</sup> *Holt v. Ward*, 43 A.D.3d 637 (4th Dep't. 2007) (Subscribing Witness's sheet invalidated in that he had moved from the address indicated).

<sup>44</sup> N.Y. Elec. Law §§6-132(2), 6-138(2) and 6-140(1)(b) (McKinney). In the event the printed name is mistakenly omitted, substantial compliance with this requirement may allow a petition to escape invalidation if the name is identifiable through a legible signature.

<sup>45</sup> *Id.* See also *Etkin v. Thalmann*, 287 A.D.2d 775 (3d Dep't. 2001) (where Subscribing Witness realized that he forgot to insert number of signatures in several pages and submitted photocopies of

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Below the signature line of the Subscribing Witness, the Subscribing Witness's Town or City, and County, must be included.<sup>46</sup>

The law used to provide that a person circulating for the candidate was required to live in the relevant political district and be eligible to vote for the candidate in the party primary. The one exception to this long-standing law was that a person who was a Notary Public or Commissioner of Deeds who did not live in the political district or was not eligible to vote in the primary could nevertheless petition, providing that she administered an oath to the signers. Thus, it has always been advisable that the Statement of Witness included two versions at the bottom of the petition — one for a Subscribing Witness who lived in and voted from the district, and one for a Notary or Commissioner of Deeds.

The law now permits any registered voter in New York who is enrolled in a political party to circulate petitions for a candidate seeking her party's designation for a particular public office, and any registered voter in New York to circulate petitions for a candidate of an independent body for the general election ballot.<sup>47</sup> Individuals who do not meet those specified qualifications can nevertheless circulate petitions as a Notary or Commissioner of Deeds.<sup>48</sup>

### D. Rules for Petitioning

Most of the rules for petitioning are straightforward. It is worthwhile to state them in detail because a candidate can be disqualified if the rules are not followed. The number of required signatures can be found in Election Law Sec. 6-136 ("designating petitions" for political party primaries) or Sec. 6-142 ("nominating petitions" for general and special elections). For designating petitions, the statute requires a specific number of signatures or five percent of those enrolled in the relevant political party in the political unit. For nominating petitions, the statute requires a specific number or five percent of the total number of votes cast for

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sheets with the numbers added within the time limit to file petitions, appellate court refused to invalidate).

<sup>46</sup> *Id.* See also *Berkowitz v. Harrington*, 307 A.D.2d 1002 (2d Dep't. 2003) ("We conclude that the failure of the subscribing witness to include the town or city, and the county, in the 'Witness Identification Information' section of the petition is insufficient, in and of itself, to warrant invalidation of the petition, particularly where, as here, the complete address of the subscribing witness appears elsewhere on the same page of the petition [citation omitted]."); *Arcuri v. Hojnacki*, 32 A.D.3d 658 (3d Dep't. 2006) (same). See also *Powers v. Kozlowski*, 54 A.D.3d 540 (4th Dep't. 2008) (in that the correct address was provided in the Statement of Witness, the fact that the Witness's town in the "Witness Identification" information was incorrect did not invalidate the sheet); *Dalton v. Wayne County Board of Elections*, 65 A.D.3d 817 (4th Dep't. 2009).

<sup>47</sup> N.Y. Elec. Law §§6-132; 6-140 (McKinney). *Lerman v. Board of Elections*, 232 F.3d 135 (2d Cir. 2000) (designating petitions); *Chou v. New York State Bd. of Elections*, 332 F.Supp.2d 510 (E.D.N.Y. 2004) (nominating petitions).

<sup>48</sup> Subscribing Witnesses who are Notaries Public or Commissioners of Deeds must, of course, adhere to certain statutory requirements and geographical limitations. See, e.g., *Shubony v. Monroe County Board of Elections*, 297 A.D.2d 462 (4th Dep't. 2002) (Commissioner of Deeds' signatures invalid in that they were taken outside of his geographic authority). In recent years the specific acts required by Notaries have been relaxed. See *MacKay v. Cochran*, 264 A.D.2d 699 (2d Dep't. 1999) (use of a notary stamp not required as long as the identity of Notary is established). And there is a presumption of regularity ascribed to such Notaries and Commissioners. See *Ritterspoon v. Sadowski*, 48 N.Y.2d 618 (1979). Nevertheless, they still must perform a basic ritual to apprise the signer of their role and to elicit from the voter her identity. See *Liebler v. Friedman*, 54 A.D.3d 697 (2d Dep't. 2008) (substantial compliance by notary sufficient); *Kutner v. Nassau County Board of Elections*, 65 A.D.3d 643 (2d Dep't. 2009) (same); *LeBron v. Clyne*, 65 A.D.3d 801 (3d Dep't. 2009) (a modicum of substantial compliance required); *Whitbeck v. Messina*, Index No. 6465/09 (Sup. Ct. Albany Co.) (August 6, 2009). Indeed, the Appellate Division, Second Department, recently held that improper compensation of notaries did not adversely impact the "genuineness of the signature or act witnessed." *Johannesen v. Flynn*, 76 A.D.3d 710 (2d Dep't. 2010).

governor at the last gubernatorial election in the relevant political unit. The candidate is advised to consult with the Board of Elections to ascertain the enrollment and voting data to determine how many valid signatures are actually required in her race.<sup>49</sup>

### 1. When Petitions May Be Circulated

Candidates and supporters must pay careful attention to the prescribed petitioning period. Although the petitions are usually printed and distributed to volunteers prior to the first day of petitioning, no one may be asked to sign or should sign a petition until the period officially begins.

Candidates who attempt to get a leg up on the competition by obtaining signatures on the day or night before the first date—and falsely inserting the first proper date—are acting unlawfully. These signatures are improper, and, if this conduct is discovered, the offending pages will be disqualified by a court during a petition challenge.<sup>50</sup>

Worse, if these offending signatures are obtained with the actual or constructive knowledge of the candidate or those close to the candidate, a court will likely rule that this constitutes fraudulent conduct by the candidate and disqualify her.<sup>51</sup>

With regard to the last date of the petition period, candidates are advised to complete their petitioning prior to the last permissible date. A candidate often wishes to collect as many signatures as possible. But images of zealous (or, perhaps, frantic) candidates rushing into their local Board of Elections at the stroke of midnight with half-bound petition volumes should serve as a warning that campaigns

<sup>49</sup> The candidate is also advised to ascertain what the correct “political unit” is when making her calculation. See, e.g., *O'Connor v. Curtin*, 21 A.D.3d 507 (2d Dep’t. 2005) (candidate’s petition for the Republican nomination for Town Superintendent of Highways for the Town of Ossining was invalidated because he erroneously calculated 5% of the enrollees of the election districts within the town that voted for the position rather than of the enrollees of the entire town, which was the relevant political unit for the purpose of the calculation). The candidate also must ascertain which list of enrollees or voters should be used. See, e.g., *Kent v. Coveney*, 96 A.D.2d 919 (2d Dep’t. 1983) (“the number of valid signatures required for the designating petition should have been determined on the basis of the last official tabulation of party enrollments computed by the Suffolk County Board of Elections, rather than on the figures computed directly prior to the last general election in November, 1982”); *Horowitz v. Egan*, 264 A.D.2d 454 (2d Dep’t. 1999) (“It is undisputed that if any or all of the enrolled voter lists prepared by the Board of Elections of the County of Dutchess on April 1, 1999, May 3, 1999, and June 1, 1999, are used, [the candidate] was required to obtain 43 signatures. However, if the enrolled voter list prepared on July 1, 1999, is used, [the candidate] needed only 42 signatures. Since 43 signatures were required on the first date on which candidates for office . . . were permitted to obtain signatures, in this case June 8, 1999, [the candidate’s] petition did not suddenly become sufficient by virtue of a fortuitous subsequent decline in enrolled Democratic party voters [citation omitted].”).

<sup>50</sup> “[T]he Supreme Court found many of [the candidates’] petitions to be fraudulent upon determining that numerous signatures had in fact been pre-dated. This practice has also been long considered by the New York courts to be a species of fraud.” *Eccles v. Gargiulo*, 497 F.Supp. 419 (E.D.N.Y. 1980). See also *Collins v. Heffernan*, 187 Misc. 165 (Sup. Ct. N.Y. Co. 1946).

<sup>51</sup> See, e.g., *Hicks v. Santiago*, 104 A.D.2d 471 (2d Dep’t. 1984):

“The testimony at the hearing held at Special Term reveals that various dates, ranging from June 19 through June 27, 1984, were inserted next to 360 signatures on 24 sheets of the challenged designating petition, while, in fact, those signatures were obtained on or after June 28, 1984, the date the blank petitions were delivered to the appellant from the printer. Appellant himself signed one such sheet as a subscribing witness prior to the predating of the signatures but is unable to recall who inserted the dates on that sheet or on the 23 other sheets which contain incorrect dates. These signatures were collected at appellant’s office, and appellant was present for at least part of the time while they were collected. Based on the foregoing, Special Term imputed a fraudulent intent to the appellant, and held that the petition, which contained some 2,745 signatures, was permeated with fraud. Whether to draw such an inference of fraudulent intent based on proof of a substantial irregularity is a question of fact [citation omitted], and we do not believe that such an inference in this case is unwarranted.”

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must give themselves sufficient time to review their petitions, bind them properly and travel to the Board (or to the Post Office if mailing the petitions) in time to meet the deadline. Late submissions are not permitted. If a candidate goes to the Board of Elections to submit her petitions, or arrives at the Post Office to mail them, and arrives late, the petitions will be accepted (in the case of the Board Elections, as a ministerial act), but will be disqualified. This is true even if the “fault” is a broken elevator, a subway or car accident, or because some of the petitions were stolen. The Board has a hard and fixed rule, and the courts have upheld it.<sup>52</sup>

### ***2. The Signer Must Sign Her Own Name***

A voter is eligible to sign a petition if she is registered to vote in the relevant political district. If the petition is a designating petition for an established party’s primary election ballot, the voter must also be enrolled in the political party in which the candidate is running and eligible to vote for the candidate in the upcoming primary.<sup>53</sup> If the petition is a nominating petition for an independent body’s nomination to the general election or special election ballot, then the voter must be eligible to vote in that election.<sup>54</sup> However, in either case, the voter cannot sign the sheet she is circulating.<sup>55</sup>

In all cases, the signer must sign her own name, and cannot sign for her spouse, partner or friend.<sup>56</sup> The signer should be strongly encouraged to sign as she is registered. That said, courts will, and should, reject challenges to signatures that do not exactly reflect how the voter is registered. After all, a person does not necessarily remember how she registered (with a formal first name; with a middle initial; with a “Jr.” or “Sr.”; etc.).<sup>57</sup> This flexible approach is countenanced even when the signer omits her first name or puts in only an initial.<sup>58</sup> The test is simply whether the identity of the signer can be ascertained. However, there are limits: if the voter signs only his or her first name, omitting the last name completely, the signature will not count.<sup>59</sup>

### ***3. The Signer Must Sign Her Name in the Presence of the Subscribing Witness***

The Subscribing Witness must actually witness each and every person signing the sheet to which the witness subscribes her name, and on the date stated next to the signer’s name.<sup>60</sup>

<sup>52</sup> See, *supra*, fn. 8.

<sup>53</sup> N.Y. Elec. Law §6-132 (McKinney). A party enrollee’s signature will not count if she previously signed a competitor’s petition; neither will it count if she signed two petitions on the same day for competitors seeking the same office. N.Y. Elec. Law §6-134(3) (McKinney).

<sup>54</sup> N.Y. Elec. Law §6-140 (McKinney). A voter’s signature will not count “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.” N.Y. Elec. Law §6-138(1) (McKinney).

<sup>55</sup> See *Brownell v. Cohen*, 262 N.Y. 707 (1933); *Hall v. Heffernan*, 185 Misc. 742 (Sup. Ct. Richmond Co. 1945).

<sup>56</sup> N.Y. Elec. Law §6-134(7) (McKinney).

<sup>57</sup> N.Y. Elec. Law §6-134(5) (McKinney).

<sup>58</sup> See, e.g., *Lane v. Meisser*, 24 A.D.2d 720 (2d Dep’t. 1965).

<sup>59</sup> See *Fusco v. Miele*, 275 A.D.2d 426 (2d Dep’t. 2000) (signature invalidated even though full name was printed); *Quercia v. Bernstein*, 87 A.D.3d 652 (2d Dep’t. 2011) (printed signatures do not match those on registration cards).

<sup>60</sup> N.Y. Elec. Law §6-132(2) (McKinney) (“Each of the individuals whose names are subscribed to this petition sheet . . . subscribed the same in my presence . . .”) (emphasis supplied); see also N.Y. Elec. Law §6-140(1)(b) (McKinney).

It is not acceptable that a Subscribing Witness saw *most* of the people sign her petition and then someone else took over. She must see *all* the signers on her page.

Often a candidate's supporters petition in couples or groups. No matter how many people stand around a campaign table or approach a group of voters, the Subscribing Witness must be the person who actually saw the signer affix her name to the sheet.

Sometimes a couple or a group of supporters visit an apartment house, travel up an elevator and then split up, with one or more going in one direction and the others going in the other direction. The person who actually sees the person sign the petition must be the one who acts as a Subscribing Witness for that person's signature. The same is true if a team of petition carriers split up, with some going to homes on one side of the street and others visiting houses on the other side of the street. Only the person who actually sees the signature being written on the petition can be the Subscribing Witness.

Perhaps I am overemphasizing the obvious. But failure to comply with this requirement constitutes the most common reason for the disqualification of a candidate's petition, and extreme care must be exercised.

This should not be as great a problem as it once was, however. Until several years ago, only registered voters or enrolled party members who resided in the political district could act as a Subscribing Witness for a candidate. Inasmuch as the current law allows anyone who is a registered voter in the state (for a nominating petition) or an enrolled party member in the state (for a designating petition) to act as a Subscribing Witness, the pool of potential Subscribing Witnesses has dramatically increased.

Nevertheless, the potential problem of acting as a Witness for signatures not actually taken, while diminished, has not disappeared with the change in the law. Perhaps a candidate has a volunteer who is a college student registered outside the state and staying in New York for the summer; or perhaps a supporter is registered in New Jersey or Connecticut. Thus, unless they qualify as Notaries Public, these campaigners cannot act as Subscribing Witnesses. Perhaps, also, a supporter has a political reason to avoid signing her name as a Subscribing Witness; or perhaps a person wants to collect a record number of signatures. In these circumstances as well, there might be an inappropriate temptation either to refrain from signing as the Witness for signatures actually taken, or to act as the Subscribing Witness even though one did not directly see the voter sign her name.<sup>61</sup>

Moreover, it could happen that the petitioning operation is not organized as well as it should be, and there is confusion as to who circulated which sheets. This, of course, could be avoided by the actual Witness printing her name on the Subscribing Witness Statement *before* she begins to circulate the petition. This problem is more likely to occur when a campaign hires petition carriers rather than relying upon supporters. While it is perfectly legal to hire Subscribing Witnesses (as long as they are not being paid by the signature — that is a crime<sup>62</sup>), extra care must

<sup>61</sup> This is not to say that a "team" of campaigners cannot circulate petitions together, even if one is eligible to act as a Subscribing Witness and the other is not. It does mean that those signing the petition must be in the "presence" of the individual acting as the Witness, and that the Witness must actually see the person signing the page. See *Rodriguez v. Harris*, 51 N.Y.2d 737 (1980) ("we should note that, as the objectant conceded at argument, appellant's so-called 'team' method of gathering signatures was not per se improper or irregular.") (Fuchsberg, J., concurring).

<sup>62</sup> N.Y. Elec. Law §17-122 (McKinney); see, e.g., *Adams v. Klapper*, 182 Misc.2d 51 (Sup. Ct. Kings Co.), *aff'd*, 264 A.D.2d 696 (2d Dep't. 1999).

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be taken to supervise and monitor these persons, some of whom might not readily understand or care about the consequences of improper conduct.<sup>63</sup>

But whether the petition carrier is a volunteer or paid worker, she must remember that the Subscribing Witness Statement is the equivalent of an affidavit, which subjects the Subscribing Witness to being charged with perjury if it contains a materially false statement.<sup>64</sup>

As a result of these requirements, a candidate's petition is often challenged for fraud, alleging that the Subscribing Witnesses did not actually witness the signatures on a page. If it is determined that a particular Subscribing Witness did not witness all of her signatures, the court will be interested in how extensive her fraudulent practice was. The central question at trial will then be whether this Witness's fraud was an aberration or part of a greater fraud in the candidate's petition-gathering process. If a petition has many sheets evidencing this kind of fraud, or several Subscribing Witnesses who engaged in fraudulent conduct, the court might conclude that the petition is "permeated with fraud" and disqualify the candidate's petitions, notwithstanding how many otherwise valid signatures remain.<sup>65</sup>

Moreover, if there is a close association between the fraudulent Subscribing Witness and the candidate, or a close relative or associate of the candidate, the court may find that there is "candidate fraud," and invalidate the whole petition.<sup>66</sup>

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<sup>63</sup> See, e.g., *Adams v. Klapper*, *supra*, where the paid petition coordinator/campaign manager testified that he lost the payroll records that would show that the wages of hired petitioners were calculated by the day, not by the signature. Under oath he said that his records were in the trunk of his car but that they disappeared in a car wash.

<sup>64</sup> In a proceeding brought by then-New York City Council Member Ruth Messinger against opponent Pat Wagner in 1985, the testimony revealed that pages upon pages of signatures contained forgeries. The matter was forwarded to District Attorney Robert Morgenthau, who brought charges against a number of Subscribing Witnesses. Guilty pleas resulted. For a more recent violation of the law as it relates to Subscribing Witnesses, see *In re Denenberg*, 33 A.D.3d 198 (1st Dep't. 2006) (although county legislator signed other circulators' petitions as a result of carelessness, and had an otherwise unblemished record as an attorney, he was suspended from practice of law for six months). On September 28, 2009, Andrew DeStefano, a former New York City police captain running for Sheriff in Putnam County, was sentenced "after pleading guilty in connection with filing forged nominating petitions." His sentence was a fine of \$1,000, 100 hours of community service and a ban from running for office for five years. Michael Risinit, "Former Sheriff Hopeful Forged Names," *www.LoHud.com*, September 29, 2009.

<sup>65</sup> This has long been the law. See *Aronson v. Power*, 22 N.Y.2d 759 (1968) (120 sheets were "so permeated with fraud to a degree sufficient to invalidate it as a whole even if a sufficient number of valid signatures was shown"); *Mercorella v. Benza*, 37 N.Y.2d 792 (1975) ("It cannot be said as a matter of law that there were insufficient findings in the referee's report of 'irregularities, improprieties and fraudulent practices' which permeated the designating petition to permit a conclusion as a factual matter that there was permeation.").

Of course, every case will be evaluated on its own set of facts. See *Ragusa v. Roper*, 286 A.D.2d 516 (2d Dep't. 2001) ("we find that the totality of [the within fraud] does not rise to the level at which it could be said that the designating petition was permeated with fraud [citations omitted]"); *Kogan v. D'Angelo*, 54 N.Y.2d 781 (1981) ("stipulation that 45 of 58 signatures on three pages of designating petition did not match signatures on buff [registration] cards, so that those signatures had to be stricken, did not by itself establish such gross irregularity or fraudulent practice with respect to the 45 signatures as to bring into play the permeation principle to strike remaining 13 signatures, despite the fact that same subscribing witness had obtained all the disputed signatures."); see also *Crosta v. O'Rourke*, 242 A.D.2d 856 (4th Dep't. 1997) (citing *Matter of Kogan v. D'Angelo*, 54 N.Y.2d 781 (1981), *Matter of Cilmi v. Suffolk County Bd. Of Elections*, 220 A.D.2d 587 (2d Dep't. 1995), and *Matter of Segreti v. Adler*, 175 A.D.2d 765 (1st Dep't. 1991), in support of the court's holding that "the fact that a large number of the signatures on respondent's designating petition were invalidated by the Erie County Board of Elections does not by itself establish 'gross irregularity or fraudulent practice'. . . .").

In a word, the court will make a factual inquiry in its attempt to ascertain whether the particular petition is permeated with fraud. And fraud must be proven by clear and convincing evidence. *Robinson v. Edwards*, 54 A.D.3d 682 (2d Dep't. 2008); *Testa v. DeVaul II*, 65 A.D.3d 651 (2d Dep't. 2009).

<sup>66</sup> Here, too, the facts will drive the legal finding. And just as in a trial as to whether fraud permeates

#### 4. Dates and Addresses of the Signers

As I have said, the signer must sign her name on the petition.<sup>67</sup> That is all the signer must do. She does not have to print it; she does not have to write in the date or her address. The Subscribing Witness or another campaign worker may insert that information.<sup>68</sup> In fact, it is advisable that the Subscribing Witness rather than the signer write in the date and the address of the signer. This ensures that the information is legible and complete as required by law.

Abbreviations are permitted. One can write 6/15 rather than June 15, and it is

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the petition, an inquiry about whether there exists a nexus between a candidate or close associate and the proven fraud is similarly a fact-driven inquiry without unambiguous, bright-line legal standards.

Obviously, if the candidate is directly involved, the court will more readily disqualify her candidacy. See, e.g., *Leonard v. Pradhan*, 286 A.D.2d 459 (2d Dep't. 2001) ("Where, as here, the candidate himself, as a subscribing witness, has participated in the fraud, the petition should be invalidated even if there is a sufficient number of valid signatures independent of those fraudulently procured [citation omitted]."). See also *Tapper v. Sampel*, 54 A.D.3d 435 (2d Dep't. 2008) (candidate as subscribing witness did not obtain all signatures on his pages); *Drace v. Sayegh*, 43 A.D.3d 481 (2d Dep't. 2007) (candidate's involvement with respect to only two signatures was sufficient to invalidate the entire petition); *Valenti v. Bugbee*, 930 N.Y.S.2d 319 (3d Dep't. 2011) (candidate as subscribing witness did not obtain all signatures on his pages). Even an indirect involvement by the candidate may lead to disqualification. *Lerner v. Power*, 22 N.Y.2d 767 (1968) (candidate "accompanied" Subscribing Witness who obtained 1,047 signatures, of which 146 were fraudulent; petition invalidated); *Martinez v. Olmedo*, 153 A.D.2d 720 (2d Dep't. 1989) (several petition sheets with fraudulent signatures were taken by subpoenaed Subscribing Witnesses "under the control" of the candidate who failed to testify; fraud had sufficient nexus with candidate to invalidate entire petition); *Bueno v. Board of Elections of the City of New York*, N.Y.L.J., Sept 21, 2001, at 20, col. 4 (Sup. Ct. Kings Co. 2001) (candidate, who refused to testify, had a "close working relationship with his campaign manager" who was found to have submitted fraudulent petitions; sufficient nexus between the two requires imputing fraud to the candidate and invalidating the petition); *Adams v. Klapper*, 182 Misc.2d 51 (Sup. Ct. Kings Co.), *aff'd*, 264 A.D.2d 696 (2d Dep't. 1999) (evidence showed candidate, who failed to testify, was "inextricably intertwined in the petitioning process" and the "sometime" campaign manager, who himself was indirectly involved with illegal activities, as was candidate's husband, who, despite being subpoenaed, also refused to testify).

It appears, then, that in many of the cases where a court invalidates a petition after finding only an indirect connection between a candidate and significant wrongdoing, it is because there has been a failure to testify by the candidate or a close associate. Thus, a negative inference is drawn.

On the other hand, if there is no proof of candidate fraud, this claim will fail. See, e.g., *Scott-McFadden v. Board of Elections in City of N.Y.*, 54 A.D.3d 280 (1st Dep't. 2008) (relying upon Justice Seewald's Decision, Index No. 260252/08 (Sup. Ct. Bronx Co. 2008)); *Galan v. The Westchester County Republican Party*, Index No. 16040/08 (Sup. Ct. Westchester Co. 2008) (subscribing witnesses lied but candidate did not know). When the candidate is only indirectly connected to the fraud, the courts are more reluctant to disqualify an entire petition. See, e.g., *Volino v. Calvi*, 87 A.D.3d 657 (2d Dep't. 2011); *Rodriguez v. Harris*, 51 N.Y.2d 737 (1980) (no proof that the candidate himself personally participated in obtaining 9 fraudulent signatures out of 4336, even though his campaign manager did); *Perez v. Galarza*, 21 A.D.3d 508 (2d Dep't. 2005) (no proof that candidate participated in or should have known about one questionable signature); *Harris v. Duran*, 76 A.D.3d 658 (2d Dep't. 2010) (Appellate Division found no basis to disturb findings of trial court).

Two final points. In that a designating petition may list the names of several candidates running for a variety of offices, an allegation against one candidate does not, without proof, automatically carry any weight as against another candidate on the petition. Though linked on the same sheet of paper, each candidate stands or falls on her own; put another way, evidence against one candidate on an omnibus petition may not be construed as evidence against another. *Scott-McFadden v. Board of Elections in City of N.Y.*, 54 A.D.3d 280 (1st Dep't. 2008). Moreover, an objector cannot rely upon the proof of fraud against a candidate for one office in a separate proceeding against the same candidate running for another office. *Soto v. Gram*, 54 A.D.3d 279 (1st Dep't. 2008) (relying upon Decision of Justice Seewald, Index No. 260275/08 (Sup. Ct. Bronx Co. 2008) (Court rejected "novel" argument by counsel against candidate for public office and party position).

<sup>67</sup> N.Y. Elec. Law §§6-130, 6-132, 6-134(7), 6-138(2) and 6-140 (McKinney).

<sup>68</sup> N.Y. Elec. Law §§6-134(7) and 6-138(2) (McKinney); see *DiMarino v. Maher*, 76 A.D.3d 653 (2d Dep't. 2010) (statute does not require a given sequence).

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advisable in either case that the year be printed on the petition. One can also, for example, write “E.” rather than “East” or “St.” rather than “Street.”<sup>69</sup>

The signatures on the petition must be in chronological order. A petition need not contain signatures obtained only on one date. It is permissible to have several signatures from one day, and additional ones on subsequent dates. However, if the signer or Subscribing Witness puts in the wrong date, and the signatures on a sheet are out of chronological sequence, this will likely result in the disqualification of those out of order.<sup>70</sup> Accordingly, errors need to be corrected.

Similarly, a signer might neglect to write in her entire address, leaving out Avenue or Boulevard, for example.<sup>71</sup> These omissions require correction as well. Or, perhaps, the signer forgot to write in the date. Obviously, without a correction, that signature would be disqualified.<sup>72</sup>

As a result, the Subscribing Witness or the petition coordinator needs to review the entire sheet to ensure that all the information required has been properly inserted.

### 5. Correcting Errors

If a date is incomplete or wrong, it should be corrected. If the printed name is incomplete or wrong, it should be corrected. If the address is incomplete or wrong, it should be corrected. If the county or town or city is incomplete or wrong, it should be corrected. Keeping in mind that abbreviations are permissible, the rule of thumb is that there must be sufficient information to identify the date, signer and address.

Any of these corrections may be made by the signer, the Subscribing Witness or any other campaign worker.<sup>73</sup> A correction of the date must be initialed by the Subscribing Witness. On the other hand, corrections of other information on the signature line need not be initialed by anyone.<sup>74</sup> This may be inconsistent or without a basis in logic, but, nevertheless, is currently the law.

<sup>69</sup> N.Y. Elec. Law §6-134(5) (McKinney).

<sup>70</sup> As a general rule, an out-of-sequence date earlier than prior signatures will lead to an invalidation of the out-of-sequence signature and those that follow. However, if one out-of-sequence date is an obvious error, the court might simply strike only that one. *Kent v. Bass*, 54 N.Y.2d 776 (1981) (“in light of the fact that the designating petition was received by the Board of Elections on July 23, 1981 the ‘8-21-81’ date was an obvious error which should not have invalidated the two subsequent signatures”). See also *Molloy v. Scaringe*, 153 A.D.2d 78 (3d Dep’t. 1989) (dates on a sheet that were prior to petitioning period stricken; others were not).

<sup>71</sup> See Sumathi Reddy, “*The Lost Borough*,” Wall St. Journal, July 22, 2011 (“You could easily end up driving in circles in Maspeth [Queens]. Trying to get to 58th Road? You sure it’s not 58th Drive or 58th Avenue? Or perhaps it’s 58th Place? Maybe 58th Street?”); *Montesano v. New York City Housing Authority*, 47 A.D.3d 215 (1st Dep’t. 2007) (neighborhood of Marble Hill is in Manhattan, not the Bronx). An incomplete address may invalidate a signature. *Lane v. Meisser*, 24 A.D.2d 720 (2d Dep’t. 1965) (“the petition failed to state the full and correct post-office address of the alleged signer”). Abbreviations are permitted, however. See N.Y. Elec. Law §6-134(7) (McKinney). Even ditto marks have been allowed on occasion. See *Le Sawyer v. Board of Elections*, 207 Misc. 12 (Sup. Ct. Albany Co. 1954). Thus, even over fifty years ago, the courts sometimes demonstrated flexibility in validating signatures in the absence of fraud.

<sup>72</sup> *DeBerardinis v. Sunderland*, 277 A.D.2d 187 (2d Dep’t. 2000) (strict compliance of the requirement of insertion of date of signature); *Curley v. Zacek*, 9 Misc.3d 1120(A) (Sup. Ct. Saratoga Co.), *aff’d*, 22 A.D.3d 954 (3d Dep’t. 2005) (“The date is a matter of prescribed content, strict compliance is required, and its omission is not a technical violation that can be overlooked [citation omitted].”); *DiSanzo v. Addabbo*, 76 A.D.3d 655 (2d Dep’t. 2010).

<sup>73</sup> N.Y. Elec. Law §§6-134(7), 6-134(9) and 6-138(2) (McKinney).

<sup>74</sup> N.Y. Elec. Law §§6-134(6) and 6-138(2) (McKinney). Under the current law, then, the only “material” correction (or “alteration,” if you will) on the signature line is the date or the signature itself. Thus, a material change to the date or signature must be initialed by the Subscribing Witness. However, the courts will apparently relax this stricture when the correction is not “material” and it is contained



If the signature itself needs correction, the signer should do it and the modification should be initialed by the Subscribing Witness.<sup>75</sup>

#### **6. The Subscribing Witness Statement Must Be Fully and Accurately Completed**

For a designating petition, any *bona fide* resident of New York State who is registered to vote and an enrolled member of the political party eligible to vote in the primary election in which the candidate seeks to run may act as a Subscribing Witness. For a nominating petition, any *bona fide* resident of the state who is registered to vote and eligible to vote in the general or a special election in which the candidate seeks to run may act as a Subscribing Witness.

In addition, any Notary Public, irrespective of residence, registration or party enrollment, or, in certain venues in New York, a Commissioner of Deeds, may act as a Subscribing Witness. In such cases a notarial statement appears at the bottom of the petition sheet rather than a Subscribing Witness statement. Notaries are required to ask the signers to swear or affirm that they are actually the person whose name they sign. Although formal administration of an oath is not necessary, some verbal exchange attesting to the authenticity of the action is.<sup>76</sup>

After the Subscribing Witness has obtained the signatures<sup>77</sup> on a particular petition sheet, the Subscribing Witness Statement must be completed — and it must be done fully and accurately. Once this is done, the Subscribing Witness should total the signatures on the petition sheet. When adding up the signatures, it is presumed that the information the signer has provided to the Witness is accurate, and, therefore, all the signatures should be counted.

Sometimes a signature is obviously valid for one of the candidates but not for others. For example, if the Subscribing Witness is carrying a petition that includes a candidate for Governor of the State of New York and a candidate for the Assembly, some signatures on a page are likely to be valid for the candidate for Governor but not for the candidate for Assembly. In totaling the signatures on the page, all facially valid signatures, even if not valid for all candidates on the petition, should be counted when stating the “number of signatures” in the Subscribing Witness statement.

Only when a signature is obviously and unambiguously invalid for all the can-

in the Subscribing Witness statement. *See, e.g., Coleman v. Boone*, 230 A.D.2d 872 (2d Dep’t. 1996) (“The change of ‘6’ to ‘June’ on the date . . . was an inconsequential alteration [in the Subscribing Witness Statement] . . .”).

<sup>75</sup> *Quinlin v. Pierce*, 254 A.D.2d 690 (4th Dep’t. 1998) (“Here, a number of the sheets of the designating petition contain alterations to that portion of the statement of the subscribing witness setting forth the total number of signatures on the sheet, and those alterations are neither initialed nor explained by the subscribing witness. Thus, those sheets of the designating petition containing the alterations are invalid [citation omitted].”).

<sup>76</sup> *See* Joel Cohen and Danielle Alfonzo Walsman, “‘Can You Notarize This?’ Taking the Notary Job Seriously,” N.Y.L.J., July 18, 2008. *See also Nolin v. McNally*, 87 A.D.3d 804 (3d Dep’t. 2011) (strict compliance not required); *Bonner v. Negron*, 87 A.D.3d 737 (2d Dep’t. 2011) (no finding that the notarized signatures were not authentic or that notary did not witness the signatures); *Johannesen v. Flynn*, 76 A.D.3d 710 (2d Dep’t. 2010) (notaries may be compensated). *But see Harckham v. Burns*, 33 Misc.3d 317 (Sup. Ct. Westchester Co. 2011) (notary followed neither strict nor informal procedures; Opportunity to Ballot petition invalidated).

<sup>77</sup> The entire signature section need not be completed. If there are fifteen lines for signatures on a petition sheet, it is permissible to submit fewer than fifteen. The Subscribing Witness may choose to stop obtaining signatures on a particular page, for example, after eight signatures. In fact, there have been instances recently where insurgents have printed petitions with only one signature line, perceiving that the quantity of petition sheets would make it more difficult for challengers. The anecdotal evidence suggests that, while this tactic has obviously increased photocopying costs, challengers seem undeterred.

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didates on the petition sheet, such as a signer who is visiting from Colorado and mistakenly signs, should the Witness cross out the signature and not include it in the total.<sup>78</sup> Otherwise, all should be counted, even those whose identifying information might not be complete. After all, all signatures are presumed valid unless and until challenged and ruled off the ballot, and Subscribing Witnesses should not determine in advance whether an apparently incomplete address, for instance, might not be ruled acceptable after legal argument is made.

The total number of signatures on the sheet must then be written in the proper place on the Subscribing Witness Statement.<sup>79</sup> Accuracy as to the number of signatures is very important. If the number indicated in the Subscribing Witness Statement is wrong because it is higher than the actual number of signatures, assuming there is no fraud, only the actual number of signatures will be validated.<sup>80</sup> If the number indicated in the Subscribing Witness Statement is wrong because it is lower than the actual number of signatures, then the candidate will receive credit only for the lower number, and the excess number of signatures at the end of the petition sheet will not be counted.<sup>81</sup>

The Subscribing Witness Statement must be dated on the date the Subscribing Witness signs the sheet. This can be on the date when the last signer on the sheet signed — or any time thereafter. The Witness's signature, like those of every other signer, should replicate the signature on her voter registration form.

All the information required on the Subscribing Witness Statement may be filled in either by the Witness or anyone else.<sup>82</sup> However, all of the information must be filled in at the time or before the Witness signs her name.<sup>83</sup> The Witness's signature should be the last writing on the petition sheet (except for Witness Identification information immediately below the Subscribing Witness's signature).

If there are any corrections in the Subscribing Witness Statement, either before or after the Witness signs her name, these changes should be initialed by the Subscribing Witness.<sup>84</sup> Indeed, if there are changes anywhere on the petition sheet above the Subscribing Witness signature line after the Witness has signed, then those changes should be initialed by the Subscribing Witness (even if the change might not otherwise require an initialing).<sup>85</sup>

<sup>78</sup> I know of no case where a *de minimus* failure to do this has led to the disqualification of any signatures beyond the ineligible signer. Nevertheless, prudence dictates that multiple pages of obviously invalid signatures should not be counted lest a challenger claim fraudulent conduct.

<sup>79</sup> This information is material and necessary. N.Y. Elec. Law §§6-132 and 6-140 (McKinney). See *Magee v. Camp*, 253 A.D.2d 573 (3d Dep't. 1998) ("an essential element of the witness statement").

<sup>80</sup> *Ramos v. Lawson*, 298 A.D.2d 610 (2d Dep't. 2002). If overstatements occurred with frequency in the petition, there might be a different result.

<sup>81</sup> N.Y. Elec. Law §§6-134(11) and 6-140(2) (McKinney).

<sup>82</sup> N.Y. Elec. Law §§6-134(9) and 6-140(2) (McKinney).

<sup>83</sup> *Id.*

<sup>84</sup> *Magee v. Camp*, 253 A.D.2d 573 (3d Dep't. 1998) (material information that is changed must be initialed or explained).

<sup>85</sup> See *Jonas v. Velez*, 65 N.Y.2d 954 (1985), where the Court of Appeals opined on the subject: "Essential to the integrity of the petition process is the subscribing witness's statement authorized by Election Law §6-132 and particularly that portion of it which contains the total number of signatures on the petition sheet to which it is appended. We have, therefore, consistently held that alteration of the statement which is unexplained and uninitialed will result in the invalidation of the petition sheet (*Matter of Sheldon v. Sperber*, 45 NY2d 788; *Matter of Klemann v. Acito*, 45 NY2d 796, affg 64 AD2d 952; *Matter of Nobles v. Grant*, 41 NY2d 1048, affg 57 AD2d 600). The fact that the alterations here resulted in the manifestation of correct information, or that the numbers inserted were smaller, rather than larger, as in *Matter of Berger v. Acito* (64 AD2d 949, lv denied 45 NY2d 707), does not remedy the legal deficiency (see, *Matter of White v. McNab*, 40 NY2d 912, 913). It does not unduly burden the designating petition process to require that a subscribing witness whose statement has been changed initial the change and

## 7. Duplicate Signatures

A voter may sign for only one candidate running for a public office or party position.<sup>86</sup> If the voter has signed for a competitor, only the earlier signature

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explain the reason for it (see, *Matter of Roman v Sharpe*, 42 NY2d 986, 987; cf. *Matter of Grancio v Coveney*, 60 NY2d 608, 611)."

However, several years after the Court of Appeals ruling in *Jonas*, the state Legislature enacted the Election Law Reform Act of 1992, which liberalized the petition process, and added §6-134(10) of the Election Law, which allows imperfectly completed petitions to pass muster. See *Pulver v. Allen*, 242 A.D.2d 398 (3d Dep't. 1997):

"Election Law §6-134(9) (as renum. by L.1996, ch. 709), which was added as part of the Election Reform Act of 1992 (see, L.1992, ch. 79, §14), provides that "A person other than the subscribing witness may insert the information required by the subscribing witness statement, provided that all subscribing witness information required above the subscribing witness' signature is inserted either before such subscribing witness signs the statement or in the presence of such subscribing witness. . . ." While the addition of information to the witness statement subsequent to the signature of the subscribing witness by another in the witness's absence has resulted in the invalidation of petition sheets in cases preceding the Election Reform Act of 1992 (see, *Matter of Jonas v. Velez*, 65 N.Y.2d 954, 493 N.Y.S.2d 1019, 483 N.E.2d 1151; *Matter of Sheldon v. Sperber*, 45 N.Y.2d 788, 409 N.Y.S.2d 1, 381 N.E.2d 159), the recent enactment of Election Law §6-134(10) (L.1996, ch. 709, §3) now permits the courts to "liberally construe" all the provisions of §6-134, including subdivision 9, "not inconsistent with substantial compliance thereto and the prevention of fraud". Here, the parties stipulated that the inserted residence addresses were correct and that if the line "I reside at" followed by a blank line had appeared in the petitions, the witnesses would have entered the correct residence addresses. In our view, the parties' stipulation to these unique circumstances removed any possibility of fraud and brought the alterations of the witness statements into substantial compliance. Accordingly, the failure to strictly comply with the statute in this case is not a fatal defect.

Even if the alterations are deemed a nullity, the omission of the residence addresses from the "witness statements" does not, under the circumstances of this case, require invalidation of the petitions. . . . Since all of the substantive requirements of witness eligibility have been satisfied, we view the omission of the specific street address, in this instance, as an inconsequential violation of the statute. Where such a violation of the Election Law occurs and there is no implication of fraud, resort to strict construction should be avoided if it would lead to injustice in the electoral process or the public perception of it [citation omitted]."

[Emphasis in original.] See also *Curley v. Zacek*, 22 A.D.2d 954 (3d Dep't. 2005):

"[T]he mere fact that the unidentified individual who thereafter completed the witness identification information . . . failed to appreciate that the hamlet of Gansevoort lies within the Town of Wilton is an inconsequential error that in no way warrants invalidation of the signatures witnessed by Thomas. Indeed, as noted previously, the Board's own records reveal that Thomas resides in Gansevoort. . . . [W]here, as here, the narrow violation at issue does not give rise to the possibility or inference of fraud, "resort to strict construction should be avoided if it would lead to injustice in the electoral process or the public perception of it" (*Matter of Pulver v. Allen* [citation omitted]. . . ."

See also *Pisani v. Kane*, 87 A.D.3d 650 (2d Dep't. 2011) (Subscribing Witness must put her correct address); but see *McManus v. Relin*, 286 A.D.2d 855 (4th Dep't. 2001) (Subscribing Witness in the process of moving put incorrect address on Statement, but "given the fact that both addresses are within the correct political subdivision and in the absence of any indication of fraud, we conclude that the court erred in invalidating the designating petitions that failed to comply with Election Law §6-132(2)."

Inasmuch as the law now permits Subscribing Witnesses to live anywhere in the state, it is logical to infer that any incorrect address, absence fraud, would be tolerated.). *Hurst v. Board of Elections*, 265 A.D.2d 590 (3d Dep't. 1999) (omission of town or city inconsequential where Subscribing Witness satisfied all of the substantive requirements of witness eligibility, and information was redundant); *Frascone v. Rockland County Board of Elections*, 87 A.D.3d 667 (2d Dep't. 2011) (failure by Subscribing Witness to identify his town not a fatal defect); *Kraham v. Rabbit*, 11 A.D.3d 808 (3d Dep't. 2004) (information was "improperly added...to certain witness statements after the subscribing witnesses had signed . . . [In the absence of] "fraudulent or deceptive conduct . . . we cannot say that Supreme Court erred in concluding that there had been substantial compliance with the Election Law

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counts.<sup>87</sup> If both signatures are on the same date, neither will count.<sup>88</sup> However, the voter may sign a petition upon which the competitor candidate appears for the office if the petition sheet contains candidates for other offices or positions for whom the voter has not yet signed. If she does so, the voter's signature on the second sheet, if challenged, would not count for the competitor, but would count for the candidates for the other offices or positions.

A Witness may circulate for more than one candidate for a particular office, but once she has signed for a candidate she cannot then witness signatures for a competitor. The rationale for this rule is that in order to circulate petitions for a candidate, a Subscribing Witness must be eligible to sign that petition. However, in that eligibility to vote for the public office or party position is no longer a requirement to be a Subscribing Witness, there is no longer a rationale that should prohibit a Subscribing Witness from carrying petitions for competing candidates, even if she has signed for one of them.<sup>89</sup>

### 8. *The Role of the Candidate*

The candidate is strongly advised to keep a healthy distance from her petitions. There is no law or regulation barring a candidate—or close relative—from acting as a Subscribing Witness,<sup>89a</sup> but it is not a good idea. Moreover, even when not acting as the Subscribing Witness, the candidate who accompanies the Witness should not be the person who asks the voter to sign her petition.

There are two reasons for this. First, if there is a challenge to the petitions and the candidate was involved in petitioning, she may be subpoenaed to testify in court. This will obviously waste the candidate's precious time.

Second, if there is an allegation of fraud and the candidate was involved in petitioning, any proof of improper or fraudulent petitioning may taint the candidate. If this occurs, then the candidate may be disqualified even if she otherwise has a sufficient number of signatures.<sup>90</sup>

The same caution applies to the candidate's spouse, partner, other close relatives, or campaign manager. If a court finds that any of these people are involved in improper or fraudulent petitioning, the court may infer that the candidate was involved as well and disqualify her.<sup>91</sup>

The candidate, of course, must make her own judgment as to whom she can rely upon for petitioning. As a practical matter, the candidate's family and the candidate may have to petition if they believe it is necessary to obtain a sufficient number of signatures. If this is the case, extreme caution is urged during the petition process. Furthermore, petitioning is an excellent way of campaigning. It provides the candidate with a terrific opportunity of meeting many voters, attracting volunteers and accumulating a list of favorable voters for primary day.

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(see Election Law §6-134[10]; *Matter of Pulver v. Allen* [citation omitted].’’).

Thus, errors or omissions in a Subscribing Witness Statement are no longer viewed as fatal to a sheet.

<sup>86</sup> N.Y. Elec. Law §§6-134(3) and 6-140(2) (McKinney).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> I know of no cases that have tested this proposition, and the courts appear to adhere to the anachronistic rule. See, e.g., *Henry v. Trotto*, 54 A.D.3d 424 (2d Dep't. 2008).

<sup>89a</sup> Indeed, a candidate may even act as a notary to obtain signatures for her own petitions. *Harte v. Kaplan*, 87 A.D.3d 813 (3d Dep't. 2011); *Nolin v. McNally*, 87 A.D.3d 804 (3d Dep't. 2011).

<sup>90</sup> See fn. 65-66, *supra*.

<sup>91</sup> See, e.g., *Adams v. Klapper*, 182 Misc.2d 151 (Sup. Ct. Kings Co.), *aff'd*, 264 A.D.2d 696 (2d Dep't. 1999).

Therefore, a balance must be struck in deciding what role in the petitioning process, if any, should be undertaken by the candidate, her family and campaign staff. In addition to the risks already stated, improper or fraudulent petition practices might constitute crimes. It is not common, but courts have sent election cases to the District Attorney for prosecution, and DAs have prosecuted candidates and Subscribing Witnesses for various activities, including fraudulent petitioning practices.<sup>92</sup>

### 9. The Cover Sheet

If a candidate has collected more than ten petition sheets, they must be “bound” when filed.<sup>93</sup> This requirement can be satisfied in any way as long as the petition sheets are held together in some fashion.<sup>94</sup> A bound set of petition sheets is a “volume.” There are no rules with regard to how many sheets may be contained in a volume, and there is no limit as to how many (or how few) volumes a petition may contain.

Once a volume is bound, the sheets in each volume must be numbered sequentially.<sup>95</sup> The pagination can be performed by anyone, and corrections in the numbering do not need initials.

After all the volumes are bound and paginated, it is advisable for a candidate to photocopy her own petitions. However, this should be done after binding and numbering to eliminate confusion and mistakes that may occur when photocopying. A “cover” sheet must then be prepared. In New York City, the cover sheet is not

<sup>92</sup> Historically, the courts have been reluctant to impose sanctions for improper, illegal or frivolous conduct in an election case beyond the sanction, of course, of disqualifying a candidate for actual or imputed fraud. See, e.g., *Gavilanes v. Dilan*, 281 A.D.2d 546 (2d Dep’t. 2001) (sanctions imposed upon Subscribing Witnesses and attorney reversed by Appellate Division). But, as they say, “a word to the wise is sufficient.” In 1985, New York County District Attorney Robert Morgenthau prosecuted several Subscribing Witnesses supporting New York City Council candidate Pat Wagner for filing forged signatures. And Brooklyn District Attorney Charles Hynes famously prosecuted John O’Hara for filing a false instrument; he was convicted and lost his law license. *People v. O’Hara*, 96 N.Y.2d 378 (2001). (On October 6, 2009, O’Hara was re-admitted to the bar.) See also *In re Panepinto*, 290 A.D.2d 66 (4th Dep’t. 2001) (attorney admitted that he signed his name as Subscribing Witness to nominating petitions that were not signed in his presence and that contained fraudulent signatures in violation of N.Y. Elec. Law 17-122(7) (McKinney); misdemeanor resulted in finding by Disciplinary Committee that conduct was a serious crime within the meaning of Judiciary Law §90(4)(d) (McKinney); suspended from the practice of law for thirty days); *In re Denenberg*, 33 A.D.3d 198 (1st Dep’t. 2006) (although county legislator witnessed other circulators’ petitions as a result of carelessness, and had an otherwise unblemished record as an attorney, he was suspended from practice of law for six months). See also *Mosley and Figueroa v. Rosario*, 3 Misc.3d 1123(A) (Sup. Ct. Bronx Co. 2005) (insurgent candidate and attorney were sanctioned for false statements to the court regarding service of process). The Supreme Court in *Mosley* stated:

“[E]lectorate contests are not a street brawl, where anything goes. Rather, the principle is reaffirmed that any candidate, whether incumbent or challenger, whether backed by the Party apparatus or insurgent, must proceed fairly and abide by the rules.”

See also *Gilford v. Johnson*, Index No. 260444/09 (Sup. Ct. Bronx Co.) (August 14, 2009) (warns counsel of conduct “bordering on sharp practice”); Larry Fisher-Hertz, “Saint Angel Gets Jail Time for Fake Petitions,” Poughkeepsie Journal, March 31, 2006 (<http://www.poughkeepsiejournal.com/apps/pbcs.dll/article?AD=20060331/NEWS05/603310325/1009>)

<sup>93</sup> N.Y. Elec. Law §6-134(2) (McKinney); 9 NYCRR §6215.1(b).

<sup>94</sup> 9 NYCRR §§6215.1(c) and (d). Some candidates simply use clips; others resort to elaborate taping and even go so far as to choose the color of the tape to match the no-longer required color for their party’s designating petition. One candidate, New York City Comptroller Harrison J. Goldin, running for State Comptroller, actually used wooden cover sheets and secured his petitions with nails, obviously intending to make it extremely difficult for his opponent to challenge him!

<sup>95</sup> N.Y. Elec. Law §6-134(2) (McKinney); 9 NYCRR §6215.1(a). See *Philpotts v. The Board of Elections in the City of New York*, Index No. 700011/08 (Sup. Ct. Kings Co. 2008) (failure to paginate is fatal defect). But see *Collins v. Kelly*, 253 A.D.2d 571 (3d Dep’t. 1998) (Congresswoman permitted to submit paginated photocopies of petitions to cure unpaginated originals).

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affixed as a cover to the petition volumes;<sup>96</sup> it is actually a “*Candidate Summary Sheet*,” which must be filed with the Board of Elections. When filing with the State Board of Elections, cover sheets are attached to each volume.<sup>97</sup>

If, after the candidate files her petitions and Candidate Summary Sheet with the Board of Elections, the Board finds that there is an error on the cover sheet or with the binding requirements of the petition, it will notify the candidate (or her contact person) by sending a Notice to Cure, enabling her to cure the error by filing an Amended Cover Sheet. The Board does not review the validity or number of signatures or other substantive information provided within the petitions during this review. The Notice to Cure is of limited scope, and, therefore, the ability to cure errors is also limited.<sup>98</sup>

Within two days of its receipt of the petition, the Board will determine whether to send a Notice to Cure.<sup>99</sup> The candidate then has three business days from the date of the Board’s Notice to correct the alleged violation and file her Amended Cover Sheet.

The candidate’s Amended Cover Sheet must cure the errors. If there is an error on the Amended Cover Sheet, there is no rule that allows the candidate to submit another correction. The Board of Elections may disqualify a candidacy if the error is material, and the candidate will have to ask a court for relief.<sup>100</sup> Obviously,

<sup>96</sup> When candidates file petitions without identification numbers, they must attach to each volume a cover sheet that states: “This is Volume \_\_\_\_\_ of a total of \_\_\_\_\_ Volumes in this petition.” 9 NYCRR §6215.1(e)(3). If the petition is being filed with a Board that does distribute ID numbers (such as in New York City), then only the Candidate Summary Sheet is required; the ID number can be affixed to the Volume directly without any cover sheet attached to the petition volume. The candidate is strongly encouraged to consult with the Board of Elections to which her petitions are being submitted to ascertain its rules pertaining to ID numbers and cover sheets.

Furthermore, in order to show that the candidate has satisfied the “distribution requirement” of a designating petition for statewide office (N.Y. Elec. Law §6-136(1)) (McKinney), requiring 15,000 signatures for a statewide office, including at least 100 or 5% of the enrollees, whichever is less, from one-half of the state congressional districts; or a nominating petition for statewide office (§6-142(1), same distributional requirement of eligible registrants), the Board of Elections requires a separate “schedule” detailing the volume and page numbers of all the signatures from the various congressional districts. 9 NYCRR §6215.2(c) and (d).

<sup>97</sup> I refer to it as a *Candidate Summary sheet*, because *each* candidate requires her own summary sheet, notwithstanding how many candidates’ names are on the petition sheets in the various volumes.

<sup>98</sup> See, e.g., *Giachetti v. Orsini*, 286 A.D.2d 457 (2d Dep’t. 2001) (failure of cover sheet to indicate which pages are applicable to the candidate is a violation of 9 NYCRR §6215.4(b), but an “overly technical interpretation” that can be cured by amending the cover sheet).

<sup>99</sup> N.Y. Elec. Law §6-134(2) (McKinney); 9 NYCRR §6215.7. Candidates who fail to respond to a Notice to Cure by filing an amended cover sheet may, after three days, be deemed off the ballot by the Board without further notice. *Castro v. New York City Bd. of Elections*, 54 A.D.3d 280 (1st Dep’t. 2008) (relying upon Decision of Justice Seewald, Index No. 260293/08 (Sup. Ct. Bronx Co. 2008)). The Court held that the three-day period within which to commence a Validation Petition to restore one’s candidacy to the ballot began at the expiration of said cure period in that the Board was not required to take any further action. *But see Schultz v. Niagara County Bd. of Elections*, 76 A.D.3d 798 (4th Dep’t 2010) (the three day cure period begins to run when candidate, or her authorized agent, receives notice of the Board’s determination). In any event, in 2011, the Appellate Division, Second Department, reaffirmed the principle that the law relating to petitions should be “liberally construed,” and refused to invalidate a designating petition whose cover sheet was in substantial compliance with legal requirements. *Krance v. Chiaramonte*, 87 A.D.3d 669 (2d Dep’t. 2011).

<sup>100</sup> Courts have permitted even defective Amended Cover Sheets to pass muster, but of course this means that the candidate must fight her way back onto the ballot. See *Pearce v. New York City Board of Elections*, 10 A.D.3d 461 (2d Dep’t. 2004); *Siems v. Lite*, 307 A.D.2d 1016 (2d Dep’t. 2003). In *Siems*, the Appellate Division said:

“The Supreme Court erred in granting that branch of the petition which was to invalidate the designating petitions on the grounds of noncompliance with the rules of the New York State Board of Elections and the Suffolk County Board of Elections regarding the utilization of petition volume identification numbers (see 9 NYCRR 6215.3[f]). There is no justification for invalidating the designating petitions under those rules, which are to be liberally construed (see 9

extreme care should be taken by the candidates when submitting the Cover Sheet and/or the Amended Cover Sheet.<sup>101</sup>

### 10. Filing an Acceptance

After the candidate files her petitions, she will receive a notice from the Board of Elections advising as to the deadline for Acceptances<sup>102</sup> or Declinations.<sup>103</sup> If a

NYCRR 6215.6[a]), where there has been substantial compliance and there is no evidence of confusion either by potential voters or the Board of Elections (see *Matter of Most v. Walker*, 297 A.D.2d 356, 746 N.Y.S.2d 410)."

See also *Magelaner v. Park*, 32 A.D.3d 487 (2d Dep't. 2006) ("amended cover sheet was in substantial compliance with the Election Law and the rules promulgated by the Board of Elections . . . and presented no danger of fraud or confusion either to the Board or to the voters."); *Schwartz v. The Board of Elections in the City of New York*, Index No. 110076/08 (Sup. Ct. N.Y. Co. 2008) (same) (citing to GOLDFEDER'S MODERN ELECTION LAW).

The Court will also allow a candidate to be restored to the ballot when hypertechnical non-compliance with Board Rules regarding ID Numbers occurred as a result of errors by Board personnel, see *Lawton v. The NYC Board of Elections*, Index No. 306398/08 (Sup. Ct. Bronx Co. 2008); or even if the candidate erred on her own, see *Ulanga v. Board of Elections*, Index No. 260274/08 (Sup. Ct. Bronx Co. 2008) (ID Number on cover sheet rather than on volume deemed inconsequential).

<sup>101</sup> Needless to say, candidates and practitioners should aim to submit correct Summary (Cover) Sheets, or, failing that, correct Amended Cover Sheets. If the Board of Elections scrutinizes these submissions in a manner that is overly technical, absent any fraud or other wrongdoing, a court will probably overturn a Board's invalidation. The current state of the law was nicely summarized by the attorneys for respondent in *Most v. Walker*, 297 A.D.2d 356 (2d Dep't. 2002):

"At one time, Section 6-134 of the Election Law contained elaborate statutory requirements for cover sheets, including a requirement for a precise count of the number of signatures contained in the petition. . . . In both 1992 and 1996, the Legislature determined to undo the draconian effect that the Election Law, and its strict judicial constructions, had had in unfairly eliminating valid candidacies on the basis of hypertechnical defects.

As Governor Pataki stated in his memorandum of approval of the 1996 reform legislation:

"The State's election laws should not be used as a weapon by lawyers and political partisans to block legitimate candidates from securing a place on the ballot. By eliminating a myriad of technicalities that have long been used to invalidate petitions and signatures for reasons having nothing to do with whether a signatory of a petition was qualified to do so, this legislation will help ensure that all our citizens have a fair opportunity to obtain access to the ballot. . . . By making the process of running for elective office easier and fairer, we honor that tenet and return government to the people."

Governor's Mem. of Approval, 1996 McKinney's Session Laws of N.Y., at 1939. The 1996 legislation completely removed any requirement for a cover sheet from the statute. . . . The current version of §6-134 of the Election Law completely repeals all statutory cover sheet requirements. The requirement of a cover sheet appears in the Rules of the State Board of Elections (See, e.g., Section 6215.2, 6215.4, 6215.8). . . . Since the statute does not require a cover sheet at all, it can hardly be seriously maintained that strict construction of cover sheet rules is required; indeed, the Election Law makes it clear that a liberal, not a strict, construction is required."

2002 WL 32720869 (Appellate Brief).

In the 2009 municipal elections, two prominent candidates were removed from the ballot for errors on their Amended Cover Sheets—Bill deBlasio, candidate for Public Advocate, and Alan Gerson, candidate for re-election to the City Council. In deBlasio's case, the Board of Elections was convinced to reverse itself. Gerson, on the other hand, had to go to court to be reinstated. *Gerson v. Board of Elections*, Index No. 110759/09 (Sup. Ct. N.Y. Co.) (August 12, 2009) (Decision rendered in Court).

<sup>102</sup> N.Y. Elec. Law §6-146 (McKinney). The courts are generally unforgiving concerning this requirement. See, e.g., *Carnahan v. Ward*, 44 A.D.3d 1249 (4th Dep't. 2007); *Hockley v. Westchester County Board of Elections*, 66 A.D.3d 898 (2d Dep't. 2009); *Walter v. Milner*, Index No. 8557/08 (Sup. Ct. Albany Co. 2008); *Dixon v. Clyne*, 87 A.D.3d 812 (3d Dep't. 2011) (not unconstitutional). Sometimes a court might bend the technicalities a bit. *Finn v. Sherwood*, 87 A.D.3d 1044 (2d Dep't. 2011) (Acceptance referred to general election rather than primary; error inconsequential).

<sup>103</sup> If a candidate on a designating or nominating petition decides that she wishes to drop out of the race, have her name removed from the ballot, and/or substitute another candidate in her place, she must file a Declination. Once the candidate declines, her Committee to Fill Vacancies may substitute another person as the candidate, provided, of course, that the substituted candidate is eligible to serve in the public office or party position. *Walter v. Milner*, Index No. 8557/08 (Sup. Ct. Albany Co. 2008). And if a candidate who has been designated through a Wilson-Pakula procedure wishes to decline so that

## GETTING ON THE BALLOT: THE PETITIONING PROCESS

candidate is running in a primary of her own political party, no Acceptance is required to be filed. If, on the other hand, the candidate is running as a candidate of another party, as a candidate of an independent body, or as a candidate designated by party rules in a special election, she must file an Acceptance. And, of course, it must be timely filed.<sup>104</sup>

Unless and until there are any challenges to the candidate's petitions, she is on the ballot, and is not required to take any further steps. It is time to campaign. However, in that New York elections are very often decided in the courts rather than at the voting booth, I shall now turn my attention to the intricacies of the challenge process.

---

another candidate may be substituted for her, there must be a proper Declination — otherwise no vacancy exists. *Kopel v. Nassau County Board of Elections*, 32 Misc.3d 1233(A) (Sup. Ct. Nassau Co. 2011).

<sup>104</sup> See, e.g., *Davis v. Walsh*, 21 Misc.3d 567 (Sup. Ct. Albany Co. 2008).





**APPENDIX TO CHAPTER 3**  
**BOARD OF ELECTIONS FORMS**

# GOLDFEDER'S MODERN ELECTION LAW—BALLOT ACCESS IN NEW YORK

## Designating Petition Sec. 6-132, ELECTION LAW

I, the undersigned, do hereby state that I am a duly enrolled voter of the \_\_\_\_\_ Party and entitled to vote at the next primary election of such party, to be held on \_\_\_\_\_, 20\_\_\_\_; that my place of residence is truly stated opposite my signature hereto, and I do hereby designate the following named person (or persons) as a candidate (or candidates) for the nomination of such party for public office or for election to a party position of such party.

| Name(s) of Candidate(s) | Public Office or Party Position | Place of Residence (also Post Office address if not identical) |
|-------------------------|---------------------------------|----------------------------------------------------------------|
|                         |                                 |                                                                |

I do hereby appoint (here insert the names and addresses of at least three persons, all of whom shall be enrolled voters of said party),

|  |  |  |
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as a committee to fill vacancies in accordance with the provisions of the election law.

IN WITNESS WHEREOF, I have hereunto set my hand, the day and year placed opposite my signature.

| Date                      | Name of Signer (signature required)<br>(printed name may be added) | Residence | Enter Town or City<br>Except in NYC enter County |
|---------------------------|--------------------------------------------------------------------|-----------|--------------------------------------------------|
| 1. _____<br>Printed Name  | _____                                                              | _____     | _____                                            |
| 2. _____<br>Printed Name  | _____                                                              | _____     | _____                                            |
| 3. _____<br>Printed Name  | _____                                                              | _____     | _____                                            |
| 4. _____<br>Printed Name  | _____                                                              | _____     | _____                                            |
| 5. _____<br>Printed Name  | _____                                                              | _____     | _____                                            |
| 6. _____<br>Printed Name  | _____                                                              | _____     | _____                                            |
| 7. _____<br>Printed Name  | _____                                                              | _____     | _____                                            |
| 8. _____<br>Printed Name  | _____                                                              | _____     | _____                                            |
| 9. _____<br>Printed Name  | _____                                                              | _____     | _____                                            |
| 10. _____<br>Printed Name | _____                                                              | _____     | _____                                            |

(You may use fewer or more signature lines - this is only to show format.)

### Complete ONE of the following

#### 1) STATEMENT OF WITNESS

I (name of witness) \_\_\_\_\_ state: I am a duly qualified voter of the State of New York and am an enrolled voter of the \_\_\_\_\_ Party.

I now reside at (residence address) \_\_\_\_\_.

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 or herself 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 \_\_\_\_\_ Signature of Witness \_\_\_\_\_

**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 to be valid.

Town or City \_\_\_\_\_ County \_\_\_\_\_

#### 2) NOTARY PUBLIC OR COMMISSIONER OF DEEDS

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 or herself, said that the foregoing statement made and subscribed by him or her was true.

Date \_\_\_\_\_ Signature and Official Title of Officer Administering Oath \_\_\_\_\_

# BOARD OF ELECTION FORMS

## Opportunity to Ballot Petition Sec. 6-132 and 6-166, ELECTION LAW

I, the undersigned, do hereby state that I am a duly enrolled voter of the \_\_\_\_\_ Party and entitled to vote at the next primary election of such party, that my place of residence is truly stated opposite my signature hereto, and I do hereby request an opportunity to write in the name of an undesignated candidate or candidates for nomination to the public office or offices or for election to the party position or positions, in the political unit or units of representation hereinafter set forth, of such party to be voted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Public Office or Party Position

Political Unit or Units of Representation

|  |
|--|
|  |
|--|

I do hereby appoint (here insert the names and addresses of at least three persons, all of whom shall be enrolled voters of said party).

|  |
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|  |
|--|

as a committee to receive notices to fill vacancies in accordance with the provisions of the election law.

IN WITNESS WHEREOF, I have hereunto set my hand, the day and year placed opposite my signature.

| Date | Name of Signer (signature required)<br>(printed name may be added)                                                                | Residence                                                                       | Enter Town or City<br>Except in NYC enter County                                |
|------|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 1.   | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="font-size: 0.8em;">Printed Name</div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> |
| 2.   | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="font-size: 0.8em;">Printed Name</div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> |
| 3.   | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="font-size: 0.8em;">Printed Name</div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> |
| 4.   | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="font-size: 0.8em;">Printed Name</div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> |
| 5.   | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="font-size: 0.8em;">Printed Name</div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> |
| 6.   | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="font-size: 0.8em;">Printed Name</div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> |
| 7.   | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="font-size: 0.8em;">Printed Name</div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> |
| 8.   | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="font-size: 0.8em;">Printed Name</div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> |
| 9.   | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="font-size: 0.8em;">Printed Name</div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> |
| 10.  | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="font-size: 0.8em;">Printed Name</div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> | <div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> |

(You may use fewer or more signature lines - this is only to show format.)

### Complete ONE of the following

#### 1) STATEMENT OF WITNESS

I (name of witness) \_\_\_\_\_ state: I am a duly qualified voter of the State of New York and am an enrolled voter of the \_\_\_\_\_ Party.

I now reside at (residence address) \_\_\_\_\_.

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 or herself 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 Signature of Witness

**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 to be valid.

Town or City \_\_\_\_\_ County \_\_\_\_\_

#### 2) NOTARY PUBLIC OR COMMISSIONER OF DEEDS

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 or herself, said that the foregoing statement made and subscribed by him or her was true.

\_\_\_\_\_  
Date Signature and Official Title of Officer Administering Oath

**Independent Nominating Petition** Sec. 6-140, ELECTION LAW

I, the undersigned, do hereby state that I am 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 that I do hereby nominate the following named person (or persons) as a candidate (or candidates) for election to public office (or public offices) to be voted for at the election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and that I select the name (fill in name) \_\_\_\_\_ as the name of the independent body making the nomination (or nominations) and (fill in emblem) \_\_\_\_\_ as the emblem of such body.

Name(s) of Candidate(s) \_\_\_\_\_ Public Office or Party Position \_\_\_\_\_ Place of Residence (also Post Office address if not identical) \_\_\_\_\_

\_\_\_\_\_

I do hereby appoint (here insert the names and addresses of at least three persons, all of whom shall be enrolled voters of such political unit),

\_\_\_\_\_

as a committee to fill vacancies in accordance with the provisions of the election law.

IN WITNESS WHEREOF, I have hereunto set my hand, the day and year placed opposite my signature.

| Date                    | Name of Signer (signature required)<br>(printed name may be added) | Residence | Enter Town or City<br>(Except in NYC enter County) |
|-------------------------|--------------------------------------------------------------------|-----------|----------------------------------------------------|
| 1. / /<br>Printed Name  | _____                                                              | _____     | _____                                              |
| 2. / /<br>Printed Name  | _____                                                              | _____     | _____                                              |
| 3. / /<br>Printed Name  | _____                                                              | _____     | _____                                              |
| 4. / /<br>Printed Name  | _____                                                              | _____     | _____                                              |
| 5. / /<br>Printed Name  | _____                                                              | _____     | _____                                              |
| 6. / /<br>Printed Name  | _____                                                              | _____     | _____                                              |
| 7. / /<br>Printed Name  | _____                                                              | _____     | _____                                              |
| 8. / /<br>Printed Name  | _____                                                              | _____     | _____                                              |
| 9. / /<br>Printed Name  | _____                                                              | _____     | _____                                              |
| 10. / /<br>Printed Name | _____                                                              | _____     | _____                                              |

(You may use fewer or more signature lines - this is only to show format.)

**Complete ONE of the following****1) STATEMENT OF WITNESS**

I (name of witness) \_\_\_\_\_ state: I am a duly qualified voter of the State of New York and am also duly qualified to sign the petition.

I now reside at (residence address) \_\_\_\_\_.

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 or herself 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 \_\_\_\_\_ Signature of Witness \_\_\_\_\_

**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 to be valid.

Town or City \_\_\_\_\_ County \_\_\_\_\_

**2) NOTARY PUBLIC OR COMMISSIONER OF DEEDS**

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 or herself, said that the foregoing statement made and subscribed by him or her was true.

Date \_\_\_\_\_ Signature and Official Title of Officer Administering Oath \_\_\_\_\_

BOARD OF ELECTION FORMS

SAMPLE COVER SHEET

**Designating and Independent Petitions  
Filed In New York City  
and Counties which Utilize Petition Identification Numbering Systems**

*[ Place Name of Party or Independent Body Here ]*

| Name of Candidate | Public Office or Party Position | Residence Address<br>(Also mailing address if different) |
|-------------------|---------------------------------|----------------------------------------------------------|
|-------------------|---------------------------------|----------------------------------------------------------|

|             |  |  |
|-------------|--|--|
| <div></div> |  |  |
|-------------|--|--|

Total Number of Volumes in Petition ..... \_\_\_\_\_

Identification Numbers ..... \_\_\_\_\_

The petition contains the number, or in excess of the number, of valid signatures required by the Election Law.

Contact Person to Correct Deficiencies:

Name: \_\_\_\_\_  
(please print)

Residence  
Address: \_\_\_\_\_  
\_\_\_\_\_  
(also mailing address if different)

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
(Include if notice by fax desired)

I hereby authorize that notice of any determination made by the Board of Elections be transmitted to the person named above:

\_\_\_\_\_  
Candidate or Agent

SAMPLE PREPARED BY STATE BOARD OF ELECTIONS

GOLDFEDER'S MODERN ELECTION LAW—BALLOT ACCESS IN NEW YORK

**SAMPLE AMENDED COVER SHEET**

Designating and Independent Petitions Filed in New York City and Counties which Utilize Petition Identification Numbering Systems

*[ Place Name of Party or Independent Body Here]*

Name of Candidate      Public Office or Party Position      Residence Address  
(Also mailing address if different)

Total Number of Volumes in Petition .....

Identification Numbers .....

The petition contains the number, or in excess of the number, of valid signatures required by the Election Law.

Contact Person to Correct Deficiencies:

Name: \_\_\_\_\_  
(please print)

Residence Address: \_\_\_\_\_

(also mailing address if different)

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

I hereby authorize that notice of any determination made by the Board of Elections be transmitted to the person named above:

\_\_\_\_\_  
Candidate or Agent

"This is to certify that I am authorized to file this amended cover sheet."

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**INSTRUCTIONS:** Clearly identify the original cover sheet being amended or attach a copy of the original cover sheet being amended.

BOARD OF ELECTION FORMS

**CERTIFICATE OF ACCEPTANCE**  
(Section 6-146, Election Law)  
\*\*\*\*\*

I, \_\_\_\_\_, residing at \_\_\_\_\_  
(Candidate's Name)

\_\_\_\_\_  
(Address)

having been designated/nominated by the \_\_\_\_\_ Party,  
(Name of Party)

as a candidate for the office of \_\_\_\_\_,  
(Title of Office and Political Subdivision)

\_\_\_\_\_ district, do hereby ACCEPT such designation/nomination  
(District Number if any)

and consent to be such candidate of such party at a \_\_\_\_\_  
(Special/Primary/General)

election to be held on \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Candidate)

\*\*\*\*\*

State of New York :  
County of \_\_\_\_\_ : ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally  
appeared \_\_\_\_\_, to me known and known to me to be  
the individual described therein, and who executed the foregoing instrument, and  
acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public

(SAMPLE PREPARED BY STATE BOARD OF ELECTIONS)



|                                                                                                                                                                                                                                                                    |                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| <p style="text-align: center;"><b>CERTIFICATE OF DECLINATION</b><br/>(Section 6-146, Election Law)<br/>*****</p>                                                                                                                                                   |                                           |
| <p>I, _____, residing at<br/>(Candidate's Name)</p>                                                                                                                                                                                                                |                                           |
| <p>_____<br/>(Address)</p>                                                                                                                                                                                                                                         |                                           |
| <p>having been designated/nominated by the _____ Party,<br/>(Name of Party)</p>                                                                                                                                                                                    |                                           |
| <p>as a candidate for the office of _____,<br/>(Title of Office and Political Subdivision)</p>                                                                                                                                                                     |                                           |
| <p>_____ district, at a _____ election to be<br/>(District Number if any) (Special/Primary/General)</p>                                                                                                                                                            |                                           |
| <p>to be held on _____, 20 _____, do hereby DECLINE such<br/>(Date of Election)</p>                                                                                                                                                                                |                                           |
| <p>designation/nomination.</p>                                                                                                                                                                                                                                     |                                           |
| <p>_____<br/>(Date)</p>                                                                                                                                                                                                                                            | <p>_____<br/>(Signature of Candidate)</p> |
| <p style="text-align: center;">*****</p>                                                                                                                                                                                                                           |                                           |
| <p>State of New York :<br/>County of _____ : ss:</p>                                                                                                                                                                                                               |                                           |
| <p>On this _____ day of _____, 20 _____, before me personally<br/>appeared _____, to me known and known to me to be<br/>the individual described therein, and who executed the foregoing instrument, and<br/>acknowledged to me that he/she executed the same.</p> |                                           |
| <p style="text-align: right;">_____<br/>Notary Public</p>                                                                                                                                                                                                          |                                           |
| <p style="text-align: center;">(SAMPLE PREPARED BY STATE BOARD OF ELECTIONS)</p>                                                                                                                                                                                   |                                           |

BOARD OF ELECTION FORMS

| CERTIFICATE OF AUTHORIZATION                                                                                                                                           |                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| (Section 6-120, Election Law)                                                                                                                                          |                                            |
| We, _____ and _____                                                                                                                                                    |                                            |
| (Presiding Officer)                                                                                                                                                    | (Secretary)                                |
| Presiding Officer and Secretary of the meeting of the _____ Party                                                                                                      |                                            |
| of _____, DO HEREBY CERTIFY THAT: at a meeting of the                                                                                                                  |                                            |
| (Political Subdivision)                                                                                                                                                |                                            |
| _____ Committee of the _____, Party                                                                                                                                    |                                            |
| (Political Subdivision)                                                                                                                                                |                                            |
| held on the ____ day of _____, 20____, a quorum being present, said committee, by                                                                                      |                                            |
| majority vote of the members present, did consent and authorize the nomination/designation of                                                                          |                                            |
| (Name of Candidate)                                                                                                                                                    | _____residing at _____(Place of Residence) |
| _____ for the office of _____ as                                                                                                                                       |                                            |
| a candidate of the _____ Party for public office indicated, at the                                                                                                     |                                            |
| _____ Election to be held on _____.                                                                                                                                    |                                            |
| (Special/Primary/General)                                                                                                                                              | (Date of Election)                         |
| Said nomination/designation is authorized pursuant to the provisions of Section 6-120 of the New York State Election Law.                                              |                                            |
| IN WITNESS WHERE OF, we have set our hands this ____ day of _____, 20____.                                                                                             |                                            |
| _____                                                                                                                                                                  |                                            |
| Presiding Officer                                                                                                                                                      |                                            |
| _____                                                                                                                                                                  |                                            |
| Secretary                                                                                                                                                              |                                            |
| On this ____ day of _____, 20____ before me personally came                                                                                                            |                                            |
| _____ and _____                                                                                                                                                        |                                            |
| to me known and known to me to be the persons described in and who executed the foregoing instrument and he/she duly acknowledged to me that he/she executed the same. |                                            |
| _____                                                                                                                                                                  |                                            |
| (11/99)E:\files\forms\author                                                                                                                                           | Notary Public                              |

(Sample prepared by the State Board of Elections)

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>CERTIFICATE OF SUBSTITUTION BY COMMITTEE TO FILL VACANCIES AFTER<br/>DECLINATION, DEATH OR DISQUALIFICATION</b><br><small>(Section 6-148, Election Law)</small>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
| <p><b>WHEREAS</b>, there exists a vacancy in the designation/nomination for the office of _____<br/> <small>(title of office and political subdivision)</small></p> <p>in the _____ district by the _____ Party caused by the<br/> <small>(district number, if any)</small> <small>(name of party)</small></p> <p>declination/death/disqualification of _____<br/> <small>(name of original candidate)</small></p> <p><b>THEREFORE, WE</b>, the undersigned, constituting a majority of the duly authorized Committee to Fill Vacancies, do hereby certify that we have designated/nominated the following person to fill the above mentioned vacancy:</p> <p style="margin-left: 40px;">Name of new candidate: _____</p> <p style="margin-left: 40px;">Place of residence: _____</p> <p style="margin-left: 40px;">_____</p> <p>DATED: _____</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>_____<br/>Signature of vacancy committee member</p> <p>_____<br/>Signature of vacancy committee member</p> </div> <div style="width: 45%;"> <p>_____<br/>Signature of vacancy committee member</p> <p>_____<br/>Signature of vacancy committee member</p> </div> </div> |  |
| <p style="text-align: center;"><b>AFFIDAVIT</b></p> <p>We, the undersigned, hereby affirm that we constituted a majority of the vacancy committee referred to in the above certificate and that the statements in such certificate are true:</p> <p>_____</p> <p>_____</p> <p>Sworn to before me this _____ day of _____, 20____</p> <p style="text-align: center;">_____<br/>Notary Public</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
| <p style="text-align: center;"><b>CONSENT BY SUBSTITUTED CANDIDATE</b></p> <p>I, _____ hereby accept the above designation/nomination of the<br/> <small>(name of substituted candidate)</small></p> <p>_____ Party, for the office of _____,<br/> <small>(name of party)</small> <small>(title of office &amp; political subdivision)</small> <small>(district #, if any)</small></p> <p style="text-align: right; margin-right: 100px;">_____<br/>Signature of Candidate</p> <p>On this _____ day of _____, 20____, before me personally appeared _____<br/> to me known and known to me to be the individual described in, and who executed the foregoing instrument, and acknowledge to me that he/she executed the same.</p> <p style="text-align: center;">_____<br/>Notary Public</p>                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |

SAMPLE PREPARED BY STATE BOARD OF ELECTIONS

BOARD OF ELECTION FORMS

| CERTIFICATE OF SUBSTITUTION BY PARTY COMMITTEE AFTER DECLINATION, DEATH OR DISQUALIFICATION<br>(Section 6-148, Election Law)                                                                                                                    |                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| WHEREAS, there exists a vacancy in the nomination for the office of _____<br>(title of office and political subdivision)                                                                                                                        |                              |
| in the _____ district by the _____<br>(district number if any) (name of party)                                                                                                                                                                  | Party caused by the          |
| declination/death/disqualification of _____<br>(name of original candidate)                                                                                                                                                                     |                              |
| THEREFORE, WE, the undersigned, Presiding Officer and Secretary at a meeting at which there was a quorum of<br>the _____ Party committee members last elected in the _____ (or members of such other<br>(name of party) (political subdivision) |                              |
| committee as the rules of the party may provide), do hereby certify that the following named individual was nominated to fill the above<br>mentioned vacancy by a majority of the committee members present at said meeting:                    |                              |
| Name of new candidate: _____                                                                                                                                                                                                                    |                              |
| Place of residence: _____                                                                                                                                                                                                                       | DATE: _____                  |
| Signature of Presiding Officer _____                                                                                                                                                                                                            | Signature of Secretary _____ |
| AFFIDAVIT                                                                                                                                                                                                                                       |                              |
| We, the undersigned, hereby affirm that we were the Presiding Officer and Secretary at the committee meeting referred to in<br>the above certificate and that the statements in such certificate are true:                                      |                              |
| Presiding Officer _____                                                                                                                                                                                                                         | Secretary _____              |
| Sworn to before me this _____<br>day of _____, 20____                                                                                                                                                                                           | Notary Public _____          |
| CONSENT BY SUBSTITUTED CANDIDATE                                                                                                                                                                                                                |                              |
| I, _____ hereby accept the above nomination of the<br>(Name of Substituted Candidate)                                                                                                                                                           |                              |
| _____ Party, for the office of _____<br>(Name of Party) (Title of Office & Political Subdivision)                                                                                                                                               | _____<br>(district # if any) |
| Signature of Candidate _____                                                                                                                                                                                                                    |                              |
| On this _____ day of _____, 20____, before me personally appeared _____<br>to me known and known to me to be the individual described in, and who executed the foregoing instrument,<br>and acknowledge to me that he/she executed the same.    |                              |
| Notary Public _____                                                                                                                                                                                                                             |                              |
| [\\files\forms\vacancy2.sub(11/99)]<br>(Sample prepared by State Board of Elections)                                                                                                                                                            |                              |

**GENERAL OBJECTION**

TO: The Board of Elections in the City of New York

OBJECTOR:      Name: \_\_\_\_\_  
                     Residence Address: \_\_\_\_\_  
                                                 \_\_\_\_\_

OBJECTOR'S CONTACT PERSON:  
Note: The Objector may name himself or herself as the contact person

                     Name: \_\_\_\_\_  
                     Mailing Address: \_\_\_\_\_  
                                                 (may be a business address) \_\_\_\_\_  
                                                 \_\_\_\_\_  
                     Telephone Numbers: \_\_\_\_\_  
                     Fax Number: \_\_\_\_\_

The objector hereby objects to the designating/independent nominating petition which was filed with the Board of Elections which purports to name the following as a candidate in the Primary/General/Special Election to be held on \_\_\_\_\_, 20\_\_\_\_ for the office indicated:

CANDIDATE:      Name: \_\_\_\_\_  
                     Residence Address: \_\_\_\_\_  
                                                 \_\_\_\_\_  
                     Public Office or  
                     Party Position: \_\_\_\_\_  
                     District: \_\_\_\_\_  
                     Political Party \_\_\_\_\_

\_\_\_\_\_  
Objector's Signature

BOARD OF ELECTION FORMS

**SPECIFICATIONS OF OBJECTION**

TO: The Board of Elections in the City of New York

OBJECTOR: Name: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

OBJECTOR'S CONTACT PERSON:

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
(may be a business address)  
\_\_\_\_\_  
Telephone Numbers: \_\_\_\_\_  
Fax Number: \_\_\_\_\_

Indicate if there is a different fax number to be used on Saturday or Sunday.

The objector submits the following specifications in support of the General Objection to the nominating petition for:

CANDIDATE: Name: \_\_\_\_\_  
Residence Address: \_\_\_\_\_  
\_\_\_\_\_  
Public Office or Party Position: \_\_\_\_\_  
District: \_\_\_\_\_  
Political Party/Independent Body: \_\_\_\_\_

PETITION VOLUME IDENTIFICATION NUMBERS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CANDIDATE'S CONTACT PERSON (from the petition cover sheet):

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Telephone Numbers: \_\_\_\_\_  
Fax Number: \_\_\_\_\_

TOTAL NUMBER OF SIGNATURES ON PETITIONS: \_\_\_\_\_

NUMBER OF INVALID SIGNATURES ON PETITION: \_\_\_\_\_

The line by line and any other specific objections are attached.

\_\_\_\_\_  
Objector's Signature

## SPECIFICATIONS WORK SHEET

| <b>PART A</b>                 |                                            | <b>PART B</b>                  |     | <b>PART C</b>                       |     | <b>PART D</b>            |     | <b>PART E</b>                                |       |                   |    |     |      |
|-------------------------------|--------------------------------------------|--------------------------------|-----|-------------------------------------|-----|--------------------------|-----|----------------------------------------------|-------|-------------------|----|-----|------|
| FOR USE BY<br>CONTRACTOR ONLY |                                            | JUDICIAL ELECTIONS<br>USE ONLY |     | COURT APPOINTED REFEREE<br>USE ONLY |     | ATTORNEY<br>STIPULATIONS |     | DECISION BOARD<br>OF SUPERVISORS<br>USE ONLY |       |                   |    |     |      |
| LINE NO.                      | SPECIFICATIONS OF OBJECTIONS TO SIGNATURES | AS                             | NAS | NJ                                  | RTB | COMMENT                  | AFF | OVR                                          | (N/A) | REASON OR COMMENT | IN | OUT | DATE |
| 1                             |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 2                             |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 3                             |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 4                             |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 5                             |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 6                             |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 7                             |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 8                             |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 9                             |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 10                            |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 11                            |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 12                            |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 13                            |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 14                            |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 15                            |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 16                            |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 17                            |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 18                            |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 19                            |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
| 20                            |                                            |                                |     |                                     |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | WITNESS RELEASE ONLY                |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | Number of Signatures Filed          |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | Invalid in Signature Area           |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | Invalid Witness Statement           |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | Total                               |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | VALID                               |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | Signatures                          |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | NJ                                  |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | Signatures                          |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | JAs   NAs   NJs & RTBs   Plevees    |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | JAs, NAs, NJs & RTBs Simultaneously |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | NAMES OF CANDIDATE(S)               |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | JAs                                 |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | NAs/NJs                             |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | RTB                                 |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | Pleves                              |     |                          |     |                                              |       |                   |    |     |      |
|                               |                                            |                                |     | DATE                                |     |                          |     |                                              |       |                   |    |     |      |

## CHAPTER 4

### STAYING ON THE BALLOT: OBJECTIONS, BOARD HEARINGS AND THE JUDICIAL PROCESS

It is no exaggeration to say that the best way for a candidate to ensure that she remains on the ballot after filing her designating or nominating petitions is to submit at least three or four times the number of signatures required, and scrupulously follow the petitioning rules and practices. However, a candidate does not always have full control over their supporters' practices: those who sign petitions are not always correct in identifying themselves as being enrolled in the required political party or living in the correct political unit; Subscribing Witnesses and other campaign workers make errors in completing the petition information; and opponents often feel compelled to wage political battles in the courts rather than at the ballot box. As a result, candidates must submit petitions that will hold up to a competitor's scrutiny. They must also familiarize themselves with administrative and judicial procedures that could result in their being knocked off the ballot.

There are two avenues by which a competitor may attempt to disqualify a candidate's petitions, and thereby her candidacy: at the administrative level, the Board of Elections; and at the judicial level, in the New York State Supreme Court.

For the Board of Elections to obtain jurisdiction to review a challenge to petitions, certain procedures must be followed. A challenger must file "General Objections" and "Specifications of Objections" with the Board of Elections.<sup>1</sup>

On the other hand, a candidate's competitor may bypass the Board of Elections, and seek to invalidate her opponent directly by commencing a proceeding in the Supreme Court.<sup>2</sup>

If a challenger is contesting the validity of petition signatures, as contrasted with pure legal questions of, say, residency or other eligibility issues, the advantage of invoking the jurisdiction of the Board of Elections is that the Board has the personnel and the resources to evaluate the signatures. Going directly to court is permissible, but Supreme Court Justices or their appointed Referees will often send the litigants to the local Board to review the specific signature challenges anyway. In other words, although the parties have a right to skip the Board's procedures, it is more efficient to have Board personnel do the work.<sup>3</sup>

Whether a challenger seeks invalidation of her opponent's petitions at the Board or directly in court, she will review the opposing candidate's petitions to see if the form of the petition is correct. The language on the petition must follow the requirements of the Election Law. She will look at whether the name of the candidate matches the candidate's registration form at the Board of Elections; whether the

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<sup>1</sup> N.Y. Elec. Law §6-154 (McKinney); 9 NYCRR §6204.1.

<sup>2</sup> N.Y. Elec. Law §16-102 (McKinney).

<sup>3</sup> Usually the "choice" of going to court rather than invoking the Board's jurisdiction is simply a reflection of whether a candidate has missed the deadline to file General or Specific Objections. On the other hand, candidates often lack the resources to go to court and, by necessity, must abide by the rulings of the Board of Elections.



name of the office sought has been stated properly; whether the candidate's stated residence is truthful, and, if required, within the political unit; whether the candidate obtained a sufficient number of signatures; whether the required information has been inserted on the signature lines and in the Subscribing Witness Statements; whether the Subscribing Witnesses were qualified to circulate the petitions; if the corrections on the petitions have been properly initialed by the Subscribing Witnesses; if the indicated "number of signatures" in the Subscribing Witness Statements is correct; if petition sheets are properly numbered; whether the petition's Cover Sheet or Amended Cover Sheet is accurate; and, of course, whether the petition was submitted timely. A competitor will also review the signatures and Subscribing Witness Statements to ascertain whether the signatures and initials appear genuine.

Beyond reviewing the petition itself, a challenger will attempt to learn whether the candidate's stated residence is accurate, and whether any of the candidate's Subscribing Witnesses or other supporters acted in an arguably improper way during the petitioning process.

### A. The General Objection

Once a challenger has opted to invoke the jurisdiction of the Board of Elections to invalidate an opponent's petitions, a challenger must exercise this challenge by filing a General Objection with the Board of Elections.<sup>4</sup> This Objection is, as the name suggests, a general allegation that the candidate's petition fails to meet the requirements under the Election Law. It need not contain any specifics. It is filed and signed by a "Citizen-Objector" rather than in the name of the competitor (although the competitor may do so in her name as well), and must be signed and submitted to the Board within three days from the date a challenged candidate's petitions are filed.<sup>5</sup> Of course, the Objector should also consult the relevant Board of Elections to see if additional or particular rules have been promulgated.

To be eligible as an Objector to a candidate running for public office, one must be registered to vote in the election for the office; and to be eligible as an Objector to a candidate running for a political party position, one must be eligible to vote for the party position.<sup>6</sup>

<sup>4</sup> N.Y. Elec. Law §6-154 (McKinney).

<sup>5</sup> If the candidate's petitions are mailed, the three-day period begins to run when the "designating petition is received and accepted for filing by the Board of Elections, not when such petition is post-marked. . . ." *Anello v. Niagara County Board of Elections*, 43 A.D.3d 638 (4th Dep't. 2007). The three-day filing requirement for General Objections (and the six-day requirement for Specifications of Objections) is calculated by including Saturday and Sunday, and if the third (or sixth) day falls on the weekend, the deadline is extended to Monday. As a result, some candidates strategize as to when petitions should be filed as it relates to the length of time potential challengers have to review their petitions and file objections. For instance, if petitions are filed on Monday or Tuesday, a challenger must file the General Objection on, respectively, Thursday or Friday of that same week. Inasmuch as a potential challenger may still be circulating or binding her own petitions, she may not yet be focused upon filing a General Objection. On the other hand, a petition filed on Wednesday or Thursday allows a potential challenger to have the weekend to review a candidate's petitions before filing the General Objection. Furthermore, if the candidate files Monday or Tuesday, the challenger will have only until the middle of the following week to file her line-by-line Specifications, whereas a Wednesday or Thursday petition filing will allow the challenger two weekends to review the petitions and prepare her Specifications of Objections. See *Rivera-Powell v. New York City Bd. of Elections*, 470 F.3d 458 (2d Cir. 2006) (rights of candidates and objectors discussed within the context of alleged constitutional claims).

<sup>6</sup> N.Y. Elec. Law §6-154 (McKinney).

## OBJECTIONS, BOARD HEARINGS AND THE JUDICIAL PROCESS

The General Objection is not served upon the candidate or her contact person. It is merely filed with the Board of Elections. Thus, the candidate must inquire at the Board of Elections as to whether a General Objection was filed against her petitions, and when it was filed.<sup>7</sup> If filed, the candidate should ascertain whether its form and filing were proper, and if the Objector is eligible to serve as an Objector.<sup>8</sup> If the General Objection is defective, the candidate may raise this at the Board of Elections administrative hearing, urging that the Board has no jurisdiction over the challenge.

### B. Specifications of Objections

Having taken the first step in challenging a candidate's petitions by filing a General Objection, the Citizen-Objector has six additional days to file Specification of Objections against the petitions.<sup>9</sup> Colloquially known as "Specs," these allege with as much specificity as can be mustered all that is purportedly improper with the candidate's petition.<sup>10</sup> The state Board of Elections has issued a sample form, and has promulgated rules for filing and service of the Specifications.<sup>11</sup> The candidate should familiarize herself with these rules to ascertain whether the Objector has complied.<sup>12</sup> If the Objector did not comply with these rules, the objections may be challenged at the Board hearing, and the Board is likely to rule that it has no jurisdiction over the purported challenge.

### C. The Administrative Hearing at the Board of Elections

The Board of Elections, acting as the administrative agency empowered to make determinations with respect to objections to petitions, acts a week or so after the Specifications are served and filed. Indeed, Boards may rule candidates off the ballot even if there is no challenge filed if there is a *prima facie* basis for doing

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<sup>7</sup> The candidate must remember that objections, like petitions, may be mailed to certain Boards outside New York City. Accordingly, candidates must carefully and frequently check a Board's log.

<sup>8</sup> Eligibility is governed by Election Law §6-154, which provides that an Objector must be able to vote for the public office or party position to which the candidate aspires. Thus, various factors come into play, including, for instance, whether the Objector is properly registered to vote in the district; whether she is properly enrolled in the relevant political party and has been enrolled sufficiently long to vote in the subject primary; and whether the residence of the Objector is her true residence.

<sup>9</sup> At least one court has allowed the General and Specific Objections to be filed as one paper, as long as all the requirements are met. *DiCaprio v. Kosiur*, 42 A.D.3d 867 (3d Dep't. 2007).

<sup>10</sup> The Board of Elections in the City of New York has warned objectors about filing boiler-plate Specs. See Board of Elections in the City of New York, *Designating Petition Rules and Opportunity to Ballot Rules for the September 13, 2011 Primary Election*:

"H7. Objectors are warned not to include in the specifications broad, non-specific or generic claims or claims which are not supported by documents filed with the Board. The Board may dismiss the entire objections as frivolous if specifications include such claims."

<sup>11</sup> 9 NYCRR §6204.1.

<sup>12</sup> The State and New York City Boards of Elections require that Specs be served upon the candidate (running for public office) or a representative (running for a party position); that proof of service must be filed with the Board in a timely manner; that allegations of fraud be alleged with specificity; that allegations regarding specific signatures must be stated on a line-by-line basis, usually using customary abbreviations; and that the objector state how many signatures are allegedly improper and how many valid ones remain. Inquiries to other local Boards must be made to ascertain their requirements. For example, the Herkimer County Board of Elections does not require that Specs be served upon a candidate prior to the Board's determination. *Iocovozzi v. Herkimer County Bd. of Elections*, 76 A.D.3d 797 (4th Dep't. 2010).

so.<sup>13</sup> Some Boards hold public hearings, and others merely issue findings. However, even the Boards that do hold public hearings and permit a candidate or her authorized representative to appear and address the various issues raised do not function as adjudicatory bodies under the State Administrative Procedure Act. Neither a candidate nor an Objector has a right to present evidence, cross-examine witnesses, or the like. As a result, the Board will not, for example, rule on alleged fraud or alleged forgeries, or whether a candidate has stated a *bona fide* residence. Nevertheless, the Board will rule on whether the Specifications are themselves *bona fide* or merely “blunderbuss” allegations filed in bad faith. The Board will also accept affidavits regarding change of addresses by signers or Subscribing Witnesses to rebut a challenge.<sup>14</sup>

Although the various Boards throughout the state have different customs and practices, the Board’s staff will review the objections and present a recommendation to the Board prior to the hearing. This report, referred to as the “Clerk’s Report,” will state whether the objections are “as specified,” invalidating the signature, or “not as specified,” rejecting the objection and validating the signature. The candidate is supposed to receive this report prior to the hearing (if there is one).

At a Board that permits a “hearing,” the Objector and the candidate will have the opportunity to be heard on the Objector’s allegations, and the Board will render a decision as to whether the objections were served and filed properly, and if a sufficient number of allegations have been sustained to disqualify the candidate from the ballot. The decision is usually announced immediately.

#### D. Supreme Court

After the Board rules on a challenge to a candidate’s petition, the challenger or the candidate may invoke the court’s jurisdiction for a *de novo* hearing on the validity of the petition — provided, of course, that the lawsuit has been commenced properly and in a timely manner.

<sup>13</sup> See, e.g., Board of Elections in the City of New York, *Designating Petition Rules and Opportunity to Ballot Rules for the September 13, 2011 Primary Election*:

“E. PRIMA FACIE MATTERS

E1. The Board 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.”

<sup>14</sup> The law requires a signer and Subscribing Witness to state her address at the time of the signature. However, the Board does not necessarily have current records of where voters actually live. In part this is because the law provides that voters who move within a county (or New York City) need not re-register. Without having to notify the Board of Elections, these voters appear at their new polling place, and vote by Affidavit Ballot, the act of which constitutes a re-registration. Thus, if a voter has moved and signs a petition, the Board’s records do not match the new address on the petition. A challenge to the signature alleging that the voter is neither registered nor enrolled at her accurately stated new address will be sustained unless an affidavit is submitted by the voter swearing as to her having moved. Beyond this review, Boards of Elections have “no power to deal with questions of fact or with objections involving matters not appearing upon the face of the . . . petition. . . .” *Scaturro v. Maloney*, 76 A.D.3d 688 (2d Dep’t. 2010), citing *Schwartz v. Heffernan*, 304 NY 474 (1952).

## OBJECTIONS, BOARD HEARINGS AND THE JUDICIAL PROCESS

### 1. *Disqualifying a Candidate*

The statute of limitations to commence a lawsuit to invalidate a candidate's petitions for a party primary or general election is fourteen days from the last day to file designating or nominating petitions; to challenge petitions in a village or special election, it is seven days; and to challenge a certification nominating a candidate by caucus or convention, it is ten days from its filing.<sup>15</sup> To validate one's candidacy after having been disqualified by the Board, a candidate has three days from the ruling. These statutes of limitations are strictly enforced.<sup>16</sup>

There are two types of "Invalidating Proceedings": the Citizen-Objector Invalidating Proceeding (Objector lawsuit); and the Aggrieved Candidate Invalidating Proceeding (Aggrieved Candidate lawsuit).<sup>17</sup>

The Objector lawsuit must be preceded by a properly filed General Objection and a properly served and filed Specifications of Objections. If either one of these is found by the Board of Elections or the court to have been defective (either because its form was improper or because it was served or filed improperly), then the candidate may move to dismiss the Objector lawsuit.<sup>17a</sup> The Aggrieved Candidate lawsuit, on the other hand, is brought in the name of a competing candidate. It requires no condition precedent, except that the petitioner in the lawsuit must be an opposing candidate.<sup>18</sup> No General Objection or Specifications of Objections need to have been served or filed prior to the commencement of an Aggrieved Candidate lawsuit; in this case the court hears the objections in the first instance — without

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<sup>15</sup> N.Y. Elec. Law §16-102(2) (McKinney):

"A proceeding with respect to a petition shall be instituted within fourteen days after the last day to file the petition, or within three business days after the officer or board with whom or which such petition was filed, makes a determination of invalidity with respect to such petition, whichever is later; except that a proceeding with respect to a petition for a village election or an independent nomination for a special election shall be instituted within seven days after the last day to file the petition for such village election or independent nomination or within three business days after the officer or board with whom or which such petition was filed, makes a determination of invalidity with respect to such petition, whichever is later. A proceeding with respect to a primary, convention, meeting of a party committee, or caucus shall be instituted within ten days after the holding of such primary or convention or the filing of the certificate of nominations made at such caucus or meeting of a party committee."

<sup>16</sup> See, e.g., *Duvalle v. DeBerry*, 10 A.D.3d 428 (2d Dep't. 2004) (validating lawsuit, three days); *Essenberg v. Reape*, 272 A.D.2d 544 (2d Dep't. 2000) (ten day limitations period from filing of certificate of party officers); *Olma v. Dale*, 306 A.D.2d 905 (4th Dep't. 2004) (cannot avoid 14-day limitations period to commence a special proceeding to invalidate designating petitions by fashioning the action as a declaratory judgment); *Riley v. Democratic Party of Owasco*, 21 A.D.3d 708 (4th Dep't. 2005) (cannot avoid 14-day limitations period by relying upon provision of Election Law that permits a validating lawsuit three days after being disqualified or CPLR §306-b, which extends limitations period but not in election cases); *Thomas v. Turco*, 43 A.D.3d 617 (3d Dep't. 2007) (cannot avoid 14-day period by claiming aggrieved status was triggered by filing of certificate of substitution); *Berney v. Ragusa*, 76 A.D.3d 647 (2d Dep't. 2010) (certificate of nomination must be challenged within ten days). Cf. *Cohen v. Dear*, NYLJ, July 10, 2003, at 17, col. 1 (Sup. Ct. Kings Co.), where the court dismissed as "premature" an invalidating petition commenced prior to the beginning of the fourteen-day statute of limitations period.

<sup>17</sup> N.Y. Elec. Law §16-102(1) (McKinney).

<sup>17a</sup> General Objections and Specifications of Objections must be filed timely. See, e.g., *Fedak v. Judge*, 71 A.D.3d 892 (2d Dep't. 2010) (General Objection was not untimely when filed six minutes early).

<sup>18</sup> If a candidate has been disqualified by the Board of Elections, she is no longer a candidate, aggrieved or otherwise. Thus, unless and until her candidacy is restored, she cannot pursue an Aggrieved Candidate lawsuit. See, e.g., *Cipriano v. Graves*, 87 A.D.3d 636 (2d Dep't. 2011).

the benefit of the Board's personnel having reviewed the signatures and ruled upon the challenges.

Either lawsuit may allege deficiencies in the candidate's petition and/or of the residence or eligibility of the candidate. Both must be commenced, served and filed properly within the indicated statute of limitations time period. The advantage of the Objector lawsuit is that the line-by-line challenges to the candidate's signatures will have been reviewed and ruled upon by the Board. This means, of course, that even if the Board does not disqualify a candidate, the Objector can use the Board's work in attempting to challenge a candidate without having to start from scratch. The advantage of commencing an Aggrieved Candidate lawsuit is to preserve a second avenue of attack in case either the General Objections or Specifications of Objections are determined either by the Board or the court to have been improper — which would result in the Objector lawsuit being dismissed.

A prudent challenger to a candidate's petitions is well advised, therefore, to bring both lawsuits against the candidate, and combine them into one proceeding by naming both the Objector and the Aggrieved Candidate as petitioners.

Given the attenuated time line of election litigation, invalidating proceedings usually have initial return dates in the Supreme Court prior to the Board of Elections hearing dates. This means that *before* the Board rules on an Objector's allegations that a candidate's petition is deficient, the Objector must commence her lawsuit seeking a *de novo* hearing by the Supreme Court in case the Board errs by not finding that the petition was deficient. Thus, in case the Board does not disqualify the candidate, the Objector must anticipatorily commence a lawsuit asking a court to do so.

If the Board disqualifies the candidate, the Invalidating lawsuit will be moot. However, it would not be prudent for a challenger to discontinue the proceeding; rather, the challenger should have the Invalidating lawsuit held in abeyance. The reason for this is, in the course of a Validating lawsuit, if the Court finds sufficient errors by the Board to re-qualify the candidate, the challenger's Invalidating lawsuit will preserve her opportunity to invalidate signatures that the Board had not already struck. Moreover, the Objector or Aggrieved Candidate may also ask the court to rule on any alleged fraud or forgery — matters over which the Board had no jurisdiction. Thus, assuming the candidate successfully resuscitates enough signatures to get back on the ballot, the Objector or Aggrieved Candidate can seek to disqualify the candidate anew. With this in mind, in the event the Board rules a respondent-candidate off the ballot, the Objector or Aggrieved lawsuit should simply be adjourned.

## 2. *Protecting One's Candidacy*

If the Board does indeed disqualify the candidate from the ballot, she has three business days to commence, serve and file a Validating Petition.<sup>19</sup> The Validating

<sup>19</sup> N.Y. Elec. Law §16-102(2) (McKinney). The unwary candidate must be careful: the Appellate Division, Second Department affirmed a finding by the Bronx Supreme Court that a Validating Petition must be commenced within three days of the expiration of the Cure period when the Board of Elections has sent a Notice to Cure regarding a defective cover sheet and neither the Board nor the candidate took any further action. *Castro v. New York City Bd. of Elections*, 54 A.D.3d 280 (1st Dep't. 2008) (relying on Decision of Justice Seewald, Index No. 260293/08 (Bronx Co. Sup. Ct. 2008)). The ramifications of this are far-reaching if this ruling is followed: it means that the three-day period is automatically triggered even in the absence of any formal ruling by the Board. Generally, however, a candidate will submit a cured, or amended cover sheet, and the Board will issue a determination. In

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lawsuit alleges that the Board erred in its ruling, and seeks a *de novo* hearing on the relevant issues. Here, too, a court will use as its starting point the specific line-by-line rulings by the Board. The candidate's burden is to show that the Board committed sufficient errors in sustaining objections to her signatures.

Although the candidate has a statutory right to commence a Validating lawsuit within three days *after* being disqualified by the Board, prudence dictates that, resources permitting, she commence her Validating Petition *prior to* the Board ruling. A Validating lawsuit may be brought within the same fourteen day period from the last day petitions may be filed; as with an Invalidating lawsuit, this period usually expires *prior to* the Board's hearings.

The reason a candidate is encouraged to commence a Validating lawsuit prior to the Board ruling relates to the circumstance where the candidate is *not* disqualified by the Board. If the Board rules that the alleged objections are not sufficient, the burden is on the challenger in the Supreme Court's *de novo* hearing to find sufficient Board errors to knock the candidate off the ballot.<sup>20</sup> However, it is often the case that only if the candidate has previously commenced a Validating lawsuit will the courts permit her to "resuscitate" signatures that the Board had improperly invalidated.<sup>21</sup>

An example will illustrate the point. Assume a candidate in a party primary for the New York State Senate who needs 1000 valid signatures has submitted 2000. Assume further that the Board has ruled her on the ballot with 1054 valid signatures on her designating petitions. If the Objector has anticipatorily filed an Invalidating lawsuit asking the court to overrule the Board's allegedly erroneous ruling, the challenger will try to present evidence as to why the Board should have invalidated another 55 signatures. Further assume the challenger succeeds in this effort. Unless the candidate has brought her own Validating lawsuit before the statute of limitations has run (after all, the candidate cannot bring a Validating lawsuit three days after the Board has ruled, because her petitions have been ruled *valid*), the candidate will not be able to increase her totals by arguing that the Board improperly invalidated certain signatures. Without having brought a Validating lawsuit, the candidate is helpless as she watches 1054 signatures shrink below 1000. If a Validating lawsuit had been brought, however, the candidate is in a position to increase her count by resuscitating signatures at the same time.

### 3. Proper Procedure

Invalidating and Validating lawsuits are special proceedings brought pursuant to Article 16 of the Election Law and the rules relating to special proceedings in the

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this case, the candidate has three days from the time she receives notice of her disqualification. *Schultz v. Niagara County Bd. of Elections*, 76 A.D.3d 798 (4th Dep't. 2010).

<sup>20</sup> Of course, the Objector will, if she can, also allege forgery and fraud, as well as other legal issues such as improper residence, in order to invalidate the petition.

<sup>21</sup> The Court will permit the candidate to resuscitate signatures without having previously commenced an anticipatory Validating lawsuit if she interposes an Affirmative Defense or Counterclaim in her Verified Answer that alleges that her petition is valid and has a sufficient number of signatures. *See, e.g., Reilly v. Cadel*, Index No. 25279/08 (Sup. Ct. Suffolk Co. 2008); *Edelstein v. Matuszcwski*, Index No. 300093/09 (Sup. Ct. Suffolk Co.) (August 17, 2009). However, this Answer must be served either prior to the expiration of the statute of limitations, or, if the Invalidating lawsuit is served on the last day of limitations period, immediately thereafter.

In that a candidate obviously does not know if she will receive an Invalidating lawsuit until the very tail-end of the limitations period, it is prudent, resources permitting, simply to commence a Validating lawsuit in advance.

CPLR.<sup>22</sup> Each lawsuit is commenced by Order to Show Cause and a Verified Petition.<sup>23</sup> It must be verified properly.<sup>24</sup> It must be served properly and timely.<sup>25</sup> It also must be filed in the court, and done so timely.<sup>26</sup>

Only certain individuals have standing to commence these lawsuits,<sup>27</sup> and all necessary parties must be named as respondents.<sup>28</sup> In both Invalidating and Vali-

<sup>22</sup> N.Y. Elec. Law §16-102 (McKinney); see N.Y. CPLR, art. 4 (McKinney).

<sup>23</sup> N.Y. Elec. Law §16-116 (McKinney).

<sup>24</sup> See, e.g., *Goodman v. Hayduk*, 45 N.Y.2d 804 (1978) (an unverified petition violates a jurisdictional requirement and cannot be cured by amendment); *Frisa v. O'Grady*, 297 A.D.2d 394 (2d Dep't. 2002); A proceeding brought by Order to Show Cause and a Petition that is not verified will be dismissed. *Niebauer v. Board of Elections in the City of New York*, 76 A.D.3d 660 (2d Dep't. 2010) (unverified petition cannot be cured after statute of limitation has expired).

<sup>25</sup> N.Y. CPLR §304 (McKinney); see, e.g., *Rodwin v. Townsend*, 286 A.D.2d 569 (4th Dep't. 2001) (cannot simply mail papers when order to show cause requires "nail and mail"; suit dismissed in that "petitioners failed to serve the order to show cause and petition upon respondent in the manner specified in the order to show cause and thus failed to obtain jurisdiction over her"); *Hawkins v. Szczesniak*, 309 A.D.2d 1307 (4th Dep't. 2003) (party cannot effect service); *Keane v. Clark*, 43 A.D.3d 639 (4th Dep't. 2007) (statute of limitations period for an Invalidating Petition expires fourteen days after the last day to file petitions; not extended by filing of Acceptance or Certificate of Authorization); *DeCaprio v. Rockland Co. Board of Elections*, N.Y.L.J., Aug. 8, 2011 (Sup. Ct. Rockland Co. 2011) (seven days statute of limitation for invalidating petition in Village election); *Malaga v. Suffolk County Board of Elections*, 66 A.D.3d 902 (2d Dep't. 2009) (statute of limitations strictly enforced); *Corbin v. Troiano*, Index No. 15999/09 (Sup. Ct. Nassau Co.) (August 13, 2009) (same); *McDonough v. Scannapieco*, 65 A.D.3d 647 (2d Dep't. 2009) (same); *Leroy v. Board of Elections*, 65 A.D.3d 645 (2d Dep't. 2009) (same).

<sup>26</sup> N.Y. CPLR §304 (McKinney).

<sup>27</sup> N.Y. Elec. Law §16-102(1) (McKinney); see, e.g., *Colaiacovo v. Aberle*, 10 A.D.3d 464 (3d Dep't. 2004). The court in *Gross v. Hoblock*, 6 A.D.3d 933 (3d Dep't. 2004) laid out the complexities of the standing issue involving non-party candidates:

"[T]he standing issue ultimately turns upon whether the underlying challenge is to the internal affairs and/or operating functions of a political party in its designation of candidates or, rather, to a legislatively mandated requirement of the Election Law (see *Matter of Stempel v. Albany County Bd. of Elections*, 97 AD2d 647, 648 [1983], aff'd 60 NY2d 801 [1983]). Thus, where the challenge is directed to the manner in or methods by which a given party committee votes on or designates a particular candidate, a nonparty candidate will not be deemed aggrieved, as he or she has no interest in whether the formalities of that process have been followed (see e.g. *Matter of Koppell v. Garcia*, supra; *Matter of Swarts v. Mahoney*, supra). Where, however, the challenge is to a legislatively mandated requirement of the Election Law, such as the content of a designating petition (see 936 *Matter of Ciccotti v. Havel*, 186 AD2d 979 [1992], lv denied 80 NY2d 754 [1992]; *Matter of Liepshutz v. Palmateer*, 112 AD2d 1098 [1985], aff'd 65 NY2d 963 [1985]), "the interests involved . . . transcend the mere regulation of the affairs of a political party" (*Matter of Martin v. Tutunjian*, 89 AD2d 1034, 1034 [1982]) and standing will lie. Inasmuch as the failure to file a Wilson-Pakula authorization "constitutes a fatal defect rather than a mere technicality" (*Matter of Maurer v. Monescalchi*, 264 AD2d 542, 543 [1999], lv denied 93 NY2d 816 [1999]; see *Matter of Cosgrove v. Sunderland*, 253 AD2d 504 [1998]) and, hence, represents a challenge to a legislative mandate of the Election Law, we are satisfied that petitioner has standing."

See also *Fehrman v. New York State Board of Elections*, 10 N.Y.3d 759 (2008) (non-member of political party lacks standing to challenge party's compliance with its own rules). But see *Occhipinti v. Westchester County Bd. of Elections*, 49 A.D.3d 674 (2d Dep't. 2008) (a party non-member may object to results of a caucus, not a primary); *Cerreto v. Sunderland*, 307 A.D.2d 1004 (2d Dep't. 2003) (candidate has no standing to bring a proceeding in representative capacity). Other than in a case of clear evidence to the contrary, the courts may be inclined to defer to a political party's procedures for granting a Wilson-Pakula. *Wong v. Cooke*, 87 A.D.3d 659 (2d Dep't. 2011).

<sup>28</sup> See, e.g., *Miller v. Lapine*, 43 A.D.3d 480 (2d Dep't. 2007) (inasmuch as petitioners challenge actions and authority of the Executive Committee of the Working Families Party, their failure to name it was jurisdictionally fatal); *Dixon v. Reynolds*, 65 A.D.3d 819 (4th Dep't. 2009) (proceeding seeking

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dating lawsuits, the Board of Elections with jurisdiction over the subject candidate is a necessary party and must be named as a respondent and served. The candidate being challenged must be named as a respondent as well.<sup>29</sup>

In the Objector Invalidating lawsuit, the Objector is the petitioner; in the Aggrieved Candidate Invalidating lawsuit, the candidate is the petitioner. As indicated above, one lawsuit may be brought in the name of both types of challengers, and, in that case, both are petitioners.

In a Validating lawsuit, the candidate seeking to protect her candidacy is the petitioner, and the Citizen-Objectors are the respondents. Every objector must be named, and served. If every objector is not named and served, the Validating lawsuit will be dismissed for failure to have named and served a necessary party.<sup>30</sup> Although this has long been the general rule, the Appellate Division, Third Department has taken the better view by holding that a Validating Proceeding that does not name all objectors will not be deemed defective if it is commenced prior to all objections having been served and the eventual objectors' interests are represented by other parties.<sup>31</sup> Sometimes challengers will use numerous Objectors in order to make it difficult for a candidate trying to validate her petition to serve all of them. Indeed, on more than one occasion, attorneys for challengers have used literally dozens of objectors, each of whom must be named and served within the statute of limitations period. Needless to say, this is a very daunting task, but if the Validating lawsuit is to survive a motion to dismiss for failure to name and serve all necessary parties, it must be done. The courts have not yet disapproved of this obviously egregious practice.<sup>32</sup>

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determination interpreting political party's rules required naming and service of party); *McGrath v. Ablove*, 87 A.D.3d 803 (3d Dep't. 2011) (dispute regarding authority of Independence Party's State Executive Committee designation of candidate must name and serve that candidate); *Barbuto v. Sarcone*, 275 A.D.2d 424 (2d Dep't. 2000) (challenge to actions of steering committee of Independence Party must name the committee as respondent); *Kendall v. Anderson*, 287 A.D.2d 665 (2d Dep't. 2001) (must name candidate whose petitions are being challenged); *Plochocki v. Onondaga Co. Board of Elections*, 21 A.D.3d 710 (4th Dep't. 2005) (objector is necessary party in validating lawsuit); *Cass v. Krakower*, 13 N.Y.3d 118 (2009) (members of Committee to Receive Notices on Opportunity to Ballot petition must be named and served); *Goodman v. Nassau County Bd. of Elections*, 87 A.D.3d 668 (2d Dep't. 2011) (must complete service on all named necessary parties; otherwise petition against all parties must be dismissed). *But see Master v. Pohanka*, 43 A.D.3d 478 (2d Dep't. 2007) (candidates not affected by proceeding and thus not necessary parties); *Master v. Davis*, 65 A.D.3d 646 (2d Dep't. 2009) (need not name all candidates in an Opportunity to Ballot challenge); *Messina v. Albany County Board of Elections*, 66 A.D.3d 1111 (3d Dep't. 2009) (challenge to absentee ballots need not name or serve voters); *Fingar v. Columbia County Board of Elections*, Index No. 7456/09 (Sup. Ct. Columbia Co. Dec. 4, 2009) (same).

<sup>29</sup> Neither the members of the Committee to Fill Vacancies nor any contact person the candidate may have designated are necessary party respondents.

<sup>30</sup> See, e.g., *Plochocki v. Onondaga Co. Board of Elections*, 21 A.D.3d 710 (4th Dep't. 2005); *Jacobellis v. Fonseca*, 43 A.D.3d 484 (2d Dep't. 2007). *But see Red Hook/Gowanus Chamber of Commerce v. New York Board of Standards and Appeals*, 5 N.Y.3d 452 (2005) (failure to name a necessary party is not *per se* fatal to suit; mitigating facts of CPLR §1001(b) must be weighed); this is not an election case, but a creative election attorney may seek to rely upon it if her case requires it.

<sup>31</sup> *Kryzen v. New York State Bd. of Elections*, 55 A.D.3d 1217 (3d Dep't. 2008) ("to require petitioners to join objectors who were unknown to them at the time that this proceeding was commenced is to impose an unreasonable level of prescience upon them."); *New York State Comm. of the Independence Party v. New York State Bd. of Elections*, 87 A.D.3d 806 (3d Dep't. 2011) (in dispute between State and County committees, the County Executive Committee's interests were represented and service upon it was not necessary).

<sup>32</sup> See, e.g., *Nadelson v. Various Individuals*, 2001 WL 1491136 (Sup. Ct. Kings Co. 2001).



Inasmuch as the time for a candidate to receive notice of the identities of the objectors (through service of the Specifications) usually occurs at about the same time as a Validating lawsuit must be commenced, the candidate is strongly advised to visit the Board of Elections and carefully study the actual General Objections that have been filed (which do not have to be served upon the candidate). This will ensure that the candidate knows the identities of the Objectors, can name them all accurately, ascertain their correct addresses and prepare and serve proper Validating lawsuits in a timely manner.

Probably more election proceedings are disposed of on the ground of improper or untimely service than for any other reason. Thus, the petitioner must act with great care. The petitioner in the lawsuit should ask for broad permission to serve the papers in her Order to Show Cause. In election cases, courts routinely allow overnight mailing or “nail and mail” rather than in-person service; petitioners should ask the court to include either or both, and should carefully request alternative methods of service.<sup>33</sup> Petitioners should also bring their papers to the courthouse sufficiently in advance of the last day of the statute of limitation so that mail service can be effected *and received* no later than the last day. Sometimes the court will sign an Order to Show Cause allowing for service by mail even though it is the very last day of the statute of limitations period. In that it is obviously impossible for a respondent to receive the papers in the mail on or before the last day, a petitioner who has effected service in compliance with this Order will generally have her lawsuit dismissed for untimely service;<sup>34</sup> the Appellate Division, Second Department, however, appears to have allowed this practice on occasion.<sup>35</sup> In any event, service must be effected exactly as provided for in the Order to Show Cause.<sup>36</sup>

The petitioner should, of course, also remember to serve the Board of Elections.<sup>37</sup>

<sup>33</sup> The practitioner should carefully request in her Order to Show Cause alternative methods of service, using the disjunctive. If the Order to Show Cause is not written in such a way as to permit service other than personal delivery without having to first attempt such delivery using due diligence, the alternative method of service will be held inadequate. *Hennessey v. DiCarlo*, 21 A.D.3d 505 (2d Dep’t. 2005). Furthermore, practitioners must carefully draft their own papers because they will be compelled to comply with the Order to Show Cause as signed. *Cox v. Altschuler*, Index No. 25782/10 (Sup. Ct. Suffolk Co. Aug. 11, 2010).

<sup>34</sup> See *Buhlmann v. LeFever*, 83 A.D.2d 895 (2d Dep’t. 1981) (“Attempted service by certified mail or by first class mail on the last day service could be made was inadequate and ineffectual to institute the proceeding under subdivision 2 of section 16-102 of the Election Law. It cannot be said that this mode of service was reasonably calculated to give timely notice to the necessary parties (cf. *Matter of Butler v. Gargiulo*, 77 AD2d 939; *Matter of Radda v. Acito*, 54 AD2d 531; *Matter of Loucky v. Buchanan*, 49 AD2d 797.”); *Henry v. Trotto*, 54 A.D.3d 424 (2d Dep’t. 2008) (review of postal regulations as to what is a reasonable calculation to receive a mailing in timely manner). See also *Davis v. McIntyre*, 43 A.D.3d 636 (4th Dep’t. 2007) (an erroneous Order to Show Cause will not extend the statute of limitations); *Kurth v. Orange County Board of Elections*, 65 A.D.3d 642 (2d Dep’t. 2009) (same).

<sup>35</sup> *Marcoccia v. Garfinkle*, 307 A.D.2d 1010 (2d Dep’t. 2003); *Chaimowitz v. Calcaterra*, 76 A.D.3d 685 (2d Dep’t. 2010).

<sup>36</sup> See *Del Villar v. Vekiarelis*, 59 A.D.3d 642 (2d Dep’t. 2009) (“method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with [citation omitted]”); *Rodwin v. Townsend*, 286 A.D.2d 569 (4th Dep’t. 2001) (must “serve the order to show cause and petition upon respondent in the manner specified in the order to show cause”). See also *Gorman v. Board of Elections in the City of New York*, 76 A.D.3d 658 (2d Dep’t. 2010) (failure to file an affidavit of service pursuant to the Order to Show Cause resulted in the petition being dismissed). Practitioners are, therefore, urged to expressly include language in the Order that relieves petitioners of otherwise routine requirements imposed by the CPLR.

<sup>37</sup> See *Flynn v. Orsini*, 286 A.D.2d 568 (4th Dep’t. 2001) (service upon Board must be effected pursuant to the Order to Show Cause).

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Once the original Order to Show Cause is signed, the original petition must be filed with the Clerk of the Court, or the Clerk's designated representative.<sup>38</sup>

Given the highly truncated statute of limitations period, and the very strict enforcement of service and filing requirements, procedural matters are, therefore, quite important in election cases. Once the parties have appeared in court, even on the very first return date, there is no opportunity to correct improper service or filing, the statute of limitations having already run.<sup>39</sup>

### E. The Trial<sup>40</sup>

Election proceedings have a preference over all civil and criminal matters, and, of course, litigation must be resolved in a very tight time period.<sup>41</sup> As a result, practitioners must be prepared to proceed on the return date of the Order to Show Cause.<sup>42</sup> While it is true that these cases are often adjourned in that the Board of Elections has often not yet held their hearings or issued their rulings, if the case includes allegations requiring an evidentiary trial or the briefing of legal issues that the Board will not rule upon, the Court may direct the parties to proceed immediately. This, of course, includes issues of service and other jurisdictional matters that respondents wish to raise. Thus, the parties should be prepared with legal arguments on the initial return date; and the parties should be ready for a traverse or to begin the trial as well.<sup>43</sup> Subpoenas, if required, should be returnable on that day, and have their witnesses ready to testify.<sup>43a</sup>

Candidates should make certain that they are either represented by a duly admitted attorney, or appear on their own. A failure to appear, even on the first return date, can have devastating results.<sup>44</sup> A candidate may be defaulted, and thrown off the ballot for failure to appear. While the court has some discretion on a subsequent motion to vacate a default judgment, it is by no means certain that this will occur. Indeed, in the face of evidence that service was effected properly and timely, the excuse by a candidate that she did not know about the lawsuit might be of no

<sup>38</sup> N.Y. CPLR §304 (McKinney) provides, in pertinent part, that

“filing shall mean the delivery of the summons with notice or summons and complaint or petition to the clerk of the court in the county in which the action or special proceeding is brought or any other person designated by the clerk of the court for that purpose . . .”

<sup>39</sup> If issues of service or filing requirements are not raised, they are waived.

<sup>40</sup> Practitioners are reminded that clients locked in political contests are *clients*—and that counsel are officers of the court. *See, e.g., Mosley and Figueroa v. Rosario*, 3 Misc.3d 1123(A) (Sup. Ct. Bronx Co. 2005) (insurgent candidate and attorney were sanctioned for false statements to the court). The Supreme Court admonished counsel:

“[E]lectoral contests are not a street brawl, where anything goes. Rather, the principle is reaffirmed that any candidate, whether incumbent or challenger, whether backed by the party apparatus or insurgent, must proceed fairly and abide by the rules.”

<sup>41</sup> N.Y. Elec. Law §16-116 (McKinney).

<sup>42</sup> If respondent's counsel legitimately believes that service was not properly effected, the issue must be raised either in the Answer or on the first return date of the proceeding. Otherwise, this defense is waived. *See, e.g., Sasson v. Board of Elections in the City of New York*, 65 A.D.3d 995 (2d Dep't. 2009); *Haggerty v. Golub*, Index No. 20187/09 (Sup. Ct. Queens Co.) (August 27, 2009).

<sup>43</sup> The practitioner is also advised to include all of her arguments in the pleadings or at the commencement of the trial. Issues raised for the first time during the trial may be barred. *See, e.g., Escoffery-Bey v. New York City Board of Elections*, 2009 WL 2590051 (N.Y.A.D. 1st Dep't.) (affirming without opinion Justice Seewald's Decision at Index No. 260450/09 (Sup. Ct. Bronx Co.) (Aug. 14, 2009)).

<sup>43a</sup> The Supreme Court may refuse to grant an adjournment if a party is not ready to proceed. *Fonvil v. Alexandre*, 87 A.D.3d 640 (2d Dep't. 2011). And affidavits, while probative, are not dispositive. *See, e.g., Muscarella v. Nassau County Bd. of Elections*, 87 A.D.3d 645 (2d Dep't. 2011).

<sup>44</sup> *See Baptiste v. Emmanuel*, 21 A.D.3d 503 (2d Dep't. 2005).

avail. And if the default judgment is not vacated by the court that granted it in the first place, the candidate is without recourse: she has no standing to appeal.<sup>45</sup>

Thus, every candidate is encouraged to actually review the records of the Supreme Court to ascertain whether a lawsuit has been filed that affects her candidacy; she should check in the county where she has filed her petitions, as well as in neighboring counties within the political district. Having done so, the candidate should appear in court on the return date irrespective of whether she has actually received the papers.

In that election matters are special proceedings, there is no discovery unless requested of and directed by the court.<sup>46</sup> Some courts, however, have promulgated rules that require a Citizen-Objector or Aggrieved Candidate to serve and file, on or before the morning of the first return date of the Order to Show Cause, a Bill of Particulars that specifies with particularity any allegations of fraud or improper residence, and any line-by-line allegations of improper signatures that had not been previously served and filed. This allows the respondent an opportunity to review the allegations and act accordingly in preparation for the trial.<sup>47</sup> It also allows the respondent to have the case against her limited. Courts that have issued such rules will bar evidence of allegations relating to invalid signatures or even fraud unless specified in a timely Bill.<sup>48</sup>

In counties that do not propound such rules, there is no reason for practitioners not to seek sufficient information to try their case as they would in any other litigation. In that a Bill of Particulars is not considered a discovery device, it can be demanded without permission from the court.<sup>49</sup> A Notice to Admit, also not considered a discovery device, can also be used.<sup>50</sup> Moreover, permission may be sought from the court to use interrogatories and depositions, as well as to demand a witness list. If used sparingly and for the purpose of expediting the trial, there is no reason why requests for discovery should not be granted in an election case.<sup>51</sup> This is especially true in that most election lawsuits are churned out with generic allegations that lack the specificity required in other litigation.<sup>52</sup>

<sup>45</sup> *Id.*

<sup>46</sup> N.Y. CPLR §408 (McKinney). The statute expressly provides, however, that a Notice to Admit, pursuant to N.Y. CPLR §3123, may be used without leave of the court. However, a cross-claim may not be interposed without the Court's permission. *Larsen v. May*, Index No. 700013/08 (Sup. Ct. Kings Co. 2008). On the other hand, a counterclaim to validate a petition may be, as long as it is pled with specificity. *Id.* See also *Reilly v. Cadel*, Index No. 25279/08 (Sup. Ct. Suffolk Co. 2008) (same).

<sup>47</sup> Thus a candidate whose residency is challenged or against whom allegations of fraud are being made has notice as to the nature of the allegations and the witnesses who will be appearing in the challenger's case. These rules, initiated by Justice Garry in Kings County in the mid-1990s, and now propounded in several counties, streamline an election proceeding. It should be noted that, even in the absence of a Bill of Particulars, an Objector may raise allegations not previously made to the Board of Elections as long as they are contained in the Invalidating Petition. This has been deemed sufficient notice. *Venuti v. Westchester County Board of Elections*, 43 A.D.3d 482 (2d Dep't. 2007).

<sup>48</sup> *Fletcher v. Barkr*, 196 A.D.2d 611 (2d Dep't. 1993).

<sup>49</sup> N.Y. CPLR §3041 (McKinney).

<sup>50</sup> N.Y. CPLR §408 (McKinney).

<sup>51</sup> Indeed, in that election trials are such highly truncated affairs, unusual practices are sometimes permitted. See, e.g., *Jaffe v. Kelly*, 32 A.D.3d 485 (2d Dep't. 2006) (in the absence of any objection, court received affidavits rather than testimony to prove authenticity of signatures).

<sup>52</sup> But see *Jannaccio v. Board of Elections*, 297 A.D.2d 355 (2d Dep't. 2002), citing to *Green v. Mahr*, 231 A.D.2d 480 (2d Dep't. 1996), which held:

"[W]e agree with the Supreme Court that the appellant's validating petition was insufficiently pleaded as a matter of law. Such a validating petition must specify the individual determinations by the board which the candidate claims were erroneous, or the signatures which the candidate

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As any good practitioner, the election lawyer is advised to anticipate arguments that might be raised on appeal and, accordingly, make as complete a record as possible.<sup>53</sup>

Trial courts have obligations as well. Although a Board of Elections may issue a very specific Clerk's report on a line-by-line challenge, the Supreme Court is advised to render its own determinations and not simply rely upon the Board — and, moreover, to rule on all issues, and make a record.<sup>54</sup> The Supreme Court should also be sure that proper procedures are followed, and that all parties' rights are respected.<sup>55</sup>

### F. Appeals

Orders in election cases are appealable as of right to the Appellate Division.<sup>56</sup> Although the file of the case being appealed has to be subpoenaed to the Appellate Division, the full record or appendix usually required in ordinary civil litigation is

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claims the board improperly invalidated (see, *Matter of Krueger v. Hickey*, 59 N.Y.2d 680, 682, 463 N.Y.S.2d 413, 450 N.E.2d 219; *Matter of Dickerson v. Daly*, 196 A.D.2d 610, 611, 601 N.Y.S.2d 704; *Matter of Ford v. D'Apice*, 133 A.D.2d 191, 192, 518 N.Y.S.2d 697). Since the appellant's validating petition was not sufficiently particularized to give the court and the parties notice of the board's determinations which were claimed to be erroneous or the signatures that the candidate claimed were improperly invalidated (see, CPLR 3013), the proceeding was properly dismissed."

See also *Jennings v. Board of Elections*, 32 A.D.3d 486 (2d Dep't. 2006) ("validating petition must specify the individual determinations of a board of elections that the candidate claims were erroneous"); *Waugh v. Nowicki*, 4 Misc.3d 1014(A) (Sup. Ct. Nassau Co. 2004) (allegations of fraud insufficiently particularized); *Brotherton v. Suffolk County Board of Elections*, 33 A.D.3d 944 (2d Dep't. 2006) (objector to petitions may raise challenges in court that were not alleged before the Board of Elections when candidate "was sufficiently apprised of the grounds for the objections"); *Edelstein v. Suffolk County Board of Elections*, 33 A.D.3d 945 (2d Dep't. 2006) (same); *Rodriguez v. Ward*, 43 A.D.3d 640 (4th Dep't. 2007) (failure to specify allegedly erroneous determinations by Board of Elections resulted in dismissal of Validating lawsuit); *Fischer v. Suffolk County Bd. of Elections*, 55 A.D.3d 759 (2d Dep't. 2008).

<sup>53</sup> See, e.g., *Romaine v. Suffolk County Board of Elections*, 65 A.D.3d 993 (2d Dep't. 2009) (cannot argue issue on appeal if not raised in Supreme Court); *Muscarella v. Nassau Bd. of Elections*, 87 A.D.3d 645 (2d Dep't. 2011) (same).

<sup>54</sup> *Olenick v. Carlow*, 76 A.D.3d 711 (2d Dep't. 2010) (Appellate Division remitted the matter for trial court to rule on all issues); *Scaturro v. Maloney*, 76 A.D.3d 688 (2d Dep't. 2010) (remitted to ensure that trial court made independent findings); *Nunziato v. Messano*, 87 A.D.3d 647 (2d Dep't. 2011) (remitted to Supreme Court to allow petitioner to present evidence on service); *Watch v. Halloran*, 87 A.D.3d 658 (2d Dep't. 2011) (same); *Littlewort v. Board of Elections in the City of New York*, 87 A.D.3d 642 (2d Dep't. 2011) (same). Courts should also feel unconstrained to refer obviously fraudulent conduct to the District Attorney. Cf. *Maher v. Jordan*, 32 Misc.3d 1232(A) (Sup. Ct. Nassau Co. 2011) ("whether fraud was committed [relating to an improper change of Board of Elections records] is not for this Court to decide.").

<sup>55</sup> *Carlow v. Irwin*, 76 A.D.3d 648 (2d Dep't. 2010) (remitted to correct findings by Referee who made rulings over the weekend outside the presence of counsel).

<sup>56</sup> The party wishing to appeal must make sure that the Order from which she wishes to appeal has been duly entered by the court of original jurisdiction. See *Kryzan v. New York State Bd. of Elections*, 55 A.D.3d 1217 (2008). Parties should also make certain that the Orders accurately reflect the relief requested and granted. See, e.g., *Chaimowitz v. Calcaterra*, 76 A.D.3d 685 (2d Dep't. 2010); *Pisani v. Kane*, 87 A.D.3d 650 (2d Dep't. 2011). Once before the Appellate Division, litigants should remember that its "authority is as broad as that of the trial court. . . ." *Simmons v. Wills*, 54 A.D.3d 431 (2d Dep't. 2008). Having said that, there is a notable exception to the right to appeal: a party who has defaulted in the Supreme Court and whose default has not been vacated may not do so. She has no standing to appeal. See *Baptiste v. Emmanuel*, 21 A.D.3d 503 (2d Dep't. 2005) ("no appeal lies from an order made upon the default of an appealing party").

often not required. Briefs are often submitted only a day or two before oral argument (and sometimes as late as that day) and decisions are rendered quite quickly. Uniquely, the Appellate Division, Second Department, avoids even the appearance of a political conflict by having a case heard by Judges who are not from the originating county.

If there are two dissents in the Appellate Division's decision, or there is an issue relating to the New York State or United States Constitution, there is an automatic appeal to the Court of Appeals.<sup>57</sup> Otherwise, leave to appeal must be requested. To seek leave, all the practitioner needs to do is call the Court of Appeals, and arrange for the briefs from the Appellate Division to be delivered to Albany. No motion papers or additional briefs are required. A simple letter will do. The party seeking appeal and her adversary will meet with two Judges of the Court, and the motion for leave is argued. This is customarily done in the Judges' chambers at 8 am on the appointed day. Once the two Judges have heard the arguments, the parties will be notified several hours later if the Court has decided to grant leave; oral argument is heard forthwith. Leave is almost never granted, unless a novel or important issue has been raised.

It is rare, but sometimes an Appellate Division will grant leave to appeal to the Court of Appeals on its own motion.<sup>58</sup> In recent years parties who have lost their cases in state court, either at the Supreme Court level or after having exhausted the appeals process have commenced actions in federal court. For the most part, federal courts have declined to rule upon election matters, owing to their deference to the state courts.<sup>59</sup> On the other hand, there have been several notable exceptions to this disinclination, where the federal courts determined that constitutional rights were at stake.<sup>60</sup> Indeed, some litigants even attempt to bypass the customary route and seek relief directly in federal court. These almost always fail.<sup>61</sup>

<sup>57</sup> N.Y. CPLR §5601 (McKinney).

<sup>58</sup> *Hunter v. Orange County Bd. of Elections*, 55 A.D.3d 760 (2d Dep't.), *rev'd*, 11 N.Y.3d 813 (2008).

<sup>59</sup> See, e.g., *Barron v. New York City Board of Elections*, 2008 WL 4809450 (E.D.N.Y. 2008); *Fischer v. Suffolk County Board of Elections*, (E.D.N.Y. 2008) N.Y.L.J., Nov. 3, 2008, p. 23; *Brown v. New York City Board of Elections*, 08-CV-3512 (KAM) (E.D.N.Y. 2008); *Dear v. Board of Elections in the City of New York*, 2003 WL 22077679 (E.D.N.Y. 2003); *Rivera-Powell v. New York City Board of Elections*, 470 F.3d 458 (2d Cir. 2006); *Brunell v. Clinton County*, 334 Fed. Appx. 367 (2d Cir. 2009); *Williams Bey v. Board of Elections*, N.Y.L.J., September 17, 2009, p. 29, col. 1 (S.D.N.Y. 2009); *Leroy v. New York City Board of Elections*, 2009 WL 3242304 (E.D.N.Y. 2009).

<sup>60</sup> See, e.g., *Lerman v. Board of Elections*, 232 F.3d 135 (2d Cir. 2000) (party enrollees residing outside the political unit may act as Subscribing Witness); *Molinari v. Powers*, 82 F.Supp.2d 57 (E.D.N.Y. 2000) (requirement to identify signer's "town or city" may be relaxed).

<sup>61</sup> See, e.g., *Koppell v. New York State Bd. of Elections*, 108 F.Supp.2d 355 (S.D.N.Y. 2000) (challenge to lottery determination of ballot position in primary elections in 57 counties outside of New York City); *Disabled in Action of Metropolitan New York v. Hammons*, NYLJ, January 31, 2000, at 25, col. 3 (2d Cir. 2000) (National Voter Registration Act did not require hospitals and nursing homes to provide voter registration); *Wit v. Berman*, 306 F.3d 1256 (2d Cir. 2002) (Election Law did not impermissibly deny citizens who had homes in two communities the right to vote in both places); *Green Party of State of New York v. Weiner*, 216 F.Supp.2d 176 (S.D.N.Y. 2002) (statutory scheme of appointing election officials did not violate party's associational or voting rights); *Fulani v. McAuliffe*, 2005 WL 2276881 (S.D.N.Y. 2005) (dismissed claim that Democratic Party conspired to keep Ralph Nader off the ballot); *New v. Pelosi*, 2008 WL 4755414 (S.D.N.Y. 2008) (rejected claim that electoral college must comply with one person-one vote doctrine); *Murawski v. Pataki*, 514 F.Supp. 2d 577 (S.D.N.Y. 2007) ("federal court is generally not the appropriate place to deal with minutiae of state election disputes [citation omitted]"); *Forjone v. California*, 2010 WL 653651 (N.D.N.Y. 2010) (alleged wrongful counting of voting age population); *Marchant v. New York City Bd. of Elections*, 2011 WL 3882842 (E.D.N.Y. 2011) (alleged violation of voters' due process rights in petitioning gathering process rejected).

**APPENDIX TO CHAPTER 4**  
**LITIGATION FORMS**

**ORDER TO SHOW CAUSE IN PROCEEDING SEEKING TO  
INVALIDATE A CANDIDATE’S DESIGNATING PETITION**

At a *[name of part]* of the Supreme Court of  
the State of New York, held in and for the  
County of \_\_\_\_\_, at *[court address]*,  
on the *[ordinal number of day]* day of *[month]*,  
*[year]*.

P R E S E N T :

*[Assigned Justice]*,  
J.S.C.

-----X

*[PETITIONER-OBJECTOR]*,

Petitioner,

-and-

*[CANDIDATE-AGGRIEVED]*<sup>1</sup>

Petitioner,

-against-

*[RESPONDENT-CANDIDATE]*,

Respondent-Candidate,

-and-

*[LOCAL BOARD OF ELECTIONS]*,

Respondent.

-----X

ORDER TO SHOW CAUSE

Index No.: *[index number]*

Date Purchased: *[date]*

Upon the reading and filing of the emergency affirmation of *[attorney’s name]* dated *[date]*, and the annexed Verified Petition of *[name of petitioner-objector and/or candidate aggrieved]*, duly verified on *[date]*; upon the designating petition purporting to designate Respondent-Candidate *[name of respondent candidate]* (“Respondent-Candidate”), as candidate of the *[name of political party]* for the public office of *[name of public office]*; upon the original files relating thereto of the *[local board of elections]* (“Board of Elections”); and upon all of the papers and proceedings herein, it is hereby:

ORDERED, that the Respondents named hereinabove show cause before this Court at a Term, Part *[part number]*, to be held at the Courthouse located at *[street address]*, on the *[ordinal number of day]* day of *[month]*, *[year]* at *[time]* of that

<sup>1</sup> A Candidate-Agrieved need not be named in this proceeding, but should be to preserve his/her rights in the event the Objections or Specifications of Objections are determined to be improper.

LITIGATION FORMS

day, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein:

- (a) Declaring insufficient, defective, invalid, null and void the designating petition heretofore filed with Respondent Board of Elections purporting to designate Respondent-Candidate as candidate for the public office of *[name of public office]* in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- (b) Directing, requiring and commanding Respondent Board of Elections not to place and/or print the name of Respondent-Candidate as candidate of the *[name of political party]* for the public office of *[name of public office]* on the official ballots to be used at the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- (c) Declaring the designating petition filed with Respondent Board of Elections purporting to designate Respondent-Candidate aforesaid as candidate of the *[name of political party]* for the public office of *[name of public office]* on the official ballots to be used at the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to be a legal nullity, and reversing any contrary determination of Respondent Board of Elections that may have been made or may hereinafter be made; and
- (d) Granting Petitioners such other and further relief as this Court deems just and proper; and it is further

ORDERED, that Respondent Board of Elections be and is hereby ordered and directed to produce upon the hearing of this Order to Show Cause and on all adjournments thereof, the aforesaid designating petition, with cover sheet and any amended cover sheet(s), identification number application form and any other documents in support of or related to designation and/or nomination of Respondent-Candidate; together with the Objections and Specifications of Objections relating to the aforesaid designating petition; any written notification of a determination of non-compliance together with proof of service upon Respondent-Candidate and/or contact person designated therein; any writing purporting to cure or correct said determination of non-compliance; the permanent personal voter registration poll records of voters, computer generated registration lists for the last four (4) years and official maps for the *[name of relevant district]*; the report of the Clerk(s) of the Board made on such objections and specifications; the minutes and proceedings of any meeting of Respondent Board of Elections made for the purpose of ruling upon Objections and/or Specifications of Objections filed by any person herein to the purported Designating Petition of Respondent-Candidate; and such other records of Respondent Board of Elections as may relate to this matter for examination by this Court.

SUFFICIENT CAUSE APPEARING THEREFOR, leave is hereby granted to the Petitioners to submit, upon the return date 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, including without limitation, such proof as may be necessary to support any allegations of candidate ineligibility, fraud, forgery or other illegality that may be made and that do not appear on the face of the documents submitted to Respondent Board of Elections.

SUFFICIENT CAUSE APPEARING THEREFOR, it is further



ORDERED that service of a copy of this Order to Show Cause and Verified Petition with index number and date of filing endorsed thereon together with the papers upon which it is granted be made upon: Respondent Board of Elections by leaving them at its office at \_\_\_\_\_, on or before the \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_<sup>2</sup> and that service of a copy of this order together with the papers upon which it is granted to be made on Respondent-Candidate either:

- 1) by personal delivery of the same to such Respondent-Candidate on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 2) by personal delivery of the same to a person of suitable age and discretion at the residence of Respondent-Candidate as set forth on the designating petition filed by or on behalf of Respondent-Candidate with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to said Respondent-Candidate at said address and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 3) by affixing the same to the door of the residence of said Respondent-Candidate as set forth on the designating petition filed by or on behalf of Respondent-Candidate with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to said respondent at said address and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 4) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Candidate at said address as set forth on the designating petition filed by or on behalf of Respondent-Candidate with Respondent Board of Elections and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United State Postal Service, by ordinary first class mail on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 5) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Candidate at said address as set forth on the designating petition filed by or on behalf of said Respondent-Candidate with Respondent Board of Elections and by sending same by overnight, next-day delivery by UPS or FedEx or by the United States Postal Service on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

and that any such method of service shall be deemed good and sufficient service thereof.

ORDERED, that any requirement that the affidavits of service be filed with the Clerk of the Court be extended to the return date of this motion, and such affidavits shall be filed with the Clerk of the Part on the return date, and that any requirement that substituted service be preceded by due diligence attempt(s) at personal delivery

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<sup>2</sup> Local Boards of Elections may have their own rules regarding service upon such Board, and those rules should be consulted.

LITIGATION FORMS

upon Respondent-Candidate be and is hereby waived, and that the ten day completion of service provision be and is hereby waived by this Order.

ENTER:

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J.S.C.

**VERIFIED PETITION IN A PROCEEDING SEEKING TO INVALIDATE  
A CANDIDATE'S DESIGNATING PETITION**

SUPREME COURT OF THE STATE OF NEW YORK  
[NAME OF COUNTY]

-----X

[PETITIONER-OBJECTOR],

Petitioner,

-and-

[CANDIDATE-AGGRIEVED]<sup>1</sup>

Petitioner,

-against-

[RESPONDENT-CANDIDATE],

Respondent-Candidate,

-and-

[LOCAL BOARD OF ELECTIONS],

Respondent.

-----X

VERIFIED PETITION

Index No.: [index number]

Date Purchased: [date]

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioners [name(s) of petitioner(s)], by [his/her/their] attorneys [name of firm], respectfully allege as follows:

1. Petitioner-Objector \_\_\_\_\_, a duly qualified registered voter and enrollee of the \_\_\_\_\_ Party, resides at \_\_\_\_\_, and is entitled to vote for the public office of \_\_\_\_\_ in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

2. Petitioner-Candidate-Agrieved \_\_\_\_\_, a duly registered voter and enrolled in the \_\_\_\_\_ Party, resides at \_\_\_\_\_, and is entitled to vote for the public office of \_\_\_\_\_ in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and is a candidate for said office in said election.

3. Respondent Board of Election is charged with the responsibility of the supervision of the conduct of official elections held in the [name of county], including the duties of receiving and filing designating petitions for public office in political subdivisions located entirely within the [name of county], the review and determination of Objections and Specifications of Objections to such designating petitions, notification of a determination of noncompliance, maintaining the permanent

<sup>1</sup> A Candidate-Agrieved need not be named in this proceeding, but should be to preserve his/her rights in the event the Objections or Specifications of Objections are determined to be improper.

## LITIGATION FORMS

personal voter registration poll records of voters and official maps for all election districts located within the *[name of county]*, and the preparation of official Primary, General and Special Election ballots for use in the *[name of county]*.

4. Upon information and belief, on or about *[date]*, a purported Designating Petition was filed with Respondent Board of Elections purporting to designate Respondent-Candidate *[name of Respondent-Candidate]* ("Respondent-Candidate"), as a candidate of the *[name of political party]* for the public office of *[name of public office]* in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Designating Petition").

5. Pursuant to Election Law Section 6-154, on or about *[date]*, Petitioner-Objector did file written objections to the foregoing purported Designating Petition of RespondentCandidate as candidate of the *[name of political party]* for said public office with Respondent Board of Elections.

6. Also pursuant to Election Law Section 6-154, Specifications of Objections in support of the written objections to the foregoing purported Designating Petition were or will be timely filed with Respondent Board of Elections. It is respectfully requested that the Objections and Specifications of Objections be incorporated herein, and hereby are referred to and made a part hereof, as though fully set forth herein, upon same being filed.

7. Upon information and belief, Respondent Board of Elections has not yet made a determination with regard to the aforesaid Objections and Specifications of Objections.

8. Upon information and belief, the aforesaid Specifications of Objections will come on for a hearing before Respondent Board of Elections on a date in the near future and many of the allegations in the Specifications of Objections will, of necessity, have to come before this Court for determination.

9. The attention of the Court is respectfully drawn to Election Law Section 16-102 wherein it is provided that a proceeding with respect to a petition for a Primary Election shall be instituted within fourteen (14) days after the last day to file the petitions for such Primary Election, the latest date being *[date]*.

10. Petitioners respectfully allege that the Objections and Specifications of Objections filed with Respondent Board of Elections to the purported Designating Petition are valid and proper objections, and respectfully request this Order to Show Cause be granted so that this anticipatory proceeding may be commenced in a timely fashion in the event Respondent Board of Elections should render a determination adverse to Petitioners.

11. Some of the matters raised in the said Specifications of Objections are exclusively within the jurisdiction of this Court and should be heard and determined by this Court.

12. It is possible that Respondent Board of Elections will not dispose of the abovementioned Objections and Specifications of Objections before *[date]*, the last day allowed by statute for the commencement of this proceeding.

13. Upon information and belief, the aforesaid alleged Designating Petition filed by, or on behalf of, Respondent-Candidate is insufficient, ineffective, false, fraudulent, and invalid, does not conform to the provisions of the Election Law and other Laws of the State of New York, and the Rules and Regulations of the Board, and is null and void by reason of the facts and allegations set forth herein, including but not limited to the Objections and Specifications of Objections incorporated by reference herein, and Respondent Board of Elections should be restrained and

enjoined from printing the name of Respondent-Candidate upon the official ballots of the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

14. Upon information and belief, the purported Designating Petition of the Respondent-Candidate is invalid for the reasons set forth in the objections and Specifications of Objections and/or that:

- (a) the petition does not contain the minimum number of required valid signatures;
- (b) many of the signatures were not personally signed by the persons whose names appear upon the petition, but their names were signed by others;
- (c) many of the signers were not registered from the addresses stated in the petition;
- (d) many of the signers did not sign their names to the Designating/Nominating Petition in the presence of the subscribing witness on the dates indicated in the Designating/Nominating Petition;
- (e) the signatures were obtained by fraud;
- (f) signatures have been altered;
- (g) witness statements have been altered;
- (h) dates have been altered;
- (i) signatures have been forged;
- (j) subscribing witnesses' initials have been forged;
- (k) dates and/or addresses have been omitted or are incomplete;
- (l) signatures and/or dates and/or addresses are illegible;
- (m) signers are not enrolled as in the proper political party;
- (n) subscribing witnesses are not registered at the address indicated or do not actually reside at said address;
- (o) subscribing witnesses are not enrolled in the proper political party;
- (p) signers do not live in the proper political district;
- (q) witness statements have been signed before completed;
- (r) notaries public failed to properly administer oaths or comply with appropriate procedures when taking signatures;
- (s) the Designating/Nominating Petition is paginated improperly;
- (t) the number of signatures on various pages is omitted or wrong;
- (u) signatures were obtained prior to first day for circulation of the Designating/Nominating Petition;
- (v) signers previously signed another candidate's Designating/Nominating Petition;
- (w) the Designating/Nominating Petition is permeated with fraud;
- (x) the Designating/Nominating Petition is invalid on other grounds which will be established at the hearing of this application; and/or
- (y) Respondent-Candidate is ineligible to be a candidate for the indicated office.

15. In the event Respondent Board of Elections renders a determination adverse to Petitioners, said determination will be arbitrary, capricious, and in violation of the provisions of the Election Law so as to be reviewable pursuant to Election Law Section 16-102.

16. Petitioners intend to prove to this Court that any decisions rendered by

## LITIGATION FORMS

Respondent Board of Elections in favor of Respondent-Candidate on particular Specifications of Objections filed with the Board of Elections are erroneous, and Petitioners intend to substantiate said Specifications of Objections which are not sustained by Respondent Board of Elections.

17. In accordance with prior decisions of this and other courts, whose decisions are controlling, Petitioners retain the right to submit proof establishing invalidity of any and all signatures and sheets on the purported Designating Petition, as well as the Designating Petition itself, and the ineligibility of Respondent-Candidate. Petitioners intend to exercise such right.

18. Petitioners request leave and reserve their 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.<sup>2</sup>

19. Petitioners request that Respondent Board of Elections produce upon the argument and hearing of this application the aforesaid Designating Petition, with cover sheet and any amended cover sheet(s), identification number application form and any other documents purporting to designate Respondent-Candidate; together with the Objections and Specifications of Objections relating to the aforesaid Designating Petition; any written notification of a determination of non-compliance together with proof of service upon Respondent-Candidate and/or contact person designated therein; any writing purporting to cure or correct said determination of non-compliance; the permanent personal voter registration poll records of voters, computer generated registration lists for the last four (4) years and official maps for the *[name of relevant district]*, State of New York; the report of the Clerk(s) of Respondent Board of Elections made on such Objections and Specifications of Objections; the minutes and proceedings of any meeting of Respondent Board of Elections made for the purpose of ruling upon Objections and/or Specifications of Objections filed by any person herein to the purported Designating Petition of Respondent-Candidate; such other records of Respondent Board of Elections as may relate to this matter for examination by this Court; and the records provided for in the annexed Order to Show Cause.

20. Petitioners have no adequate remedy at law.

21. No previous application has been made for the relief sought herein or for the Order to Show Cause hereto annexed, or for any similar relief.

WHEREFORE, Petitioners respectfully pray for a final Order and Judgment, granting the relief requested in the Order to Show Cause, and for such other and further relief as this Court deems just and proper.

Dated: *[Town/city]*, New York

*[Date]*

*[NAME OF FIRM]*

*Attorneys for Petitioner*

By: \_\_\_\_\_

*[NAME OF ATTORNEY]*

*[Firm street address]*

*[Telephone number]*

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<sup>2</sup> Many courts have local election law rules that require a Bill of Particulars be filed upon the return date of the Order to Show Cause, and allegations not supplied in such Bill of Particulars are excluded.

## VERIFICATION

[illegible]

\_\_\_\_\_, being duly sworn, says as follows: I am the Petitioner in the within proceeding [*united in interest with the other Petitioners*], have read the foregoing Petition and know the content thereof; the same is true to my own knowledge, except as to matters stated to be alleged upon information and belief, and as to those matters, I believe it to be true.

Sworn to before me this  
 \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public

LITIGATION FORMS

**ORDER TO SHOW CAUSE IN PROCEEDING SEEKING TO  
INVALIDATE A CANDIDATE'S NOMINATING PETITION**

At a *[name of part]* of the Supreme Court of  
the State of New York, held in and for the  
County of \_\_\_\_\_, at *[court address]*,  
on the *[ordinal number of day]* day of *[month]*,  
*[year]*.

P R E S E N T :

*[Assigned Justice]*,  
J.S.C.

-----X

*[PETITIONER-OBJECTOR]*,

Petitioner,

-and-

*[CANDIDATE-AGGRIEVED]*<sup>1</sup>

Petitioner,

-against-

*[RESPONDENT-CANDIDATE]*,

Respondent-Candidate,

-and-

*[LOCAL BOARD OF ELECTIONS]*,

Respondent.

-----X

Upon the reading and filing of the emergency affirmation of *[attorney's name]* dated *[date]*, and the annexed Verified Petition of *[name of Petitioner-Objector and/or Candidate Aggrieved]*, duly verified on *[date]*; upon the nominating petition purporting to nominate Respondent-Candidate *[name of respondent candidate]* ("Respondent-Candidate"), as candidate for the public office of *[name of public office]*; upon the original files relating thereto of the *[local board of elections]* ("Board of Elections"); and upon all of the papers and proceedings herein, it is hereby:

ORDERED, that the Respondents named hereinabove show cause before this Court at a Term, Part *[part number]*, to be held at the Courthouse located at *[street address]*, on the *[ordinal number of day]* day of *[month]*, *[year]* at *[time]* of that

<sup>1</sup> A Candidate-Aggrieved need not be named in this proceeding, but should be to preserve his/her rights in the event the Objections or Specifications of Objections are determined to be improper.



day, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein:

- (a) Declaring insufficient, defective, invalid, null and void the nominating petition heretofore filed with Respondent Board of Elections purporting to nominate Respondent-Candidate as candidate for the public office of *[name of public office]* in the *[General/Special]* Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- (b) Directing, requiring and commanding Respondent Board of Elections not to place and/or print the name of Respondent-Candidate as candidate of the *[name of independent body]* for the public office of *[name of public office]* on the official ballots to be used at the *[General/Special]* Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- (c) Declaring the nominating petition filed with Respondent Board of Elections purporting to nominate Respondent-Candidate aforesaid as candidate of the *[name of independent body]* for the public office of *[name of public office]* on the official ballots to be used at the *[General/Special]* Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to be a legal nullity, and reversing any contrary determination of Respondent Board of Elections that may have been made or may hereinafter be made; and
- (d) Granting Petitioners such other and further relief as this Court deems just and proper; and it is further

ORDERED, that Respondent Board of Elections be and is hereby ordered and directed to produce upon the hearing of this Order to Show Cause and on all adjournments thereof, the aforesaid nominating petition, with cover sheet and any amended cover sheet(s), identification number application form and any other documents in support of or related to nomination of Respondent-Candidate; together with the Objections and Specifications of Objections relating to the aforesaid nominating petition; any written notification of a determination of non-compliance together with proof of service upon Respondent-Candidate and/or contact person designated therein; any writing purporting to cure or correct said determination of non-compliance; the permanent personal voter registration poll records of voters, computer generated registration lists for the last four (4) years and official maps for the *[name of relevant district]*; the report of the Clerk(s) of the Board made on such objections and specifications; the minutes and proceedings of any meeting of Respondent Board of Elections made for the purpose of ruling upon Objections and/or Specifications of Objections filed by any person herein to the purported Nominating Petition of Respondent-Candidate; and such other records of Respondent Board of Elections as may relate to this matter for examination by this Court.

SUFFICIENT CAUSE APPEARING THEREFOR, leave is hereby granted to the Petitioners to submit, upon the return date 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, including without limitation, such proof as may be necessary to support any allegations of candidate ineligibility, fraud, forgery or other illegality that may be made and that do not appear on the face of the documents submitted to Respondent Board of Elections.

SUFFICIENT CAUSE APPEARING THEREFOR, it is further

LITIGATION FORMS

ORDERED that service of a copy of this Order to Show Cause and Verified Petition with index number and date of filing endorsed thereon together with the papers upon which it is granted be made upon: Respondent Board of Elections by leaving them at its office at \_\_\_\_\_, on or before the \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_<sup>2</sup> and that service of a copy of this order together with the papers upon which it is granted to be made on Respondent-Candidate either:

- 1) by personal delivery of the same to such Respondent-Candidate on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 2) by personal delivery of the same to a person of suitable age and discretion at the residence of Respondent-Candidate as set forth on the nominating petition filed by or on behalf of such Respondent-Candidate with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Candidate at said address and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 3) by affixing the same to the door of the residence of Respondent-Candidate as set forth on the nominating petition filed by or on behalf of Respondent-Candidate with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to said respondent at said address and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 4) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Candidate at said address as set forth on the nominating petition filed by or on behalf of Respondent-Candidate with Respondent Board of Elections and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United State Postal Service, by ordinary first class mail on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 5) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Candidate at said address as set forth on the nominating petition filed by or on behalf of said Respondent-Candidate with Respondent Board of Elections and by sending same by overnight, next-day delivery by UPS or FedEx or by the United States Postal Service on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

and that any such method of service shall be deemed good and sufficient service thereof.

ORDERED, that any requirement that the affidavits of service be filed with the Clerk of the Court be extended to the return date of this motion, and such affidavits shall be filed with the Clerk of the Part on the return date, and that any requirement that substituted service be preceded by due diligence attempt(s) at personal delivery

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<sup>2</sup> Local Boards of Elections may have their own rules regarding service upon such Board, and those rules should be consulted.

GOLDFEDER'S MODERN ELECTION LAW—BALLOT ACCESS IN NEW YORK

upon Respondent-Candidate be and is hereby waived, and that the ten day completion of service provision be and is hereby waived by this Order.

ENTER:

---

J.S.C.

LITIGATION FORMS

**VERIFIED PETITION IN A PROCEEDING SEEKING TO INVALIDATE  
A CANDIDATE'S NOMINATING PETITION**

SUPREME COURT OF THE STATE OF NEW YORK  
[NAME OF COUNTY]

-----X

[PETITIONER-OBJECTOR],

Petitioner,

-and-

[CANDIDATE-AGGRIEVED]'

Petitioner,

-against-

[RESPONDENT-CANDIDATE],

Respondent-Candidate,

-and-

[LOCAL BOARD OF ELECTIONS],

Respondent.

-----X

VERIFIED PETITION

Index No.: [index number]

Date Purchased: [date]

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioners [name(s) of petitioner(s)], by [his/her/their] attorneys [name of firm], respectfully allege as follows:

1. Petitioner-Objector \_\_\_\_\_, a duly qualified registered voter, resides at \_\_\_\_\_, and is entitled to vote for the public office of \_\_\_\_\_ in the [General/Special] Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

2. Petitioner-Candidate-Aggrieved \_\_\_\_\_, a duly registered voter, resides at \_\_\_\_\_, and is entitled to vote for the public office of \_\_\_\_\_ in the [General/Special] Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and is a candidate for said office in said election.

3. Respondent Board of Election is charged with the responsibility of the supervision of the conduct of official elections held in the [name of county], including the duties of receiving and filing nominating petitions for public office in political subdivisions located entirely within the [name of county], the review and determination of Objections and Specifications of Objections to such nominating petitions, notification of a determination of noncompliance, maintaining the permanent personal voter registration poll records of voters and official maps for all election

<sup>1</sup> A Candidate-Aggrieved need not be named in this proceeding, but should be to preserve his/her rights in the event the Objections or Specifications of Objections are determined to be improper.

districts located within the *[name of county]*, and the preparation of official Primary, General and Special Election ballots for use in the *[name of county]*.

4. Upon information and belief, on or about *[date]*, a purported Nominating Petition was filed with Respondent Board of Elections purporting to designate Respondent-Candidate *[name of Respondent-Candidate]* ("Respondent-Candidate"), as a candidate of the *[name of independent body]* for the public office of *[name of public office]* in the *[General/Special]* Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Nominating Petition").

5. Pursuant to Election Law Section 6-154, on or about *[date]*, Petitioner-Objector did file written Objections to the foregoing purported Nominating Petition of RespondentCandidate as candidate of the *[name of independent body]* for said public office with the Respondent Board of Elections.

6. Also pursuant to Election Law Section 6-154, Specifications of Objections in support of the written objections to the foregoing purported Nominating Petition were or will be timely filed with the Respondent Board of Elections. It is respectfully requested that the Objections and Specifications of Objections be incorporated herein, and hereby are referred to and made a part hereof, as though fully set forth herein, upon same being filed.

7. Upon information and belief, the Respondent Board of Elections has not yet made a determination with regard to the aforesaid Objections and Specifications of Objections.

8. Upon information and belief, the aforesaid Specifications of Objections will come on for a hearing before the Respondent Board of Elections on a date in the near future and many of the allegations in the Specifications of Objections will, of necessity, have to come before this Court for determination.

9. The attention of the Court is respectfully drawn to Election Law Section 16-102 wherein it is provided that a proceeding with respect to a petition for a *[General/Special]* Election shall be instituted within *[fourteen (14)/seven (7)]* days after the last day to file the petitions for such *[General/Special]* Election, the latest date being *[date]*.

10. Petitioners respectfully allege that the Objections and Specifications of Objections filed with Respondent Board of Elections to the purported Designating Petition are valid and proper objections, and respectfully request this Order to Show Cause be granted so that this anticipatory proceeding may be commenced in a timely fashion in the event the Respondent Board of Elections should render a determination adverse to Petitioners.

11. Some of the matters raised in the said Specifications of Objections are exclusively within the jurisdiction of this Court and should be heard and determined by this Court.

12. It is possible that Respondent Board of Elections will not dispose of the abovementioned Objections and Specifications of Objections before *[date]*, the last day allowed by statute for the commencement of this proceeding.

13. Upon information and belief, the aforesaid alleged Nominating Petition filed by, or on behalf of, Respondent-Candidate is insufficient, ineffective, false, fraudulent, and invalid, does not conform to the provisions of the Election Law and other Laws of the State of New York, and the Rules and Regulations of the Board, and is null and void by reason of the facts and allegations set forth herein, including but not limited to the Objections and Specifications of Objections incorporated by reference herein, and Respondent Board of Elections should be restrained and en-

## LITIGATION FORMS

joined from printing the name of Respondent-Candidate upon the official ballots of the [General/Special] Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

14. Upon information and belief, the purported Nominating Petition of the Respondent-Candidate is invalid for the reasons set forth in the objections and Specifications of Objections and/or that:

- (a) the petition does not contain the minimum number of required valid signatures;
- (b) many of the signatures were not personally signed by the persons whose names appear upon the petition, but their names were signed by others;
- (c) many of the signers were not registered from the addresses stated in the petition;
- (d) many of the signers did not sign their names to the Designating/Nominating Petition in the presence of the subscribing witness on the dates indicated in the Designating/Nominating Petition;
- (e) the signatures were obtained by fraud;
- (f) signatures have been altered;
- (g) witness statements have been altered;
- (h) dates have been altered;
- (i) signatures have been forged;
- (j) subscribing witnesses' initials have been forged;
- (k) dates and/or addresses have been omitted or are incomplete;
- (l) signatures and/or dates and/or addresses are illegible;
- (m) subscribing witnesses are not registered at the address indicated or do not actually reside at said address;
- (n) signers do not live in the proper political district;
- (o) witness statements have been signed before completed;
- (p) notaries public failed to properly administer oaths or comply with appropriate procedures when taking signatures;
- (q) the Designating/Nominating Petition is paginated improperly;
- (r) the number of signatures on various pages is omitted or wrong;
- (s) signatures were obtained prior to first day for circulation of the Designating/Nominating Petition;
- (t) signers previously signed another candidate's Designating/Nominating Petition;
- (u) the Designating/Nominating Petition is permeated with fraud;
- (v) the Designating/Nominating Petition is invalid on other grounds which will be established at the hearing of this application; and/or
- (w) Respondent-Candidate is ineligible to be a candidate for the indicated office.

15. In the event Respondent Board of Elections renders a determination adverse to Petitioners, said determination will be arbitrary, capricious, and in violation of the provisions of the Election Law so as to be reviewable pursuant to Election Law Section 16-102.

16. Petitioners intend to prove to this Court that any decisions rendered by Respondent Board of Elections in favor of Respondent-Candidate on particular Specifications of Objections filed with the Board of Elections are erroneous, and

Petitioners intend to substantiate said Specifications of Objections which are not sustained by the Respondent Board of Elections.

17. In accordance with prior decisions of this and other courts, whose decisions are controlling, Petitioners retain the right to submit proof establishing the invalidity of any and all signatures and sheets on the purported Nominating Petition, as well as the Nominating Petition itself, and the ineligibility of Respondent-Candidate. Petitioners intend to exercise such right.

18. Petitioners request leave and reserve their 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.<sup>2</sup>

19. Petitioners request that Respondent Board of Elections produce upon the argument and hearing of this application the aforesaid Nominating Petition, with cover sheet and any amended cover sheet(s), identification number application form and any other documents purporting to nominate Respondent-Candidate; together with the Objections and Specifications of Objections relating to the aforesaid Nominating Petition; any written notification of a determination of non-compliance together with proof of service upon Respondent-Candidate and/or contact person designated therein; any writing purporting to cure or correct said determination of non-compliance; the permanent personal voter registration poll records of voters, computer generated registration lists for the last four (4) years and official maps for the *[name of relevant district]*, State of New York; the report of the Clerk(s) of Respondent Board of Elections made on such Objections and Specifications of Objections; the minutes and proceedings of any meeting of Respondent Board of Elections made for the purpose of ruling upon Objections and/or Specifications of Objections filed by any person herein to the purported Nominating Petition of Respondent-Candidate; such other records of Respondent Board of Elections as may relate to this matter for examination by this Court; and the records provided for in the annexed Order to Show Cause.

20. Petitioners have no adequate remedy at law.

21. No previous application has been made for the relief sought herein or for the Order to Show Cause hereto annexed, or for any similar relief.

WHEREFORE, Petitioners respectfully pray for a final Order and Judgment, and granting the relief requested in the Order to Show Cause, and for such other and further relief as this Court deems just and proper.

Dated: *[Town/city]*, New York

*[Date]*

*[NAME OF FIRM]*

*Attorneys for Petitioner*

By: \_\_\_\_\_

*[NAME OF ATTORNEY]*

*[Firm street address]*

*[Telephone number]*

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<sup>2</sup> Many courts have local election law rules that require a Bill of Particulars be filed upon the return date of the Order to Show Cause, and allegations not supplied in such Bill of Particulars are excluded.

LITIGATION FORMS

VERIFICATION

STATE OF NEW YORK    )  
                                          ) ss:  
COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being duly sworn, says as follows: I am the  
Petitioner in the within proceeding [*united in interest with the other Petitioners*],  
have read the foregoing Petition and know the content thereof; the same is true to  
my own knowledge, except as to matters stated to be alleged upon information and  
belief, and as to those matters, I believe it to be true.

\_\_\_\_\_  
Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public



**ORDER TO SHOW CAUSE IN A PROCEEDING SEEKING TO VALIDATE  
A CANDIDATE'S DESIGNATING PETITION**

At a *[name of part]* of the Supreme Court of  
the State of New York, held in and for the  
County of \_\_\_\_\_, at *[court address]*,  
on the *[ordinal number of day]* day of *[month]*,  
*[year]*.

P R E S E N T :

*[Name of assigned judge]*,  
J.S.C.

-----X  
*[PETITIONER-CANDIDATE]*,

Petitioner,

-against-

*[RESPONDENTS-OBJECTORS]*,<sup>1</sup>

Respondent(s)-Objector(s),

-and-

*[LOCAL BOARD OF ELECTIONS]*,

Respondent.

-----X

ORDER TO SHOW CAUSE

Index No.: *[index number]*

Date Purchased: *[date]*

Upon the reading and filing of the emergency affirmation of *[name of attorney]*, dated \_\_\_\_\_, and the annexed Verified Petition of *[name of petitioner]*, duly verified on *[date]*; upon the original designating petition naming Petitioner, *[name of petitioner]*, as candidate of the *[name of political party]* for the public office of *[name of public office]*; upon the original files relating thereto of the *[name of local board of elections]* ("Board of Elections"); and upon all of the papers and proceedings herein, it is hereby:

ORDERED, that the Respondents named hereinabove show cause before this Court at Part *[part number]*, to be held at the Courthouse located at *[street address]*, in the County of *[name of county]*, State of New York, on the *[ordinal number of day]* day of *[month]*, *[year]* at *[time]* of that day, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein:

- (a) Declaring valid, proper, sufficient and legally effective the Designating Petition heretofore filed with Respondent Board of Elections, designating Petitioner as candidate for the public office of *[name of public office]* in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

<sup>1</sup> A proceeding to validate a Designating Petition of a candidate must name all Objectors.

LITIGATION FORMS

- (b) Directing, requiring and commanding Respondent Board of Elections to print and/or place the name of Petitioner aforesaid as candidate for the public office of *[name of public office]* in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, on the official ballots to be used at the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- (c) Enjoining and restraining Respondent Board of Elections from printing, issuing, or distributing for use during the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, any and all official ballots used in the said Primary Election upon which the name of Petitioner does not appear as candidate for the public office of *[name of public office]*;
- (d) Granting Petitioner-Candidate such other and further relief as this Court deems just and proper; and it is further

ORDERED, that Respondent Board of Elections be and are hereby ordered and directed to produce upon the hearing of this Order to Show Cause and on all adjournments thereof, the aforesaid designating petition, with cover sheet and any amended cover sheet(s), identification number application form and any other documents in support of or related to the alleged designation of Petitioner; together with the Objections and Specifications of Objections relating to the aforesaid designating petition; any written notification of a determination of non compliance together with proof of service upon Petitioner and/or contact person designated therein; any writing purporting to cure or correct said determination of non-compliance; the permanent personal voter registration poll records of voters, computer generated registration lists for the last four (4) years and official maps for the *[name of relevant district]*; the report of the Clerk(s) of the Board made on such Objections and Specifications of Objections; the minutes and proceedings of any meeting of the Respondent Board of Elections made for the purpose of ruling upon Objections and/or Specifications of Objections filed by any person herein to the aforesaid Designating Petition of Petitioner; and such other records of Respondent Board of Elections as may relate to this matter for examination by this Court.

SUFFICIENT CAUSE APPEARING THEREFOR, leave is hereby granted to the Petitioner to submit, upon the return date 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, including without limitation, such proof as may be necessary to support the validity of Petitioner's candidacy for said public office at said Primary Election.

SUFFICIENT CAUSE APPEARING THEREFOR, it is further

ORDERED that that service of a copy of this Order to Show Cause and Verified Petition with index number and date of filing endorsed thereon, together with the papers upon which it is granted, be made upon: Respondent Board of Elections by leaving them at its office at \_\_\_\_\_, on or before the \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_;<sup>2</sup> and that service of a copy of these said papers to be made on Respondent-Objector(s) either:

- 1) by personal delivery of the same to such Respondent-Objector(s) on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or

<sup>2</sup> Local boards of election may each have their own rules regarding service and those rules should be consulted with respect to the manner of service on the local board of elections.

- 2) by personal delivery of the same to a person of suitable age and discretion at the residence(s) of Respondent-Objector(s) as set forth on the Objections filed with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Objector(s) at said address(es) and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 3) by affixing the same to the door of the residence of Respondent-Objector(s) as set forth on the Objections filed with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Objector(s) at said address(es) and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 4) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Objector(s) at said address(es) as set forth on the Objections filed with Respondent Board of Elections and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, by ordinary first class mail on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 5) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Objector(s) at said address(es) as set forth on the Objections filed with Respondent Board of Elections and by sending same by overnight, next-day delivery by UPS or FedEx or by the United States Postal Service on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

and that any such method of service shall be deemed good and sufficient service thereof.

ORDERED, that any requirement that the affidavits of service be filed with the Clerk of the Court be extended to the return date of this motion, and such affidavits shall be filed with the Clerk of the Part on the return date, and that any requirement that substituted service be preceded by due diligence attempt(s) at personal delivery upon Respondent-Objector(s) be and is hereby waived, and that the ten day completion of service provision be and is hereby waived by this Order.

ENTER:

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J.S.C.

LITIGATION FORMS

**VERIFIED PETITION IN A PROCEEDING SEEKING TO VALIDATE  
A CANDIDATE'S DESIGNATING PETITION**

SUPREME COURT OF THE STATE OF NEW YORK  
[NAME OF COUNTY]

-----X  
[PETITIONER-CANDIDATE],

Petitioner,

-against-

[RESPONDENTS-OBJECTORS],<sup>1</sup>

Respondent(s)-Objector(s),

-and-

[LOCAL BOARD OF ELECTIONS],

Respondent.

-----X

VERIFIED PETITION

Index No.: [index number]

Date Purchased: [date]

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioner, by [his/her] attorneys [name of firm] respectfully alleges:

1. At all times hereinafter mentioned, Petitioner-Candidate [name of Petitioner Candidate] ("Petitioner") is a candidate within the meaning of Section 16-102 of the Election Law, having duly filed a Designating Petition with Respondent [name of local board of elections] ("Board of Elections") naming Petitioner as a candidate of the [name of political party] for the public office of [name of public office] for the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ("Designating Petition").

2. Respondent Board of Elections is charged with the responsibility of the supervision of the conduct of official elections held in the [name of county], including the duties of receiving and filing designating petitions for public office and party position in political subdivisions located entirely within [name of county], the review and determination of Objections and Specifications of Objections to such designating petitions, notification of a determination of non-compliance, maintaining the permanent personal voter registration poll records of voters and official maps for all election districts located within the [name of county], and the preparation of official Primary Election ballots for use in the [name of county].

3. Upon information and belief, on or about [date], the Designating Petition was filed with Respondent Board of Elections naming Petitioner as a candidate of the [name of political party] for the public office of [name of public office] in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

4. Petitioner is, in all respects, duly qualified for the said designation.

5. The Designating Petition was and still is in due and proper form as prescribed by law, and contains more than the minimum number of signatures of duly enrolled

<sup>1</sup> A proceeding to validate a Designating Petition of a candidate must name all Objectors.

voters of the [name of political party] in the [name of relevant district] for which said designation was made, and the Designating Petition is otherwise valid, proper, sufficient and legally effective.

6. Upon information and belief, after the filing of the Designating Petition, written Objections to the Designating Petition were filed with Respondent Board of Elections by the following person(s) referred to herein as the Respondent-Objector(s), each of whose purported residence was indicated on said written Objections, and Petitioner is therefore aggrieved:

| NAME OF OBJECTOR(S) | ADDRESS OF OBJECTOR(S) SET FORTH ON OBJECTIONS |
|---------------------|------------------------------------------------|
| [Name of objector]  | [Address of objector]                          |

7. Upon information and belief, Specifications of Objections in support of the aforesaid written Objections to the Designating Petition were or will be filed with the Respondent Board of Elections.

8. (a) Upon information and belief, the aforesaid Objections and Specifications of Objections are insufficient, deficient as a matter of law and do not comply with the Rules of Respondent Board of Elections, and many of the allegations contained therein are without merit in law or in fact; and/or

(b) Upon information and belief, said Respondent-Objector(s) are not eligible to serve as lawful objectors.

9. Upon information and belief, Respondent Board of Elections has not yet made a determination with regard to the aforesaid Objections and Specifications of Objections.

10. Upon information and belief, the aforesaid Specifications of Objections will come on for a hearing before Respondent Board of Elections on a date in the near future and many of the allegations in the Specifications of Objections will, of necessity, have to come before this Court for determination.

11. Petitioner believes that it is possible that Respondent Board of Elections may make an erroneous determination of the several questions of law and fact raised by the aforesaid Objections and Specifications of Objections, which determinations would, according to law and the principles of equity, be subject to review by this Court and, in the event that Respondent Board of Elections shall make determinations sustaining the aforesaid Objections and Specifications of Objections, Petitioner will be aggrieved by such a determination.

12. Petitioner respectfully requests this Order to Show Cause be granted so that this anticipatory proceeding may be commenced in a timely fashion in the event Respondent Board of Elections should render a determination adverse to Petitioner, and so that Petitioner may resuscitate signatures that were erroneously sustained by the Board of Elections.

13. Some of the matters raised in the said Specifications of Objections are exclusively within the jurisdiction of this Court and should be heard and determined by this Court.

14. In the event Respondent Board of Elections renders a determination adverse to Petitioner, said determination will be arbitrary, capricious, and in violation of the provisions of the Election Law so as to be reviewable pursuant to Election Law Section 16-102.

LITIGATION FORMS

15. Petitioner intends to prove to this Court that any decisions rendered by Respondent Board of Elections in favor of the Respondent-Objector(s) on particular Specifications of Objections filed with Respondent Board of Elections are erroneous.

16. In accordance with prior decisions of this and other Courts, whose decisions are controlling, Petitioner retains the right to submit proof establishing the validity of individual signatures and sheets on the Designating Petition, and of the Designating Petition itself, for reasons not heretofore specified, and Petitioner intends to exercise such right.

17. 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.

18. Petitioner requests that Respondent Board of Elections produce upon the argument and hearing of this application the aforesaid Designating Petition, with cover sheet and any amended cover sheet(s), identification number application form and any other documents designating and/or nominating Petitioner-Candidate; together with the Objections and Specifications of Objections relating to the aforesaid Designating Petition; any written notification of a determination of non-compliance together with proof of service upon Petitioner Candidate and/or contact person designated therein; any writing purporting to cure or correct said determination of non-compliance; the permanent personal voter registration poll records of voters, computer generated registration lists for the last four (4) years and official maps for the [name of relevant district]; the report of the Clerk(s) of Respondent Board of Elections made on such Objections and Specifications of Objections; the minutes and proceedings of any meeting of Respondent Board of Elections made for the purpose of ruling upon Objections and/or Specifications of Objections filed by any person herein to the aforesaid Designating Petition of Petitioner-Candidate; such other records of Respondent Board of Elections as may relate to this matter for examination by this Court; and the records provided for in the annexed Order to Show Cause.

19. Petitioner has no adequate remedy at law.

20. No previous application has been made for the relief sought herein or for the Order to Show Cause hereto annexed, or for any similar relief.

WHEREFORE, Petitioner respectfully prays that the annexed Order to Show Cause be granted, for a final Order and Judgment granting the relief prayed for in the Order to Show Cause, and for such other and further relief as this Court deems just and proper.

Dated: [Town/city], New York  
[Date]

[NAME OF FIRM]  
Attorneys for Petitioner

By: \_\_\_\_\_  
[NAME OF ATTORNEY]  
[Firm street address]  
[Telephone number]

GOLDFEDER'S MODERN ELECTION LAW—BALLOT ACCESS IN NEW YORK

VERIFICATION

STATE OF NEW YORK     )  
                                          ) ss:  
COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being duly sworn, says as follows: I am the  
Petitioner in the within proceeding, have read the foregoing Petition and know the  
contents thereof; the same is true to my own knowledge, except as to matters stated  
to be alleged upon information and belief, and as to those matters, I believe it to  
be true.

\_\_\_\_\_  
Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

LITIGATION FORMS

**ORDER TO SHOW CAUSE IN A PROCEEDING SEEKING TO VALIDATE  
A CANDIDATE'S NOMINATING PETITION**

At a *[name of part]* of the Supreme Court of  
the State of New York, held in and for the  
County of \_\_\_\_\_, at *[court address]*,  
on the *[ordinal number of day]* day of *[month]*,  
*[year]*.

P R E S E N T :

*[Name of assigned judge]*,  
J.S.C.

-----X  
*[PETITIONER-CANDIDATE]*,

Petitioner,

-against-

*[RESPONDENT(S)-OBJECTOR(S)]*,<sup>1</sup>

Respondent(s)-Objector(s),

-and-

*[LOCAL BOARD OF ELECTIONS]*,

Respondent.  
-----X

ORDER TO SHOW CAUSE

Index No.: *[index number]*

Date Purchased: *[date]*

Upon the reading and filing of the emergency affirmation of *[name of attorney]*,  
dated \_\_\_\_\_, and the annexed Verified Petition of *[name of petitioner]*,  
duly verified on *[date]*; upon the original Objections naming Petitioner, *[name of  
petitioner]*, as candidate of the *[name of political party]* for the public office of  
*[name of public office]*; upon the original files relating thereto of the *[name of  
local board of elections]* ("Board of Elections"); and upon all of the papers and  
proceedings herein, it is hereby:

ORDERED, that the Respondents named hereinabove show cause before this  
Court at Part *[part number]*, to be held at the Courthouse located at *[street ad-  
dress]*, in the County of *[name of county]*, State of New York, on the *[ordinal  
number of day]* day of *[month]*, *[year]* at *[time]* of that day, or as soon thereafter  
as counsel can be heard, why an Order should not be made and entered herein:

- (a) Declaring valid, proper, sufficient and legally effective the Nominating  
Petition heretofore filed with Respondent Board of Elections, nominating  
Petitioner as candidate for the public office of *[name of public office]* in  
the *[General/Special]* Election to be held on the \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_.

<sup>1</sup> A proceeding to validate a Nominating Petition of a candidate must name all Objectors.



- (b) Directing, requiring and commanding Respondent Board of Elections to print and/or place the name of Petitioner as candidate for the public office of *[name of public office]* in the *[General/Special]* Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, on the official ballots to be used at the *[General/Special]* Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- (c) Enjoining and restraining Respondent Board of Elections from printing, issuing, or distributing for use during the *[General/Special]* Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, any and all official ballots used in the said *[General/Special]* Election upon which the name of Petitioner does not appear as candidate for the public office of *[name of public office]*;
- (d) Granting Petitioner-Candidate such other and further relief as this Court deems just and proper; and it is further

ORDERED, that Respondent Board of Elections be and are hereby ordered and directed to produce upon the hearing of this Order to Show Cause and on all adjournments thereof, the aforesaid Objections, with cover sheet and any amended cover sheet(s), identification number application form and any other documents in support of or related to the alleged nomination of Petitioner; together with the Objections and Specifications of Objections relating to the aforesaid Objections; any written notification of a determination of non-compliance together with proof of service upon Petitioner and/or contact person designated therein; any writing purporting to cure or correct said determination of non-compliance; the permanent personal voter registration poll records of voters, computer generated registration lists for the last four (4) years and official maps for the *[name of relevant district]*; the report of the Clerk(s) of Respondent Board of Elections made on such Objections and Specifications of Objections; the minutes and proceedings of any meeting of Respondent Board of Elections made for the purpose of ruling upon Objections and/or Specifications of Objections filed by any person herein to the aforesaid Nominating Petition of Petitioner, and such other records of Respondent Board of Elections as may relate to this matter for examination by this Court.

SUFFICIENT CAUSE APPEARING THEREFOR, leave is hereby granted to the Petitioner to submit, upon the return date 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, including without limitation, such proof as may be necessary to support the validity of Petitioner’s candidacy for said public office at said *[General/Special]* Election.

SUFFICIENT CAUSE APPEARING THEREFOR, it is further

ORDERED that that service of a copy of this Order to Show Cause and Verified Petition with index number and date of filing endorsed thereon, together with the papers upon which it is granted, be made upon: Respondent Board of Elections by leaving them at its office at \_\_\_\_\_, on or before the \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_;<sup>2</sup> that service of a copy of these said papers to be made on Respondent-Objector(s) either:

<sup>2</sup> Local boards of election may each have their own rules regarding service and those rules should be consulted with respect to the manner of service on the local board of elections.

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- 1) by personal delivery of the same to Respondent-Objector(s) on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 2) by personal delivery of the same to a person of suitable age and discretion at the residence(s) of Respondent-Objector(s) as set forth on the Objections filed by or on behalf of Respondent-Objector(s) with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Objector(s) at said address(es) and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 3) by affixing the same to the door of the residence(s) of Respondent-Objector(s) as set forth on the Objections filed by or on behalf of Respondent-Objector(s) with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Objector(s) at said address(es) and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 4) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Objector(s) at said address(es) as set forth on the Objections filed by or on behalf of Respondent-Objector(s) with Respondent Board of Elections and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, by ordinary first class mail on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 5) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Objector(s) at said address(es) as set forth on the Objections filed by or on behalf of Respondent-Objector(s) with Respondent Board of Elections and by sending same by overnight, next-day delivery by UPS or FedEx or by the United States Postal Service on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

and that any such method of service shall be deemed good and sufficient service thereof.

ORDERED, that any requirement that the affidavits of service be filed with the Clerk of the Court be extended to the return date of this motion, and such affidavits shall be filed with the Clerk of the Part on the return date, and that any requirement that substituted service be preceded by due diligence attempt(s) at personal delivery upon Respondent-Objector(s) be and is hereby waived, and that the ten day completion of service provision be and is hereby waived by this Order.

ENTER:

---

J.S.C.

**VERIFIED PETITION IN A PROCEEDING SEEKING TO  
VALIDATE A CANDIDATE'S NOMINATING PETITION**

SUPREME COURT OF THE STATE OF NEW YORK  
[NAME OF COUNTY]

-----X  
[PETITIONER-CANDIDATE],

Petitioner,

-against-

[RESPONDENT(S)-OBJECTORS],<sup>1</sup>

Respondent(s)-Objector(s),

-and-

[LOCAL BOARD OF ELECTIONS],

Respondent.

-----X

VERIFIED PETITION

Index No.: [index number]

Date Purchased: [date]

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioner, by [his/her] attorneys [name of firm] respectfully alleges:

1. At all times hereinafter mentioned, Petitioner-Candidate [name of Petitioner-Candidate] ("Petitioner") is a candidate within the meaning of Section 16-102 of the Election Law, having duly filed a Nominating Petition with Respondent [name of local board of elections] ("Board of Elections") naming Petitioner as a candidate of the [name of independent body] for the public office of [name of public office] for the [General/Special] Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the "Nominating Petition").

2. Respondent Board of Elections is charged with the responsibility of the supervision of the conduct of official elections held in the [name of county], including the duties of receiving and filing nominating petitions for public office and party position in political subdivisions located entirely within [name of county], the review and determination of Objections and Specifications of Objections to such nominating petitions, notification of a determination of non-compliance, maintaining the permanent personal voter registration poll records of voters and official maps for all election districts located within the [name of county], and the preparation of official [General/Special] Election ballots for use in the [name of county].

3. Upon information and belief, on or about [date], the Nominating Petition was filed with Respondent Board of Elections naming Petitioner as a candidate of the [name of independent body] for the public office of [name of public office] in the [General/Special] Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

4. Petitioner is, in all respects, duly qualified for the said nomination.

5. The Nominating Petition was and still is in due and proper form as prescribed

<sup>1</sup> A proceeding to validate a Nominating Petition of a candidate should name all Objectors.

LITIGATION FORMS

by law, and contains more than the minimum number of signatures of duly enrolled voters of the [name of relevant district] for which said nomination was made, and the Nominating Petition is otherwise valid, proper, sufficient and legally effective.

6. Upon information and belief, after the filing of the Nominating Petition, written Objections to the Nominating Petition were filed with Respondent Board of Elections by the following person(s) referred to herein as the Respondent-Objector(s), each of whose purported residence was indicated on said written Objections, and Petitioner is therefore aggrieved:

| NAME OF OBJECTOR(S) | ADDRESS OF OBJECTOR(S) SET FORTH ON OBJECTIONS |
|---------------------|------------------------------------------------|
| [Name of objector]  | [Address of objector]                          |

7. Upon information and belief, Specifications of Objections in support of the aforesaid written Objections to the Nominating Petition were or will be filed with the Respondent Board of Elections.

8. (a) Upon information and belief, the aforesaid Objections and Specifications of Objections are insufficient, deficient as a matter of law and do not comply with the Rules of Respondent Board of Elections, and many of the allegations contained therein are without merit in law or in fact; and/or

(b) Upon information and belief, said Respondent-Objectors are not eligible to serve as lawful objectors.

9. Upon information and belief, Respondent Board of Elections has not yet made a determination with regard to the aforesaid Objections and Specifications of Objections.

10. Upon information and belief, the aforesaid Specifications of Objections will come on for a hearing before Respondent Board of Elections on a date in the near future and many of the allegations in the Specifications of Objections will, of necessity, have to come before this Court for determination.

11. Petitioner believes that it is possible that Respondent Board of Elections may make an erroneous determination of the several questions of law and fact raised by the aforesaid Objections and Specifications of Objections, which determinations would, according to law and the principles of equity, be subject to review by this Court and, in the event that Respondent Board of Elections shall make determinations sustaining the aforesaid Objections and Specifications of Objections, Petitioner will be aggrieved by such a determination.

12. Petitioner respectfully requests this Order to Show Cause be granted so that this anticipatory proceeding may be commenced in a timely fashion in the event Respondent Board of Elections should render a determination adverse to Petitioner, and so that Petitioner may resuscitate signatures that were erroneously sustained by the Board of Elections.

13. Some of the matters raised in the said Specifications of Objections are exclusively within the jurisdiction of this Court and should be heard and determined by this Court.

14. In the event Respondent Board of Elections renders a determination adverse to Petitioner, said determination will be arbitrary, capricious, and in violation of the provisions of the Election Law so as to be reviewable pursuant to Election Law Section 16-102.

15. Petitioner intends to prove to this Court that any decisions rendered by Respondent Board of Elections in favor of the Respondent-Objector(s) on particular specifications of objections filed with Respondent Board of Elections are erroneous.

16. In accordance with prior decisions of this and other Courts, whose decisions are controlling, Petitioner retains the right to submit proof establishing the validity of individual signatures and sheets on the Nominating Petition, and of the Nominating Petition itself, for reasons not heretofore specified, and Petitioner intends to exercise such right.

17. 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.

18. Petitioner requests that Respondent Board of Elections produce upon the argument and hearing of this application the aforesaid Nominating Petition, with cover sheet and any amended cover sheet(s), identification number application form and any other documents designating and/or nominating Petitioner-Candidate; together with the Objections and Specifications of Objections relating to the aforesaid Nominating Petition; any written notification of a determination of non-compliance together with proof of service upon the Petitioner-Candidate and/or contact person designated therein; any writing purporting to cure or correct said determination of non-compliance; the permanent personal voter registration poll records of voters, computer generated registration lists for the last four (4) years and official maps for the [*name of relevant district*]; the report of the Clerk(s) of the Board made on such Objections and Specifications of Objections; the minutes and proceedings of any meeting of the Respondent Board of Elections made for the purpose of ruling upon Objections and/or Specifications of Objections filed by any person herein to the aforesaid Nominating Petition of Petitioner-Candidate; such other records of Respondent Board of Elections as may relate to this matter for examination by this Court; and the records provided for in the annexed Order to Show Cause.

19. Petitioner has no adequate remedy at law.

20. No previous application has been made for the relief sought herein or for the Order to Show Cause hereto annexed, or for any similar relief.

WHEREFORE, Petitioner respectfully prays that the annexed Order to Show Cause be granted, for a final Order and Judgment granting the relief prayed for in the Order to Show Cause, and for such other and further relief as this Court deems just and proper.

Dated: [*Town/city*], New York  
[*Date*]

[*NAME OF FIRM*]  
*Attorneys for Petitioner*

By: \_\_\_\_\_  
[*NAME OF ATTORNEY*]  
[*Firm street address*]  
[*Telephone number*]

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VERIFICATION

STATE OF NEW YORK    )  
                                          ) ss:  
COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being duly sworn, says as follows: I am the  
Petitioner in the within proceeding, have read the foregoing Petition and know the  
contents thereof; the same is true to my own knowledge, except as to matters stated  
to be alleged upon information and belief, and as to those matters, I believe it to  
be true.

\_\_\_\_\_  
Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

**ORDER TO SHOW CAUSE IN A PROCEEDING SEEKING TO  
INVALIDATE A CANDIDATE'S WILSON-PAKULA AUTHORIZATION  
IN A PRIMARY ELECTION**

At a *[name of part]* of the Supreme Court of  
the State of New York, held in and for the  
County of \_\_\_\_\_, at *[court address]*,  
on the *[ordinal number of day]* day of *[month]*,  
*[year]*.

P R E S E N T :

*[Assigned Justice]*,  
J.S.C.

-----X

*[PETITIONER-OBJECTOR]*,

Petitioner,

-and-

*[CANDIDATE-AGGRIEVED]*<sup>1</sup>

Petitioner,

-against-

*[RESPONDENT-CANDIDATE]*,

Respondent-Candidate,

-and-

*[OFFICERS OF POLITICAL PARTY  
WHO ISSUED CERTIFICATE OF  
AUTHORIZATION]*

Respondents,

-and-

*[LOCAL BOARD OF ELECTIONS]*

Respondents.

-----X

Upon the reading and filing of the emergency affirmation of *[attorney's name]*  
dated *[date]*, and the annexed Verified Petition of *[name of petitioner-objector and/  
or candidate aggrieved]*, duly verified on *[date]*; upon a certain Designating Pe-

<sup>1</sup> A Candidate-Aggrieved need not be named in this proceeding but should be to preserve his/her rights in the event the Objections or Specifications of Objections are determined to be improper.

## LITIGATION FORMS

tion, Certificate of Authorization and Certificate of Acceptance purporting to designate Respondent-Candidate *[name of respondent candidate]* (“Respondent-Candidate”), as candidate for the public office of *[name of public office]* in a Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; upon the original files relating thereto of the *[local board of elections]* (“Board of Elections”); and upon all of the papers and proceedings herein, it is hereby:

ORDERED, that the Respondents named hereinabove show cause before this Court at a Term, Part *[part number]*, to be held at the Courthouse located at *[street address]*, on the *[ordinal number of day]* day of *[month]*, *[year]* at *[time]* of that day, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein:

- (a) Declaring insufficient, defective, invalid, null and void the purported Designating Petition, Certificate of Authorization and Certificate of Acceptance heretofore filed with Respondent Board of Elections purporting to authorize the designation of Respondent-Candidate as candidate for the public office of *[name of public office]* in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- (b) Directing, requiring and commanding Respondent Board of Elections not to place and/or print the name of Respondent-Candidate as candidate of the *[name of political party]* for the public office of *[name of public office]* on the official ballots to be used at the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- (c) Declaring the purported Designating Petition, Certificate of Authorization and Certificate of Acceptance filed with Respondent Board of Elections purporting to designate Respondent-Candidate as candidate of the *[name of political party]* for the public office of *[name of public office]* on the official ballots to be used at the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to be a legal nullity, and reversing any contrary determination by Respondent Board of Elections that may have been made or may hereinafter be made; and
- (d) Granting Petitioners such other and further relief as this Court deems just and proper; and it is further

ORDERED, that Respondent Board of Elections be and is hereby ordered and directed to produce upon the hearing of this Order to Show Cause and on all adjournments thereof, the aforesaid Designating Petition, Certificate of Authorization and Certificate of Acceptance; any other documents in support of or related to the designation of Respondent-Candidate; any Objections and Specifications of Objections relating to the aforesaid Designating Petition, Certificate of Authorization or Certificate of Acceptance and any written notification of a determination of non-compliance together with proof of service upon Respondent-Candidate and/or contact person designated therein; any writing purporting to cure or correct said determination of non-compliance; the permanent personal voter registration poll records of voters, computer generated registration lists for the last four (4) years and official maps for the *[name of relevant district]*; the report of the Clerk of the Board made on such Objections and Specifications of Objections; the minutes and proceedings of any meeting of Respondent Board of Elections made for the purpose of ruling upon Objections and/or Specifications of Objections filed by any person



herein to the purported Designating Petition, Certificate of Authorization or Certificate of Acceptance of Respondent-Candidate; and such other records of Respondent Board of Elections as may relate to this matter for examination by this Court.

SUFFICIENT CAUSE APPEARING THEREFOR, leave is hereby granted to Petitioners to submit, upon the return date 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, including without limitation, such proof as may be necessary to support any allegations of candidate ineligibility, fraud, forgery or other illegality that may be made and that do not appear on the face of the documents submitted to Respondent Board of Elections.

SUFFICIENT CAUSE APPEARING THEREFOR, it is further

ORDERED that service of a copy of this Order to Show Cause and Verified Petition with index number and date of filing endorsed thereon together with the papers upon which it is granted be made upon: Respondent Board of Elections by leaving them at its office at \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;<sup>2</sup> and that service of a copy of this Order together with the papers upon which it is granted to be made on Respondent-Candidate and the other named Respondents, either:

- 1) by personal delivery of the same to Respondents on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 2) by personal delivery of the same to a person of suitable age and discretion at the residence(s) of Respondents as set forth on the Designating Petition, Certificate of Authorization or Certificate of Acceptance filed by or on behalf of Respondents with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondents at said address(es) and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 3) by affixing the same to the door of the residence(s) of Respondents as set forth on the Designating Petition, Certificate of Authorization or Certificate of Acceptance filed by or on behalf of such Respondents with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondents at said address(es) and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 4) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondents at said address(es) as set forth on the Designating Petition, Certificate of Authorization or Certificate of Acceptance filed by or on behalf of Respondents with Respondent Board of Elections and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United State Postal Service, by ordinary first class mail on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 5) by enclosing the same in a securely sealed and duly postpaid wrapper,

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<sup>2</sup> Local Boards of Elections may have their own rules regarding service upon such Board, and those rules should be consulted.

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addressed to Respondents at said address(es) as set forth on the Designating Petition, Certificate of Authorization or Certificate of Acceptance filed by or on behalf of Respondents with Respondent Board of Elections and by sending same by overnight, next-day delivery by UPS or FedEx or by the United States Postal Service on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ;

and that any such method of service shall be deemed good and sufficient service thereof.

ORDERED, that any requirement that the affidavits of service be filed with the Clerk of the Court be extended to the return date of this motion, and such affidavits shall be filed with the Clerk of the Part on the return date, and that any requirement that substituted service be preceded by due diligence attempt(s) at personal delivery upon Respondents be and is hereby waived, and that the ten day completion of service provision be and is hereby waived by this Order.

ENTER:

---

J.S.C.

**VERIFIED PETITION IN A PROCEEDING SEEKING TO  
INVALIDATE A CANDIDATE'S WILSON-PAKULA AUTHORIZATION  
IN A PRIMARY ELECTION**

SUPREME COURT OF THE STATE OF NEW YORK  
[NAME OF COUNTY]

-----X

[PETITIONER-OBJECTOR],

Petitioner,

-and-

[CANDIDATE-AGGRIEVED]<sup>1</sup>

Petitioner,

-against-

[RESPONDENT-CANDIDATE],

Respondent-Candidate,

-and-

[OFFICERS OF POLITICAL PARTY  
WHO ISSUED CERTIFICATE OF  
AUTHORIZATION]

Respondent,

-and-

[LOCAL BOARD OF ELECTIONS]

Respondent.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioner [name of petitioner], by [his/her] attorneys [name of firm], respectfully alleges as follows:

1. Petitioner-Objector \_\_\_\_\_, a duly qualified registered voter and enrollee of the \_\_\_\_\_ Party, resides at \_\_\_\_\_, and is entitled to vote for the public office of \_\_\_\_\_ in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

2. Petitioner-Candidate-Aggrieved \_\_\_\_\_, a duly registered voter and enrolled in the \_\_\_\_\_ Party, resides at \_\_\_\_\_, and is entitled to vote for the public office of \_\_\_\_\_ in the Primary

<sup>1</sup> A Candidate-Aggrieved need not be named in this proceeding but should be named to preserve his/her rights in case Objections or Specifications of Objections are determined by the Court to be improper.

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Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and is a candidate for said office in said election.

3. Respondent Board of Election is charged with the responsibility of the supervision of the conduct of official elections held in the *[name of county]*, including the duties of receiving and filing Designating Petitions, Certificates of Authorization and Certificates of Acceptance for public office in political subdivisions located entirely within the *[name of county]*; the review and determination of Objections and Specifications of Objections to such Designating Petitions, Certificates of Authorization and Certificates of Acceptance; as well as the notification of a determination of non-compliance, maintaining the permanent personal voter registration poll records of voters and official maps for all election districts located within the *[name of county]*, and the preparation of official Primary, General and Special Election ballots for use in the *[name of county]*.

4. Upon information and belief, on or about *[date]*, a purported Designating Petition was filed with Respondent Board of Elections purporting to designate Respondent-Candidate *[name of Respondent-Candidate]* ("Respondent-Candidate"), as a candidate of the *[name of political party]* for the public office of *[name of public office]* in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

5. Upon information and belief, on or about *[date]*, a purported Certificate of Authorization was filed with Respondent Board of Elections purporting to designate and nominate Respondent-Candidate as a candidate of the *[name of political party]* for the public office of *[name of public office]* in the Primary Election to be held \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

6. Upon information and belief, on or about *[date]*, a purported Certificate of Acceptance was filed with Respondent Board of Elections purporting to accept the designation and nomination of Respondent-Candidate as a candidate of the *[name of political party]* for the public office of *[name of public office]* in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

7. On or about *[date]*, Petitioner(s)-Objector(s) did file written objections with Respondent Board of Elections to the foregoing purported Designating Petition, Certificate of Authorization and/or Certificate of Acceptance with respect to Respondent-Candidate's candidacy of the *[name of political party]* for said public office.

8. Specifications of Objections in support of the written Objections to the foregoing purported Designating Petition, Certificate of Authorization and/or Certificate of Acceptance were or will be timely filed with Respondent Board of Elections. It is respectfully requested that the Objections and Specifications of Objections be incorporated herein, and hereby are referred to and made a part hereof, as though fully set forth herein, upon same being filed.

9. Upon information and belief, Respondent Board of Elections has not yet made a determination with regard to the aforesaid Objections and Specifications of Objections.

10. Upon information and belief, the aforesaid Specifications of Objections will come on for a hearing before Respondent Board of Elections on a date in the near future and many of the allegations in the Specifications of Objections will, of necessity, have to come before this Court for determination.

11. Petitioners respectfully allege that the Objections and Specifications of Objections filed with Respondent Board of Elections to the purported Designating Petition, Certificate of Authorization and/or Certificate of Acceptance are valid and proper objections, and respectfully request this Order to Show Cause be granted so that this anticipatory proceeding may be commenced in a timely fashion in the event Respondent Board of Elections should render a determination adverse to Petitioners.

12. Some of the matters raised in the said Specifications of Objections are exclusively within the jurisdiction of this Court and should be heard and determined by this Court.

13. The attention of the Court is respectfully drawn to Election Law Section 16102 wherein it is provided that a proceeding with respect to a Designating Petition for a Primary Election shall be instituted within fourteen (14) days after the last day to file the Designating Petition for such Primary Election, the last day being \_\_\_\_\_; and that a proceeding with respect to a Certificate of Authorization relating to a Primary Election shall be instituted within ten (10) days after the meeting authorizing a Primary Election candidate, the last day being \_\_\_\_\_.

14. It is possible that Respondent Board of Elections will not dispose of the abovementioned Objections and Specifications of Objections before the last day allowed by statute for the commencement of this proceeding.

15. Pursuant to Section 6-120 of the Election Law, a Certificate of Authorization by a political party must be filed with Respondent Board of Elections, authorizing the designation of a person as candidate for a public office who is not an enrolled member of such party, and said Certificate must be subscribed to by the presiding officer and the secretary of the meeting at which such authorization was given. A candidate not enrolled in a political party who receives such Certificate of Authorization must properly execute a Certificate of Acceptance and it must be filed with Respondent Board of Elections in a timely manner.

16. Upon information and belief, the Certificate of Authorization required by Section 6-120 of the Election Law authorizing the designation of Respondent-Candidate as a candidate of the *[name of political party]* for the public office of *[name of public office]* for the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, is invalid, and, therefore, Respondent-Candidate is ineligible to receive such designation of the *[name of political party]* for said public office. The reasons the Certificate of Authorization is invalid include: *[state reasons]*

17. Upon further information and belief, the Certificate of Acceptance filed by or on behalf of Respondent-Candidate, which purported to accept said designation is invalid because underlying Certificate of Authorization upon which it is based is invalid and/or *[insert alleged reasons for the untimeliness of the Certificate of Acceptance, or any other reasons for its invalidity]*. Therefore, the Certificate of Acceptance is invalid and a nullity.

18. In that the purported Certificate of Authorization and/or Certificate of Acceptance are invalid, the purported designation of Respondent-Candidate as candidate of the *[name of political party]* for the public office of *[name of public office]* in the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ is null and void.

19. As a result of the foregoing, the Certificate of Authorization and/or Certificate of Acceptance should be rejected and the filing thereof refused, and, therefore said

## LITIGATION FORMS

Designating Petition on behalf of Respondent-Candidate should likewise be rejected as a nullity, and the failure and/or refusal of Respondent Board of Elections to reject said Certificate of Authorization, Certificate of Acceptance and/or Designating Petition would be improper.

20. In any event, upon further information and belief, the purported Designating Petition is invalid for a variety of reasons, including:

- (a) the petition does not contain the minimum number of required valid signatures;
- (b) many of the signatures were not personally signed by the persons whose names appear upon the petition, but their names were signed by others;
- (c) many of the signers were not registered from the addresses stated in the petition;
- (d) many of the signers did not sign their names to the Designating/Nominating Petition in the presence of the subscribing witness on the dates indicated in the Designating/Nominating Petition;
- (e) the signatures were obtained by fraud;
- (f) signatures have been altered;
- (g) witness statements have been altered;
- (h) dates have been altered;
- (i) signatures have been forged;
- (j) subscribing witnesses' initials have been forged;
- (k) dates and/or addresses have been omitted or are incomplete;
- (l) signatures and/or dates and/or addresses are illegible;
- (m) signers are not enrolled as in the proper political party;
- (n) subscribing witnesses are not registered at the address indicated or do not actually reside at said address;
- (o) subscribing witnesses are not enrolled in the proper political party;
- (p) signers do not live in the proper political district;
- (q) witness statements have been signed before completed;
- (r) notaries public failed to properly administer oaths or comply with appropriate procedures when taking signatures;
- (s) the Designating/Nominating Petition is paginated improperly;
- (t) the number of signatures on various pages is omitted or wrong;
- (u) signatures were obtained prior to first day for circulation of the Designating/Nominating Petition;
- (v) signers previously signed another candidate's Designating/Nominating Petition;
- (w) the Designating/Nominating Petition is permeated with fraud;
- (x) the Designating/Nominating Petition is invalid on other grounds which will be established at the hearing of this application; and/or
- (y) Respondent-Candidate is ineligible to be a candidate for the indicated office.

21. Accordingly, said Designating Petition, Certificate of Authorization, and/or Certificate of Acceptance must be declared invalid, null and void and of no force or effect by this Court, and Respondent Board of Elections should be restrained and enjoined from printing the name of Respondent-Candidate upon the official

ballots of the Primary Election to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

22. In the event Respondent Board of Elections renders a determination adverse to Petitioners, said determination would be arbitrary, capricious, and in violation of the provisions of the Election Law so as to be reviewable pursuant to Election Law Section 16102.

23. Petitioner intends to prove to this Court that any decisions rendered by Respondent Board of Elections in favor of Respondent-Candidate on particular Specifications of Objections filed with Respondent Board of Elections are erroneous, and Petitioner intends to substantiate said Specifications of Objections which are not sustained by Respondent Board of Elections.

24. Petitioner requests leave and reserves 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.<sup>2</sup>

25. Petitioner has standing to challenge the validity of the purported Designating Petition, Certificate of Authorization and/or Certificate of Acceptance, as well as the validity of the meeting at which purported Certificate of Authorization was allegedly authorized.

26. Petitioner requests that Respondent Board of Elections produce upon the argument and hearing of this application the aforesaid Designating Petition, with cover sheet and any amended cover sheet(s), identification number application form and any other documents purporting to designate Respondent-Candidate; as well as the subject Certificate of Authorization and Certificate of Acceptance, together with the Objections and Specifications of Objections relating to the aforesaid Designating Petition, Certificate of Authorization and/or Certificate of Acceptance; any written notification of a determination of non-compliance together with proof of service upon Respondent-Candidate and/or contact person designated therein; any writing purporting to cure or correct said determination of non-compliance; the permanent personal voter registration poll records of voters, computer generated registration lists for the last four (4) years and official maps for the [name of relevant district], State of New York; the report of the Clerk(s) of Respondent Board of Elections made on such Objections and Specifications of Objections; the minutes and proceedings of any meeting of Respondent Board of Elections made for the purpose of ruling upon Objections and Specifications of Objections filed by any person herein to the purported Designating Petition, Certificate of Authorization and Certificate of Acceptance of Respondent-Candidate; and such other records of Respondent Board of Elections as may relate to this matter for examination by this Court.

27. Petitioner has no adequate remedy at law.

28. No previous application has been made for the relief sought herein or for the Order to Show Cause hereto annexed, or for any similar relief.

WHEREFORE, Petitioner respectfully prays for a final Order and Judgment, granting the relief requested in the Order to Show Cause, and for such other and further relief as this Court deems just and proper.

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<sup>2</sup> Some courts have local election law rules that require a Bill of Particulars to be filed upon the return date of the Order to Show Cause, and allegations not supplied in such Bill of Particulars are excluded.

LITIGATION FORMS

Dated: [Town/city], New York  
[Date]

[NAME OF FIRM]  
Attorneys for Petitioner

By: \_\_\_\_\_  
[NAME OF ATTORNEY]  
[Firm street address]  
[Telephone number]

VERIFICATION

STATE OF NEW YORK     )  
                                          ) ss:  
COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being duly sworn, says as follows: I am a  
Petitioner in the within proceeding [*united in interest with the other Petitioners*],  
have read the foregoing Petition and know the content thereof; the same is true to  
my own knowledge, except as to matters stated to be alleged upon information and  
belief, and as to those matters, I believe it to be true.

\_\_\_\_\_  
Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public



**ORDER TO SHOW CAUSE SEEKING POST-ELECTION RELIEF FOR  
RECANVASS AND RECOUNT IN CLOSE CONTEST**

At a *[name of part]* of the Supreme Court of  
the State of New York, held in and for the  
County of \_\_\_\_\_, at *[court address]*,  
on the *[ordinal number of day]* day of *[month]*,  
*[year]*.

P R E S E N T :

*[Assigned Justice]*,  
J.S.C.

-----X

*[PETITIONER(S)-VOTERS]*,

Petitioners,

-and-

*[CANDIDATE-AGGRIEVED]*,

Petitioner,

-against-

*[RESPONDENT-CANDIDATE]*,

Respondent-Candidate,

-and-

*[LOCAL BOARD OF ELECTIONS]*,

Respondent.

-----X

Upon the reading and filing of the emergency affirmation of *[attorney's name]* dated *[date]*, and the annexed Verified Petition of *[name of Petitioner-Voter and/or Candidate Aggrieved]*, duly verified on *[date]*; upon all the ballots cast for the public office of *[name of public office]* in the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; upon the original files relating thereto of the *[local board of elections]* ("Board of Elections"); and upon all of the papers and proceedings herein, it is hereby:

ORDERED, that Respondents named hereinabove show cause before this Court at a Term, Part *[part number]*, to be held at the Courthouse located at *[street address]*, on the *[ordinal number of day]* day of *[month]*, *[year]* at *[time]* of that day, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein pursuant to the provisions of Articles 8, 9 and 16 of the New York State Election Law:

LITIGATION FORMS

- (a) Determining the validity of all ballots and votes, including but not limited to, all election day paper ballots (including scanned ballots and nonscanned hand-counted ballots), emergency ballots, absentee ballots, affidavit ballots, special ballots, federal ballots and military ballots cast for the public office of *[name of public office]*, voted for by the voters of the County of *[name of county]* in the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;
- (b) Determining the accurate tally upon the recanvass and/or audit of the votes cast utilizing electronic voting machines, special ballot marking devices and/or ballot scanners (collectively, “Voting Machines”) for the public office of *[name of public office]*, voted for by the voters of the County of *[name of county]* in the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and ordering the canvass of the votes made by Respondent Board of Elections be corrected and adjusted to reflect such proper tally;
- (c) Ordering the testing and inspection of any Voting Machines that have malfunctioned or been tampered with, and making appropriate findings of fact, and adjustments to the canvass and/or recanvass and/or audit as may be just and proper including, but not limited to, the preservation of evidence;
- (d) Ordering that all ballots cast in the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ for the public office of *[name of public office]* be completely re-canvassed by a voter-verifiable record audit (i.e., a recount by hand of all paper ballots), with counsel and representatives of all parties having the right to be present and interpose challenges;
- (e) Ordering Respondent Board of Elections to certify the correct vote tally and certify the name of the Candidate-Aggrieved as the duly *[nominated/elected]* person for the public office of *[name of public office]* in the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and
- (f) Granting Petitioners such other and further relief as this Court deems just and proper; and it is further

ORDERED, that Respondent Board of Elections be and is hereby ordered and directed to produce upon the hearing of this Order to Show Cause and on all adjournments thereof, all election day paper ballots, including emergency ballots, absentee ballots, affidavit ballots, special ballots, federal ballots, military ballots, and all removable electronic memory devices used by or as part of Voting Machines for the recording of votes and voting activity on said Voting Machines, official tally sheets and returns of canvass sheets used in the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the public office of *[name of public office]*, all reports pertaining to Voting Machines’ break-downs or malfunctions, all inspectors notes, reports and/or memos, and other records which are the subject of this proceeding, and together with the determinations of Respondent Board of Elections upon any objections and challenges to voters and/or ballots and/or applications therefore, and any other papers or worksheets relating thereto; and it is further,

ORDERED, that Respondent Board of Elections cause all Voting Machines and ballots contained therein utilized in the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the public office of *[name of public office]*, to be preserved inviolate and separate, from all others, under guard by the police or sheriff (subject to such reasonable access by Board of Elections personnel in bi-partisan teams as is necessary to fulfill statutory duties) pending future Order of this Court unless released upon Stipulation by the parties hereto, but that no Voting Machines may be canvassed and/or recanvassed and/or audited except upon reasonable notice to, and the opportunity for the presence of, representatives of the parties hereto; and it is further,

ORDERED, that Respondent Board of Elections cause all election day paper ballots, including emergency ballots, absentee ballots, affidavit ballots, special ballots, federal ballots, military ballots, and removable electronic memory devices used by or as part of Voting Machines for the recording of votes and voting activity on said Voting Machines, and other repository of electronic voting records, scanned ballots, stubs, spoiled ballots, papers and worksheets including tally sheets and returns of canvass (collectively the "Voting Material"), utilized in and for the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the public office of *[name of public office]*, to be preserved inviolate and separate, from all others, under guard of the police or sheriff (subject to such reasonable access by Board of Elections personnel in bi-partisan teams as is necessary to fulfill statutory duties) pending future Order of this Court unless released upon Stipulation by the parties hereto, but that no unopened and/or non-scanned ballots (including all emergency ballots, absentee ballots, affidavit ballots, special ballots, federal ballots and military ballots) (collectively, the "Ballots") may be opened or canvassed except upon reasonable notice to, and the opportunity for the presence of, representatives of the parties hereto; and it is further,

ORDERED, that all County, City or Village Police Department personnel, or Police District personnel, or Sheriff's Department personnel, within the boundaries of the *[name of public office]* district ("Local Police Personnel") provide reasonable assistance to Respondent Board of Elections to effectuate the foregoing; and it is further,

ORDERED, that Respondent Board of Elections prepare all necessary records for the canvass of all Ballots described above in the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as soon thereafter as the Ballots and supporting records can be made available, and prepare all necessary records, Voting Material and Voting Machines for the recanvass thereof under this Court's supervision; and it is further,

ORDERED, that Respondent Board of Elections shall produce for parties upon request all documents (or copies thereof) including but not limited to, absentee ballot applications, inspectors' notes and/or reports, voter registration records, ballot envelopes, poll books, canvass sheets, challenge reports, machine breakdown reports, mechanics' or custodians' logs, affidavits, Election Day Court orders, stubs, spoiled ballots and other election related documents without the need for a subpoena, prior to the canvass of Ballots and canvass and/or recanvass and/or audit of the Voting Machines; and it is further

ORDERED, that any attorney or his employee(s) or agent(s) representing a party be admitted to the place of canvass or recanvass of the votes in the *[Primary/General/Special]* Election on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and be

## LITIGATION FORMS

allowed full participation in the administrative proceedings of the Board of Elections held in relation thereto, without the need for production and filing of a poll watcher's certificate, and shall have an opportunity to review the Ballots, applications and other papers and records pertinent to each ballot reviewed before it is canvassed by Respondent Board of Elections, and shall be permitted to object to any such Ballot and/or ballot envelope; and it is further,

ORDERED, that Respondent Board of Elections shall not recanvass Voting Machines in the County of *[name of county]* until representatives of the parties have been given an opportunity to be present, and that Respondent Board of Elections shall not count or canvass any Ballots in the said election pending a final resolution of the canvass and/or recanvass and/or audit of the Voting Machines, and pending the inspection of voting machines, which may have malfunctioned or have been tampered with, and the hearing, review and determination of any issues raised regarding the Voting Machines by this Court, except as hereinafter provided; and it is further

ORDERED, that absent a Stipulation by the parties hereto to the contrary, all Ballots cast in the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the public office of *[name of public office]*, shall not be counted and canvassed by the Board of Elections until the parties' representatives have been given reasonable notice and opportunity to be present and a full opportunity to review the ballots, applications and other papers and records pertinent to each ballot reviewed, and that the Board of Elections and the parties' representatives shall have the opportunity to keep and confirm a hand canvass of the said ballots; and it is further

ORDERED, that Respondent Board of Elections appoint Boards of Inspectors composed of two of the Commissioners of Elections from different political parties, or alternatively, any two Deputy Commissioners or clerks thereof (in each case, one from each political party) for the purpose of conducting a canvass of all votes cast in the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the public office of *[name of public office]*; and it is further,

ORDERED, that said Boards of Inspectors shall follow canvassing procedures as set forth in the statute and case law and shall canvass each and every vote unanimously found to be valid and/or proper by said Board of Inspectors, provided that any and all Ballots objected to or upon which the Boards of Inspectors fail to agree unanimously (including any envelopes of Ballots objected to) by representatives of the parties herein shall be laid aside and preserved by said Board and shall not be opened or canvassed, and further provided that nothing in this Order shall be deemed to be a determination that a computerized optical scanning machine's acceptance and tally of a ballot has created a presumption that the said ballot is valid or complies with the Election Law; and it is further,

ORDERED, that this Court hereby invokes its powers under Article 16 of the Election Law to preserve ballots, and the inherent power of this Court to review the determinations of Respondent Board of Elections, and that any objected-to non-scanned hand counted ballots, emergency ballots, absentee ballots, affidavit ballots, special ballots, federal ballots and military ballots, be set aside and remain unopened if an objection is raised by a representative of a party herein to the envelope of any such ballot and preserved for review by this Court pending further Order of this Court; and it is further

ORDERED, that in the interests of justice, the efficient administration of the law, and judicial economy, the objections by the parties hereto and/or by any attorney or attorney's employee(s) or agent(s) representing a party hereto to any ballot, ballot envelope, affidavit, application or documents relating to the Ballots of the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the public office of *[name of public office]*, are hereby ordered to be preserved unopened and/or unscanned until the time of the canvass and recanvass of such ballots, and the hearing before this Court, regardless of whether three days have elapsed, and all such Ballots and documents shall be preserved for the review of this Court; and it is further

ORDERED, that said Board of Inspectors shall preserve a record of all objections entered against the canvassing of any of the Ballots, together with a record of the vote upon the objection thereon (sustained, overruled or split vote), and shall further preserve any of the Ballots and supporting documentation upon an objection so that this Court may review same, provided that in no instance shall said Boards of Inspectors compromise the secrecy of any voter's ballot in violation of Election Law 17-126 (1), (2) or (3); Article 2, Section 7 of the New York State Constitution and relevant provisions of Article 8 and Article 9 of the Election Law; and it is further

ORDERED, that any Voting Machines which may be the subject of testing or further inspection by this Court shall be secured by sealing the said Voting Machines with a tamper resistant seal, and securing control of all means of access to such Voting Machines and keeping said Voting Machines under surveillance; and it is further

ORDERED, that Respondent Boards of Elections and Local Police Personnel shall allow the parties hereto, or their respective counsel, employees or agents, together with the Court or the Court's designee, to inspect Voting Machines with irregular returns and to report the findings of said inspection to the Court; and it is further

ORDERED, that Respondent Board of Elections be and hereby is enjoined from certifying to the New York State Board of Elections or any other party or entity the results of the election at issue herein pending further Order of the Court; and it is further

ORDERED, that Respondent Board of Elections shall be free to conduct the recanvass and/or audit of votes cast for all other public offices in the County of *[name of county]* according to its normal procedures except to the extent such would contravene the procedures set forth herein for the recanvass and/or audit of the votes for the office at issue herein; and it is further

ORDERED, that sufficient reason appearing therefore, leave is hereby granted to the parties herein to submit on the date set for the hearing or the trial of this matter additional witnesses, exhibits, proofs and other evidence as may be necessary; and it is further

ORDERED, that in the event the canvass and/or recanvass and/or audit of Voting Machines and/or of Ballots continues beyond the return date specified hereinabove, counsel for the parties hereto may adjourn same by Stipulation, and counsel shall inform the Court by telephone of same immediately upon agreeing thereon, so that the canvass and/or recanvass and/or audit may proceed with all due speed; and

LITIGATION FORMS

SUFFICIENT CAUSE APPEARING THEREFOR, it is further

ORDERED that service of a copy of this Order to Show Cause and Verified Petition with index number and date of filing endorsed thereon together with the papers upon which it is granted be made upon: Respondent Board of Elections by leaving them at its office at \_\_\_\_\_, on or before the \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_;<sup>1</sup> and that service of a copy of this Order together with the papers upon which it is granted to be made on the Respondent-Candidate either:

- 1) by personal delivery of the same to Respondent-Candidate on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 2) by personal delivery of the same to a person of suitable age and discretion at the residence of Respondent-Candidate as set forth on the [*Designating Petition/Nominating Petition/Certificate of Authorization*] filed by or on behalf of Respondent-Candidate with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Candidate at said address and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 3) by affixing the same to the door of the residence of Respondent-Candidate as set forth on the [*Designating Petition/Nominating Petition/Certificate of Authorization*] filed by or on behalf of Respondent-Candidate with Respondent Board of Elections, and by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Candidate at said address and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United States Postal Service, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 4) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to said Respondent-Candidate at the residence as set forth on the [*Designating Petition/Nominating Petition/Certificate of Authorization*] filed by or on behalf of Respondent-Candidate with Respondent Board of Elections and by depositing same in any Post Office branch or Post Office box, regularly maintained by the United State Postal Service, by ordinary first class mail on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; or
- 5) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to Respondent-Candidate at the residence as set forth on the [*Designating Petition/Nominating Petition/Certificate of Authorization*] filed by or on behalf of Respondent-Candidate with Respondent Board of Elections and by sending same by overnight, next-day delivery by UPS or FedEx or by the United States Postal Service on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

and that any such method of service shall be deemed good and sufficient service thereof.

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<sup>1</sup> Local Boards of Elections may have their own rules regarding service upon such Board, and those rules should be consulted.

ORDERED, that any requirement that the affidavits of service be filed with the Clerk of the Court be extended to the return date of this motion, and such affidavits shall be filed with the Clerk of the Part on the return date, and that any requirement that substituted service be preceded by due diligence attempt(s) at personal delivery upon Respondent-Candidate be and is hereby waived, and that the ten day completion of service provision be and is hereby waived by this Order.

ENTER:

---

J.S.C.

LITIGATION FORMS

**VERIFIED PETITION FOR POST-ELECTION RELIEF FOR RECANVASS  
AND RECOUNT IN CLOSE CONTEST**

SUPREME COURT OF THE STATE OF NEW YORK  
[NAME OF COUNTY]

-----X

[PETITIONER(S)-VOTER(S)],

Petitioners,

-and-

[CANDIDATE-AGGRIEVED],

Petitioner,

-against-

[RESPONDENT-CANDIDATE],

Respondent-Candidate,

-and-

[LOCAL BOARD OF ELECTIONS],

Respondent.

-----X

VERIFIED PETITION

Index No.: [index number]

Date Purchased: [date]

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioner [name of petitioner], by [his/her] attorneys [name of firm], respectfully alleges as follows:

1. Petitioner-Voter \_\_\_\_\_, a duly qualified registered voter, resides at \_\_\_\_\_, was entitled to vote for the public office of \_\_\_\_\_ in the [Primary/General/Special] Election on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and did so vote.

2. Petitioner-Candidate-Aggrieved \_\_\_\_\_, a duly registered voter, resides at \_\_\_\_\_, was entitled to vote for the public office of \_\_\_\_\_ in the [Primary/General/Special] Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and was a candidate for said office in said election.

3. Petitioners have standing to commence this proceeding pursuant to Sections 16-100, 16-102, 16-106, 16-112 and 16-113 of the New York State Election Law. This proceeding is commenced pursuant to and in accordance with Article 16 of said Election Law.

4. Respondent [local board of elections] ("Board of Elections") is charged by the New York State Election Law with the administration of elections held in the County of [name of county], including the canvassing of the returns of elections within the County of [name of county] and the certifying of the results of elections in the County of [name of county] to the New York State Board of Elections.



5. The Police and/or Sheriff's Department of the County of *[name of county]* is charged with maintaining order during elections and preserving the integrity of all electronic voting machines, special ballot marking devices, ballot scanners, and all election day paper ballots cast at elections, and is further required to act upon an order of this Court to assign officers to such tasks pursuant to the provisions of Article 9 of the Election Law.

6. This petition is made in order to preserve Petitioners' rights under the Election Law of the State of New York, including Section 16-112 thereof, to correct any errors in the canvass of returns of the subject election, and to provide for this Court's supervision, as necessary, of the canvass of all relevant unopened and/or non-scanned ballots (including all emergency ballots, absentee ballots, affidavit ballots, special ballots, federal ballots and military ballots) cast for the candidates for election to the public office of *[name of public office]*, in the *[Primary/Special/General]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, together with the Court's supervision of the recanvass and/or audit of the electronic voting machines, special ballot marking devices and/or ballot scanners (collectively, the "Voting Machines") and to allow for the comprehensive review of the matters under the jurisdiction of this Court.

7. This petition is further made to continue to preserve the ballots; review irregular and possibly fraudulent returns from Voting Machines; preserve the ballots cast by Voting Machines and determine where Petitioner Candidate-Aggrieved may have been deprived of votes by malfunctioning or tampered Voting Machines; protect Petitioners' rights; to have this Court review all determinations of Respondent Boards of Elections as is provided for in the Election Law; to have this Court more fully set the parameters for the canvass and/or recanvass of votes and/or the audit of Voting Machines; allow for this Court to make adjustments in the canvass as may be necessary; enjoin any certification of election results which would prejudice the rights of Petitioners; and to bar or prevent any procedural defect which might be asserted to defeat this Court's determinations.

8. This petition is further made on behalf of Petitioners for an Order directing a manual audit of the voter verifiable audit records (*i.e.*, a recount by hand of the paper ballots) for the *[Primary/General/Special/]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the public office of *[name of public office]*, with counsel and representatives of all parties having the right to be present and interpose challenges because, upon information and belief, there is a likelihood of material discrepancy between such manual audit tally and the Voting Machines' tally, which creates a substantial possibility that the winner of the election as reflected in the Voting Machines' tally could change if a manual audit of voter verifiable audit records of all Voting Machines applicable to such election were conducted.

*[8a. Moreover, as this is a General Election, an injunction against certifying to the New York State Board of Elections or any other party or entity the results of the General for the public office of [name of public office], held on [date] may be the only remedy available to Petitioners to allow for the determination of the rightful claimant to the subject public office without resort to a quo warranto proceeding by the Attorney General.]*

9. Upon information and belief, the results of the election for the public office of *[name of public office]*, for votes cast by Voting Machines in the *[Primary/General/Special]* Election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

## LITIGATION FORMS

were exceedingly close, with only a marginal number of votes separating the Petitioner Candidate-Aggrieved and Respondent-Candidate.

10. Upon information and belief, numerous unopened and/or non-scanned ballots and/or mis-scanned ballots, (including all emergency ballots, absentee ballots, affidavit ballots, special ballots, federal ballots and military ballots) (collectively, the “Non-Scanned Hand Counted Ballots”) remain uncanvassed, and the canvass of such ballots may determine the outcome of this election.

11. Upon information and belief, the unofficial canvass of the votes cast by Voting Machines in the [Primary/General/Special] for the public office of [name of public office], held on [date] is incomplete and/or inaccurate.

12. Upon information and belief, several of the Voting Machines used in the subject election are or may have been defective, which may result in inaccurate tallies of votes; upon further information and belief, there have been or will be other irregularities in the election process which may give rise to improper votes being canvassed or the canvass of inaccurate returns in said Election.

13. Upon information and belief, many other Voting Machines utilized in said Election may have malfunctioned or broken down and failed to count all of the votes cast for Petitioner Candidate-Aggrieved, requiring the Court to order the testing of the subject Voting Machines and the subsequent adjustment of the canvass to correct the error in vote totals.

14. Upon information and belief, the Voting Machines may not have properly counted ballots consistent with the Election Law or controlling case law in New York State.

15. Upon information and belief, the programming of the Voting Machines used in this said Election provides for the canvass and counting of ballots that are otherwise invalid under the Election Law and controlling case law in New York State.

16. Upon information and belief, the number of improper and invalid ballots that were counted and canvassed by the Voting Machines are significant and will influence the final results of the subject election.

17. Upon information and belief, the programming of the Voting Machines used in said Election does not allow for the canvass and counting of ballots that are otherwise valid under the Election Law and controlling case law in New York State.

18. Upon information and belief, the number of proper and valid ballots that were not counted and canvassed by the Voting Machines are significant and will influence the final results of the subject election.

19. Upon information and belief, such defective Voting Machines might have resulted in the use of paper “Emergency Ballots” which were canvassed by Respondent Board of Elections on the night of Election Day should not have been canvassed and intermingled with the other ballots properly canvassed by Respondent Board of Elections on said night.

20. Upon information and belief, there are “Affidavit Ballots” and “Special Ballots” that will not have been reviewed by Respondent Board of Elections in a timely fashion.

21. Upon information and belief, there are “Absentee Ballots” that will not have been reviewed by Respondent Board of Elections in a timely fashion.

22. Upon further information and belief, many of these Absentee Ballots are yet to be received by the Board of Elections, as properly post-marked absentee ballots

may be validly received by Respondent Board of Elections for canvassing until [date].

23. Upon information and belief, there are “Military Ballots” that will not have been reviewed by Respondent Board of Elections in a timely fashion and/or will be reviewed and canvassed by Respondent Board of Elections after the election because they may be validly received by Respondent Board of Elections for canvassing until [date].

24. Upon information and belief, there will be other “Non-Scanned Hand Counted Ballots” that will not have been reviewed by Respondent Board of Elections in a timely fashion.

25. It is possible that Respondent Board of Elections, acting on its own or by local Boards of Inspectors in canvassing the Non-Scanned Hand Counted Ballots may have tie votes, may be unable to determine the validity of individual ballots, or may err in determining the invalidity of individual ballots.

26. Upon information and belief, the canvass of the aforementioned ballots may exceed the three (3) day preservation period provided for in Section 9-209 of the Election Law, and a court order is necessary to preserve those ballots unopened and/or unscanned.

27. Upon information and belief, the allegations in the paragraphs hereinabove suggest that only a review of the final recanvass of the Voting Machines by Respondent Board of Elections and a physical inspection of the subject Voting Machines and related documents on file with Respondent Board of Elections will reveal any irregularity and/or fraud.

28. Upon information and belief, the allegations in the paragraphs hereinabove suggest that the final result of the subject election may be determined by the canvass of the various types of Non-Scanned Hand Counted Ballots mentioned herein, as well as a review and/or audit of the canvass of the ballots cast by Voting Machines in the subject election.

29. Upon information and belief, there is substantial interest in this contest and because of the potential for confusion in this election and additional confusion that may have resulted due to the implementation and use of the relatively new Voting Machines, as well as the potential use of emergency paper ballots upon the breakdown of the Voting Machines and the use of affidavit ballots by those voters whose registration or enrollment cannot be confirmed at the polling place, there is a special need to ensure that all ballots and voting materials used in this election be secured as soon as possible to ensure an accurate count of votes in said election and to maintain the integrity of the recanvass process.

30. This proceeding is commenced pursuant to provisions of Sections 16-100, 16-106, 16-112, 16-113, and 16-116 of the Election Law as well as Articles 8 and 9 of the Election Law, which confers authority upon this Court to determine and resolve any disputes arising out of or relating to the canvass of ballots and returns in the [Primary/General/Special] Election for the public office of [name of public office] held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and to further direct a manual audit of the voter verifiable audit records applicable to the subject election.

31. This proceeding is also commenced pursuant to the First and Fourteenth Amendments to the United States Constitution, as well as the due process and equal protection clauses of the United States and New York State Constitutions.

32. Petitioners reserve the right to submit further proofs by way of witnesses,

LITIGATION FORMS

affidavits, and evidence upon the date set by this Court for the trial and hearing of this matter, and to amend these pleadings to reflect the facts adduced by way of a canvass of the ballots for the [Primary/General/Special] Election for the public office of [name of public office], held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

33. Petitioners have no adequate remedy at law.

34. No previous application has been made for the relief sought herein or for the Order to Show Cause hereto annexed, or for any similar relief.

WHEREFORE, Petitioners respectfully pray that the annexed Order to Show Cause be granted, for a final Order and Judgment granting the relief prayed for in the Order to Show Cause, together with such other and further relief that this Court may deem just and proper.

Dated: [Town/city], New York  
[Date]

[FIRM NAME]

Attorneys for Petitioner [name of  
petitioner]

By: \_\_\_\_\_  
[NAME OF ATTORNEY]  
[Street address of firm]  
[Telephone number]

VERIFICATION

STATE OF NEW YORK     )  
                                          ) ss:  
COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being duly sworn, says as follows: I am a  
Petitioner in the within proceeding [united in interest with the other Petitioners],  
have read the foregoing Petition and know the content thereof; the same is true to  
my own knowledge, except as to matters stated to be alleged upon information and  
belief, and as to those matters, I believe it to be true.

\_\_\_\_\_  
Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

**ANSWER WITH AFFIRMATIVE DEFENSES AND COUNTERCLAIM  
IN RESPONSE TO INVALIDATING PROCEEDING AGAINST  
CANDIDATE’S DESIGNATING OR NOMINATING PETITION**

SUPREME COURT OF THE STATE OF NEW YORK  
[NAME OF COUNTY]

-----X

[PETITIONER-OBJECTOR],

Index No.: [index number]

*Petitioner,*

VERIFIED ANSWER

*-and-*

WITH COUNTERCLAIM

[CANDIDATE-AGGRIEVED]

*Petitioner,*

*-against-*

[RESPONDENT-CANDIDATE],

([Name of assigned judge])

*Respondent-Candidate,*

Date Returnable:

*-and-*

[date]

[LOCAL BOARD OF ELECTIONS],

*Respondent.*

-----X

1. Respondent-Candidate \_\_\_\_\_ (“Respondent-Candidate”) denies each and every allegation contained in Paragraphs \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ in the Verified Petition.

2. Respondent-Candidate denies knowledge or information sufficient to form belief as to each and every allegation contained in Paragraphs \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ in the Verified Petition.

3. Respondent-Candidate denies each and every allegation contained in Paragraph \_\_\_\_\_, and respectfully refers the Court to the [law or rule or document referred to therein].

AND FOR A FIRST AFFIRMATIVE DEFENSE<sup>1</sup>

4. The Court lacks personal jurisdiction over Respondent-Candidate.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. The Court lacks subject matter jurisdiction.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. The proceeding is untimely as it was commenced after the applicable Statute of Limitations had expired.

<sup>1</sup> Include only the relevant Affirmative Defenses.

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AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

7. This Court lacks jurisdiction due to improper service.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

8. The Court lacks jurisdiction in that all necessary parties have not been named or served timely.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

9. The proceeding is barred by the doctrine of estoppel.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

10. The proceeding must be dismissed in that Petitioner lacks standing because Petitioner has failed to satisfy the legal requirements of Objectors, and/or has failed to satisfy the condition precedent of filing and serving proper Objections and Specifications of Objections, and/or has failed to file or serve proper Objections and Specifications of Objections in a timely manner.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

11. This proceeding must be dismissed in that Petitioner-Candidate-Agrieved lacks standing because [his/her] [*Designating Petition/Certificate of Authorization/Certificate of Acceptance*] is invalid or defective. Upon information and belief, the [name of political party] did not issue a valid Certificate of Authorization for [name of petitioner-candidate].

AS AND FOR RESPONDENT-CANDIDATE'S COUNTERCLAIM  
AGAINST ALL RELEVANT PARTIES<sup>2</sup>

12. For each or all of the reasons stated herein, including the various Affirmative Defenses, the instant Verified Petition has no merit and should be dismissed.

13. A [*Designating Petition* (the "*Designating Petition*") or *Nominating Petition* (the "*Nominating Petition*") was duly and timely filed with Respondent [name of local board of elections] ("Board of Elections") by or on behalf of Respondent-Candidate as candidate of the [name of political party or independent body] for the public office of [name of public office] in the [Primary/General/Special Election] to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

14. Upon information and belief, Objections and Specifications of Objections were purportedly filed with Respondent Board of Elections in relation to the Respondent-Candidate's [*Designating or Nominating Petition*].

15. Upon information and belief, Respondent Board of Elections has erroneously ruled, or will erroneously rule, that certain signatures are invalid on said [*Designating/Nominating Petition*].

16. To the extent Respondent Board of Elections made or makes such erroneous ruling(s) invalidating signatures on said [*Designating/Nominating Petition*], said ruling(s) are arbitrary and capricious, and without foundation of law.

17. Signatures of the [*Designating/Nominating Petition*] erroneously declared invalid by Respondent Board of Elections may be found valid upon a hearing by this Court.

18. Respondent-Candidate has the right to request this Court review and determine signatures erroneously invalidated by Respondent Board of Elections, and

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<sup>2</sup> Where a proceeding is commenced seeking to invalidate a Respondent-Candidate's Designating or Nominating Petition, the Respondent-Candidate may interpose a counterclaim to validate his/her own Designating or Nominating Petition.

this Court has the jurisdiction to overturn Respondent Board of Elections' erroneous rulings.

19. Respondent-Candidate's [*Designating/Nominating Petition*] has sufficient valid signatures as is required for a [*Designating/Nominating Petition*] for the public office of [*name of office*] in the [*Primary/General/Special Election*] to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

20. Respondent-Candidate's candidacy for [*nomination/election*] to the public office of [*name of office*] to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is in all respects valid and proper.

WHEREFORE, Respondent-Candidate respectfully requests (i) an Order and Judgment denying the relief requested by Petitioner's Order to Show Cause in its entirety; (ii) an Order and Judgment dismissing the Verified Petition in its entirety; (iii) an Order and Judgment granting the counterclaim, declaring the [*Designating/Nominating Petition*] valid in all respects; (iv) an Order and Judgment directing that Respondent Board of Elections place the name of Respondent-Candidate on the ballot for the public office of [*name of public office*] in the [*Primary/General/Special Election*] to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and (v) such other and further relief as this Court deems just and proper; together with any and all costs, disbursements and attorneys fees incurred from the defense of this proceeding.

Dated: [*Town/city*], New York  
[*Date*]

[*NAME OF FIRM*]  
*Attorneys for Petitioner*

By: \_\_\_\_\_  
[*NAME OF ATTORNEY*]  
[*Firm street address*]  
[*Telephone number*]

#### VERIFICATION

STATE OF NEW YORK     )  
                                          ) ss:  
COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being duly sworn, says as follows: I am the Respondent-Candidate in the within proceeding, have read the foregoing Answer and Counterclaim and know the contents thereof; the same is true as to my own knowledge, except as to matters stated to be alleged upon information and belief, and as to those matters, I believe it to be true.

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

**EMERGENCY AFFIRMATION IN PROCEEDINGS RELATING TO  
DESIGNATING OR INDEPENDENT NOMINATING PETITIONS**

6. In order for issues with respect to the allegations of this Petition to be joined expeditiously, it is respectfully requested that the Court fix the time within which



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the respective Answers of the Respondent Board of Elections and other Respondents shall be served upon Petitioner's attorneys.

7. Petitioner has no adequate remedy at law.

8. No prior application for the relief sought herein has been made to this or any other Court.

WHEREFORE, it is respectfully requested that this Court entertain this emergency Order to Show Cause.

Dated: [Town/city], New York  
[Date]

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[NAME OF ATTORNEY]

## CHAPTER 5

### GETTING ON THE BALLOT: ALTERNATIVE METHODS

In addition to the petition route, certain candidates have alternative methods of securing a place on the ballot.

Candidates for statewide office may be placed on an established party's primary ballot without having to petition. This is accomplished by a party's state convention vote of at least twenty-five percent of the party's convention delegates.<sup>1</sup> Candidates who do not receive the statutory threshold of 25% may also run in the primary — but they must petition; and their designating petitions may use the name and symbol of the party whose convention just rebuffed them.<sup>2</sup>

If the statewide designee faces no primary opposition, then her name will be on the general election ballot without having to petition at all, either for the primary or general election.

Additionally, candidates who run in special elections are nominated by established parties “in the manner prescribed by the rules of the party”; as such they do not have to petition to appear on the special election ballot.<sup>3</sup> In that case, there is no primary, and political parties choose their standard bearers for the special election at party meetings called for that purpose. Special attention must be paid to the party's rules and how these decisions are made.<sup>4</sup>

Moreover, candidates who have not petitioned, either for a primary, special or general, may be “substituted in” for a candidate who has petitioned if the latter dies, declines or is disqualified.<sup>5</sup> Of course, proper procedure must be followed.<sup>6</sup>

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<sup>1</sup> N.Y. Elec. Law §6-104 (McKinney).

<sup>2</sup> N.Y. Elec. Law §6-104(5) (McKinney). Having one's party “designation” by its state convention is, of course, no guarantee of success in a party primary. Examples abound. Some include: Bill Mulrow received the designation of the Democratic State Convention for Comptroller in 2002; he was beaten in the primary by Alan Hevesi. Ed Koch received the designation for Governor in 1982; Mario Cuomo won the primary and the election.

<sup>3</sup> N.Y. Elec. Law §6-114 (McKinney). Various editorial writers often urge the change in this law, as do reform-minded legislators. Linda Rosenthal, Assemblymember from Manhattan's West Side, was originally elected in a special election, having been nominated by the Democratic Party at a county committee meeting pursuant to the New York County Democratic Party Rules. Nevertheless, she has introduced a bill to permit primaries when special elections are called. In 2011, there was an unusually high number of special elections all at once. On September 13, 2011, voters filled unexpired terms for former Congressman Anthony Weiner and six former Assemblymembers. See <http://www.capitaltonight.com/2011/06/understanding-special-election-law/>; <http://www.nyl.com/content/141514/nyl-online--elections-attorney-jerry-goldfeder-on--inside-city-hall->. An example of a “script” and “minutes” from a county committee meeting to nominate a Democratic Party candidate for Assembly in a special election is included in the following Appendix; also included is a Certificate of Nomination.

<sup>4</sup> See fn. 6-10, and accompanying text in Chapter 1, *supra*, where I discuss special elections, and the example of filling the vacancy of Congressman Ted Weiss's seat upon his death.

<sup>5</sup> N.Y. Elec. Law §§6-146 and 6-148 (McKinney).

<sup>6</sup> See, e.g., *Justice v. Gamache*, 45 A.D.3d 508 (2d Dep't. 2007) (certificate to substitute a candidate must have her written consent “appended thereto” pursuant to Elec. Law §6-148(5)).

Candidates for Justice of the Supreme Court in New York have also enjoyed the privilege of not having to petition onto the general election ballot.<sup>7</sup> For the last seventy years, established parties have been nominating their candidates for Justice at judicial conventions, not at primary elections. Delegates to these conventions must petition to be placed on the primary election ballot, and those delegates who are elected at the primary meet to nominate their party's candidates for Justice. The successful candidates are placed upon the general election ballot, having been spared the task of petitioning.

This practice was challenged in a recent federal lawsuit, and the United States Supreme Court held that political parties had the constitutional right to nominate its candidates as they saw fit, holding that the New York State legislature had exercised its authority properly by providing for judicial nominating conventions in lieu of primaries.<sup>8</sup>

Candidates for party nomination of town offices, provided that the town's county has a population of fewer than seven hundred and fifty thousand residents, are selected by the town party's county committee, unless the county committee has adopted a rule that the selection shall be at a primary election.<sup>9</sup> Candidates for party nominations for village offices may also be made by party caucuses if the rules of the village's county committee so provides.<sup>10</sup>

Of course, parties that place candidates on party primary ballots by conventions or place them on a special or general election ballots by caucus obviously must follow the Election Law and party rules. If the law and rules are not followed assiduously, the candidates' names might very well be stricken.<sup>11</sup> As such, political

<sup>7</sup> N.Y. Elec. Law §§6-106 and 6-124 (McKinney).

<sup>8</sup> *New York State Board of Elections v. Lopez-Torres*, 552 U.S. 196 (2008).

<sup>9</sup> N.Y. Elec. Law §6-108 (McKinney).

<sup>10</sup> N.Y. Elec. Law §6-202 (McKinney).

<sup>11</sup> As a general proposition, courts are loath to become involved in internal party squabbles. *See, e.g., Porto v. Oliver*, 2002 WL 1769890 (Sup. Ct. Monroe Co. 2002):

“Although it has been held that courts should not interfere with the internal affairs of a political party (*Bloom v. Notaro*, 67 N.Y.2d 1048 [1986]) and amendment of party rules and removal proceedings are internal issues best resolved within the party organization (*Matter of Bachmann v. Coyne*, 99 A.D.2d 742, 471 N.Y.S.2d 648, *lv denied* 61 N.Y.2d 607 [1984]), where necessary, courts have intervened as a last resort (*see, Matter of Bachmann v. DeFronzo*, 164 A.D.2d 926 [2d Dept 1990]; *Terenzi v. Westchester County Comm. Conservative Party of N.Y. State*, 171 Misc.2d 93, 96, 653 N.Y.S.2d 483 [Sup Ct Westchester County 1996]). . . . However, whether a political party proceeded according to its own party rules is a subject for judicial review (*see, Matter of Donnelly v. Curcio*, 284 A.D.2d 460 [2d Dept], *lv denied* 96 N.Y.2d 718 [2001]).”

In light of this reluctance, a court might rule upon a procedural impropriety and nevertheless remand the matter back to the very party committee that committed the offense. *See Wolken v. Smith*, 8 Misc.3d 1010(A) (Sup. Ct. Onandaga Co. 2005). On the other hand, a court may choose to simply invalidate the results when party committees do not adhere to the law or its own rules, even if the issue relates only to party office. *See, e.g., Brown v. De Bicki*, 275 A.D.2d 883 (4th Dep't. 2000); *see also Dinowitz v. Rivera*, 2008 WL 5505514 (N.Y. Sup. Bronx Co. 2008) (court determined which of two dueling meetings for Democratic Party County Committee officers were properly elected).

On the other hand, when courts are confronted with an abrogation of the law or party rule in the context of nomination for a special or general election, they are generally unflinching in applying the law to invalidate an improper selection. *See, e.g., Brouillette v. Cerio*, 55 A.D.3d 1039 (3d Dep't. 2008) (certification of nomination invalid in that time and date of meeting not set in compliance with law or party rules); *Silano v. Oxford*, 4 Misc.3d 1016(A) (Sup. Ct. Albany Co. 2004) (although the evidence clearly showed unanimity by the relevant decision-makers in supporting a candidate's nomination pursuant to the Wilson-Pakula statute, Elec. Law §6-120(3) mandated an actual meeting of the participants at which a quorum existed; inasmuch as such a meeting did not occur, the nomination was invalidated); *Premo v. Tulin*, 32 A.D.3d 1071 (3d Dep't. 2006) (same); *New York State Working Families Party*

## GETTING ON THE BALLOT: ALTERNATIVE METHODS

party leadership committees, insurgent candidates and supporters of potential nominees must pay close attention to the relevant provisions of the Election Law and party rules as they pertain to procedures for nomination, as well as the execution and filing of required papers. The sections of the Election Law relevant to alternative ballot access procedures must be reviewed, and are easily accessible. Party rules, as public documents, may be obtained from the Board of Elections.<sup>12</sup>

Political party selection of candidates might not appear as open and transparent as the direct primary, but the law currently permits it.

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*State Committee v. Berman*, 11 A.D.3d 646 (2d Dep't. 2004) (the party's Suffolk County Executive Committee designation of its candidate for county legislature in a special election invalidated because the state party's rules mandated that the selection was required to be made by the statewide Executive Committee); *Gerke v. Taddeo*, 5 Misc.3d 1012(A) (Sup. Ct. Albany Co. 2004) (use of voice vote at judicial convention was a violation of Election Law §6-126(2), disqualifying nominees for Supreme Court Justice); *Keukelaar v. Monroe County Bd. of Elections*, 307 A.D.2d 1074 (4th Dep't. 2003) (party nominee for Supervisor for the Town of Chili disqualified because "actual presiding officer and secretary of the meeting" failed to sign and acknowledge the party's "certificate of authorization" pursuant to Election Law §6-120(3)); *Scaturro v. Becker*, 76 A.D.3d 687 (2d Dep't. 2010) (Wilson-Pakula certificate of authorization must be filed timely). The courts will also rule on whether a party committee even has the power to nominate a candidate for a public office. In *O'Brien v. Seneca County Bd. of Elections*, 22 A.D.3d 1036 (4th Dep't. 2005), the court held that the procedure employed by the Democratic Party town caucus was *ultra vires* in that Election Law §§6-110 and 6-118 required that party nominees for the office of Supervisor of the Town of Waterloo were to be selected in a primary election.

The Court of Appeals has recently ruled that a political party may, pursuant to Election Law §6-120(3), enact a rule authorizing its statewide executive committee to issue certificates of authorizations for county, city or local public office, as well, of course, for state candidates. *Master v. Pohanka*, 10 N.Y.3d 620 (2008) (except city-wide candidates for New York City public office); *Conroy v. State Committee of Independence Party of New York*, 10 N.Y.3d 896 (2008). And the party's state rules will trump its county committees' rules. *Peluso v. Erie County Independence Party*, 66 A.D.3d 1329 (4th Dep't. 2009).

Sometimes a party's lax attitude is mirrored by the opposing party's similar sloppiness, yielding interesting results. In *Stipo v. Westchester County Bd. of Elections*, 307 A.D.2d 1055 (2d Dep't. 2003), the Republican candidate for public office of Town Council of the Town of North Castle was disqualified because the party committee did not send proper notices of the nominating meeting. As it turns out, the Democratic candidate suffered the same fate. *Futia v. Westchester County Bd. of Elections*, 307 A.D.2d 1055 (2d Dep't. 2003) (Democratic candidate for public office of Town Council of the Town of North Castle disqualified because the party committee did not send proper notices of the nominating meeting and lacked a quorum).

Of course, a court will exercise its authority only if a case is properly and timely commenced. *Essenberg v. MacKay*, 272 A.D.2d 543 (2d Dep't. 2000) (proceeding dismissed because papers were deficient); *MacKay v. Essenberg*, 272 A.D.2d 547 (2d Dep't. 2000) (proceeding untimely); *Delanoy v. Faction*, 287 A.D.2d 592 (2d Dep't. 2001) (proceeding untimely); *Independence Party of Orange County v. New York State Board of Elections*, 32 A.D.3d 804 (2d Dep't. 2006) (same); *Berney v. Ragusa*, 76 A.D.3d 647 (2d Dep't. 2010) (same).

<sup>12</sup> N.Y. Elec. Law §2-114(1) (McKinney) requires political parties to file rules with the Board of Elections:

"Each [party] committee may prepare rules for governing the party within its political unit. Within ten days after the adoption of any rule or amendment thereto a certified copy thereof shall be filed by the state committee in the office of the state board of elections, and by the county committee in the office of the state board of elections, and in the office of the board of elections of the county. If a section or portion of such rules relate to the nomination of candidates for village office, such section or portion of such rules shall be filed in the office of the village clerk of all villages in which elections are conducted by the village and in which the party makes any nominations for village office. No rule or amendment thereof shall be effective until the filing thereof in the office of the state board of elections. Such rules shall continue to be the rules for the committee until they are amended or new rules adopted."



**APPENDIX TO CHAPTER 5**  
**SPECIAL ELECTION NOMINATION FORMS**

**DISTRICT MEETING OF THE NEW YORK COUNTY  
DEMOCRATIC COMMITTEE FOR THE 73RD A.D.**

- FRANK WILKINSON Pursuant to the Notice of this meeting sent by Marc Landis, Chairperson of the County Committee for the Democratic Party of the County of New York, I have been appointed Temporary Chair of this meeting and hereby call this meeting of the District Committee of the N.Y. County Democratic Committee for the 73rd A.D. to order. The first item of business is the Approval of the Agenda that has been set in the Notice that was sent to you for this meeting. The Agenda is (1) Report of the Credentials Committee; (2) Calling of the Roll; (3) Election of a Permanent Chair; (4) Election of a Permanent Secretary; (5) Adoption of the Rules; (6) Nomination of the Democratic Candidate for Member of the Assembly from the 73rd Assembly District, State of New York; (7) Appointment of a Committee to Fill Vacancies; (8) Adjournment.
- Is there a motion to adopt the Agenda? I call on TRUDY MASON.
- [MOVANT] I move that we adopt the Agenda.
- CHAIR Is there a second? I call on JAMES ANSORGE.
- [SECONDER] I second the motion.
- CHAIR A motion to adopt the Agenda has been made and seconded. All those County Committee members in favor say aye; all those against say no. The ayes have it, and the Agenda has been adopted.
- CHAIR The Agenda having been adopted, the next item of business is the Report of the Credentials Committee. I call on the Chair of the Credentials Committee, ALEX TISCH.
- [ALEX TISCH] Upon reviewing the sign-in sheet for this meeting, the Credentials Committee finds that there is a quorum present.
- CHAIR Is there a motion to adopt the Report of the Credentials Committee? I call on SALLY MINARD.
- [MOVANT] I move that we adopt the Report of the Credentials Committee.
- CHAIR Is there a second? I call on MIRIAM BALMUTH.
- [SECONDER] I second the motion.
- CHAIR A motion to adopt the Report of the Credentials Committee has been made and seconded. All those County Committee members in favor say aye; all those against say no. The ayes have it, and the Report of the Credentials Committee has been adopted.
- CHAIR The next item of business is the Calling of the Roll. Is there a motion to dispense with the calling of the roll? I call on MERYL BRODSKY.
- [MOVANT] I move that the calling of the roll be dispensed with.
- CHAIR Is there a second? I recognize BETSY FEIST

## SPECIAL ELECTION NOMINATION FORMS

[SECONDER] I second the motion to dispense with the calling of the roll.

CHAIR A motion to dispense with the calling of the roll having been made and seconded, all those County Committee members who are in favor, please say aye. All those County Committee members who are against, please say nay. The ayes have it, and the calling of the roll is dispensed with.

The next item of business is the election of the officers of this District Committee. The first officer to be elected is the Chair of the District committee. Are there any nominations? I recognize JOHN MILLS

NOMINATOR I nominate JAMES CLYNES to serve as Chair of the District Committee of the New York County Democratic Committee for the 73rd Assembly District.

CHAIR Is there a second? I call on ROBERTA RUTTENBERG.

[SECONDER] I second the nomination.

CHAIR Are there any other nominations? Hearing none, is there a motion to close nominations? I recognize JAKE ITZKOWITZ

[MOVANT] I move that nominations be closed.

CHAIR Is there a second? I recognize ROBERT LEVINSOHN

[SECONDER] I second the motion.

CHAIR The motion to close nominations has been made and seconded. All those County Committee members in favor, please say aye. All those County Committee members against, please say nay. The ayes have it. Nominations have been closed. All those in favor of JAMES CLYNES as Chair of the District Committee of the NY County Democratic Committee for the 73rd AD please say aye. All those County Committee members against, please say nay. The ayes have it, and JAMES CLYNES has been elected Chair of the District Committee of the NY County Democratic Committee for the 73rd AD.

JAMES CLYNES Thank you FRANK WILKINSON for serving as TEMPORARY CHAIR of this meeting, and thank you all for electing me as CHAIR of the District Committee of the New York County Committee for the 73rd AD. The next order of business is the election of a SECRETARY of the District Committee of the NY County Democratic Committee for the 73rd AD. Are there any nominations? I recognize LINDA FOA

[NOMINATOR] I nominate JENNIFER COYNE.

CHAIR Is there a second? I call on ELSBETH REIMANN.

[SECONDER] I second the nomination.

CHAIR Are there any other nominations? Seeing none, is there a motion to close nominations? I recognize GLENN HARDY.

[MOVANT] I move that nominations for Secretary be closed.



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- CHAIR Is there a second to close nominations? I recognize CAROL RINZLER
- [SECONDER] I second the motion.
- CHAIR The motion to close nominations has been made and seconded. All those County Committee members in favor, please say aye. All those County Committee members against, please say nay. The ayes have it and nominations have been closed. All those in favor of JENNIFER COYNE as Secretary of the District Committee of the NY County Democratic Committee for the 73rd AD please say aye. All those County Committee members against, please say nay. The ayes have it and JENNIFER COYNE has been elected SECRETARY of the District Committee of the NY County Democratic Committee for the 73rd AD.
- CHAIR The next order of business is to adopt the Rules of Procedure of this meeting, that were distributed to you this evening. Is there a motion to adopt the Rules. I recognize NICO MINERVA.
- [MOVANT] I move that the Rules be adopted.
- CHAIR Is there a second? I recognize LEIDA SNOW.
- [SECONDER] I second the motion.
- CHAIR The motion to adopt the Rules has been made and seconded. All those County Committee members in favor, please say aye. All those County Committee members against, please say nay. The ayes have it and the Rules have been adopted.
- The next item on the Agenda is to nominate the Democratic Party candidate for Member of Assembly from the 73rd Assembly District pursuant to Election Law § 6-114 and Article V Section 3 of the Rules of the Democratic Party of the County of New York. As you know Jonathan Bing resigned as our Assemblyman effective June 28, 2011 and Governor Cuomo issued a proclamation calling for a special election to fill the vacancy to be held on September 13, 2011. Pursuant to the Rules for this meeting that we adopted this evening, nominees must submit to the Temporary Chair a Nominating Petition signed by five members of the County Committee. I have received one such Petition, on behalf of DAN QUART. Are there any other Petitions to be submitted? Seeing that there are no others, is there a motion? I recognize JONATHAN BING.
- [NOMINATOR] I nominate DAN QUART as the Democratic Party candidate for Member of Assembly for the 73rd Assembly District, State of New York.
- CHAIR Is there a second? I recognize TRUDY MASON.
- [SECONDER] I second the nomination of DAN QUART.
- CHAIR Are there any other nominations? Seeing none, is there a motion to close nominations? I recognize PETER BOROCK.
- [MOVANT] I move that nominations for Member of the Assembly for the 73rd Assembly District, State of New York, be closed.

## SPECIAL ELECTION NOMINATION FORMS

CHAIR Is there a second to the motion to close nominations? I recognize LOUIS SEPERSKY.

[SECONDER] I second the motion.

CHAIR The motion to close nominations has been made and seconded. All those County Committee members in favor, please say aye. All those County Committee members against, please say nay. The ayes have it and nominations have been closed. We shall now hear from the candidates.

CANDIDATES [SPEECHES.]

CHAIR We shall now proceed to vote. I have appointed ARTHUR SCHIFF and LAWRENCE ROSENSTOCK as the TELLERS to tabulate the vote. I will now call upon the Secretary, JENNIFER COYNE.

SECRETARY Using your official ballot, write the name of the candidate you wish to vote for above your name, and sign your ballot on the bottom left hand side of the ballot. Once you have done so, please give your ballots to one of the TELLERS, ARTHUR SCHIFF or LAWRENCE ROSENSTOCK.

CHAIR The TELLERS will now tabulate the vote.

CHAIR Do the TELLERS have the results? [TELLERS hand the results to the CHAIR.] The results are as follows:

DAN QUART, \_\_\_\_\_ weighted votes;  
[Candidate], \_\_\_\_\_ weighted votes;  
Abstentions, \_\_\_\_\_ weighted votes.

DAN QUART has received \_\_\_\_\_% of those votes cast, and has been nominated by the District Committee of the NY County Democratic Committee for the 73rd Assembly District to be the candidate of the Democratic Party for Member of the Assembly for the 73rd Assembly District, State of New York, for the special election for the public office of Member of the Assembly for the 73rd Assembly District to be held on September 13, 2011.

CHAIR I now call upon our official Democratic Party nominee to speak.

DAN QUART [ACCEPTANCE SPEECH.]

CHAIR Thank you, MR. QUART.

CHAIR The next item of business on the Agenda is to appoint the COMMITTEE TO FILL VACANCIES. The members are:

1. ARTHUR L. SCHIFF 1199 Park Ave., New York, NY 10128
2. LAWRENCE M. ROSENSTOCK 14 E. 90 St., New York, NY 10128
3. ISABEL S. MINARD 133 E. 62 St., New York, NY 10065
4. JOHN K. MILLS 135 E. 54 St., New York, NY 10022
5. LINDA R. FOA 911 Park Ave., New York, NY 10075
6. MERYL BRODSKY 150 E. 61 St., New York, NY 10065

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We now move on to the next item of business on the Agenda, which is to Adjourn. The Chair recognizes CONRAD FOA.

[MOVANT]

I move that the District Meeting of the NY County Democratic Committee, for the 73rd AD be adjourned.

CHAIR

Is there a second? I recognize ARTHUR SCHIFF.

[SECONDER]

I second the motion.

CHAIR

A motion to adjourn having been made and seconded, I ask for a vote. All those in favor of adjournment, please say aye; all those against, please say nay. The ayes have it, and this meeting is adjourned. Thank you all.

SPECIAL ELECTION NOMINATION FORMS

**MINUTES OF THE SPECIAL MEETING OF THE  
73RD ASSEMBLY DISTRICT COMMITTEE OF THE NEW YORK  
COUNTY DEMOCRATIC COMMITTEE JULY 7, 2011**

Pursuant to a Notice sent in accordance with the Rules and Regulations of the Democratic Party of the County of New York (a copy of the Notice is annexed hereto), the meeting was called to order at 6:40 pm on July 7, 2011 by FRANK WILKINSON, TEMPORARY CHAIR of the 73rd Assembly District Committee. The meeting took place at the community room at Brown Gardens, 225 East 93rd Street, New York, NY 10128.

TRUDY MASON made a motion to adopt the Agenda. It was seconded by JAMES ANSORGE. The motion was unanimously adopted.

The Chair of the Credentials Committee, ALEX TISCH, reported and announced the presence of a quorum. ISABEL MINARD made a motion to adopt the Credentials Report. It was seconded by MIRIAM BALMUTH. The motion was unanimously adopted.

MERYL BRODSKY made a motion to dispense with the calling of the roll. It was seconded by BETSY FEIST. The motion was unanimously adopted.

TRUDY MASON nominated JAMES CLYNES for the position of Chair (Presiding Officer). It was seconded by ROBERTA RUTTENBERG. JAMES CLYNES was elected Chair unanimously.

JAMES CLYNES assumed the Chair.

LINDA FOA nominated JENNIFER COYNE for the position of Secretary. It was seconded by ELSBETH REIMANN. JENNIFER COYNE was elected Secretary unanimously.

No other officers were elected.

NICO MINERVA made a motion to adopt the Rules of Procedure of the meeting. It was seconded by LEIDA SNOW. The motion was unanimously adopted.

JONATHAN BING nominated DAN QUART, residing at 1623 Third Avenue, Apt. 22F, New York, NY 10128, to be the candidate and nominee of the Democratic Party for the public office of Member of Assembly, 73rd Assembly District, County of New York, State of New York, to be voted for at the Special Election to be held on September 13, 2011 to fill the unexpired term of JONATHAN BING who resigned from said office. TRUDY MASON seconded the nomination. In accordance with the Rules of Procedure, DAN QUART submitted to the Temporary Chair a nomination petition with the requisite number of signatures. There were no other nomination petitions submitted or nominations from the floor. DAN QUART received a unanimous vote for said nomination.

ARTHUR L. SCHIFF, LAWRENCE M. ROSENSTOCK, ISABEL S. MINARD, JOHN K. MILLS, LINDA R. FOA and MERYL BRODSKY were appointed as the Committee to Fill Vacancies.

CONRAD FOA moved that the meeting be adjourned. ARTHUR SCHIFF seconded the motion. The motion was unanimously adopted.

The meeting was adjourned at 7:10 pm.

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JAMES CLYNES, CHAIR

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JENNIFER COYNE, SECRETARY

**CERTIFICATION OF MINUTES**

The undersigned Chair and Secretary of the 73rd Assembly District Committee of the New York County Democratic Committee hereby certify that the foregoing are true and accurate Minutes of the Meeting of the 73rd Assembly Committee of the New York County Democratic Committee held on July 7, 2011, at the community room in Brown Gardens, 225 East 93rd Street, New York, NY 10128.

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JAMES CLYNES, Chair

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JENNIFER COYNE, Secretary

On this 7th day of July, 2011, before me personally appeared JAMES CLYNES, Chair of the 73rd Assembly District Committee of the New York County Democratic Committee, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Certification of Minutes, and acknowledged to me that he executed the foregoing Certification in said capacity, and that by his signature on the instrument, the individual, or the persons on behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the County of New York, State of New York.

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Notary Public

On this 7th day of July, 2011, before me personally appeared JENNIFER COYNE, Secretary of the 73rd Assembly District Committee of the New York County Democratic Committee, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Certification of Minutes, and acknowledged to me that she executed the foregoing Certification in said capacity, and that by her signature on the instrument, the individual, or the persons on behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the County of New York, State of New York.

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Notary Public

SPECIAL ELECTION NOMINATION FORMS

**DEMOCRATIC PARTY  
NOMINATION CERTIFICATE  
73RD ASSEMBLY DISTRICT  
NEW YORK COUNTY  
STATE OF NEW YORK**

County of New York

July 7, 2011

TO THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK:

We, the undersigned, JAMES CLYNES and JENNIFER COYNE, having been duly elected and having served as Chair (Presiding Officer) and Secretary, respectively, of the 73rd Assembly District Committee of the New York County Democratic Committee, of the County, City and State of New York, do hereby certify: that in accordance with the New York State Election Law, and the Rules and Regulations of the Democratic Party of the County of New York heretofore previously certified and filed pursuant to law ("Rules"), a special meeting of the Members of the Democratic Party County Committee of 73rd Assembly District Committee of the New York County Democratic Committee, County of New York, City of New York, was held this date at the community room at Brown Gardens, 225 East 93rd Street, New York, NY 10128, County of New York, at which we were duly elected; that a quorum of the duly elected Democratic Party County Committee members of the 73rd Assembly District of the New York County Democratic Committee attended such meeting; that said meeting was duly organized as required by the Election Law, said Rules, and the Rules of Procedure for said special meeting adopted thereat (annexed hereto); that at said meeting there was duly nominated, by majority vote, the following named person as Democratic Candidate for the public office of MEMBER OF ASSEMBLY, 73rd ASSEMBLY DISTRICT, COUNTY OF NEW YORK, STATE OF NEW YORK, to be voted for at the Special Election to be held on September 13, 2011, to fill the vacancy of the unexpired term caused by the resignation of JONATHAN BING as hereinafter specified:

| <u>NAME OF CANDIDATE</u> | <u>PUBLIC OFFICE</u>                                                                       | <u>PLACE OF RESIDENCE</u>                                                  |
|--------------------------|--------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| DAN QUART                | MEMBER OF ASSEMBLY,<br>73RD ASSEMBLY DISTRICT,<br>COUNTY OF NEW YORK,<br>STATE OF NEW YORK | 1623 Third Avenue, Apt. 22F<br>County of New York,<br>New York, N.Y. 10128 |

We do further certify that the following named persons, all of whom are enrolled members of the Democratic Party, were duly appointed as a Committee to Fill Vacancies in the nomination made by said meeting, in accordance with the Election Law.

COMMITTEE TO FILL VACANCIES

|                           |                                    |
|---------------------------|------------------------------------|
| 1. ARTHUR L. SCHIFF       | 1199 Park Ave., New York, NY 10128 |
| 2. LAWRENCE M. ROSENSTOCK | 14 E. 90 St., New York, NY 10128   |
| 3. ISABEL S. MINARD       | 133 E. 62 St., New York, NY 10065  |
| 4. JOHN K. MILLS          | 135 E. 54 St., New York, NY 10022  |
| 5. LINDA R. FOA           | 911 Park Ave., New York, NY 10075  |
| 6. MERYL BRODSKY          | 150 E. 61 St., New York, NY 10065  |

GOLDFEDER'S MODERN ELECTION LAW—BALLOT ACCESS IN NEW YORK

We do further certify that JAMES CLYNES was the Chair (Presiding Officer) and JENNIFER COYNE was the Secretary at said meeting.

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JAMES CLYNES, Chair (Presiding Officer)

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JENNIFER COYNE, Secretary

Dated: July 7, 2011  
New York, New York

SPECIAL ELECTION NOMINATION FORMS

STATE OF NEW YORK     )  
                                      : ss.:  
COUNTY OF NEW YORK    )

JAMES CLYNES and JENNIFER COYNE, being severally duly sworn, depose and say:

That we were the Chair (Presiding Officer) and Secretary, respectively, of the 73rd Assembly District Committee of the New York County Democratic Committee, City of New York, State of New York, Special Meeting on July 7, 2011, that we have read the foregoing Certificate of Party Nomination and the statements contained therein are true.

---

JAMES CLYNES

---

JENNIFER COYNE

Sworn to before me  
the 7th day of July, 2011

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NOTARY PUBLIC

STATE OF NEW YORK     )  
                                      : ss.:  
COUNTY OF NEW YORK    )

On the 7th day of July, 2011, before me, the undersigned, personally appeared, JAMES CLYNES, Chair (Presiding Officer) of the 73rd Assembly District Committee of the New York County Democratic Committee, and JENNIFER COYNE, Secretary of the 73rd Assembly District Committee of the New York County Democratic Committee, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within Certificate of Nomination and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the persons on behalf of which the individuals acted, executed the instrument, and that such individuals made such appearance before the undersigned in the County of New York, State of New York.

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NOTARY PUBLIC



**CERTIFICATE OF ACCEPTANCE AND CONSENT**

TO THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK:

I, DAN QUART, residing at 1623 Third Avenue, Apt. 22F, New York, NY 10128, hereby accept the nomination and consent to be the Democratic Candidate for the Public Office of MEMBER OF ASSEMBLY, 73rd ASSEMBLY DISTRICT, COUNTY OF NEW YORK, STATE OF NEW YORK, for the Special Election to be held on September 13, 2011 to fill the vacancy created by the resignation of JONATHAN BING, said nomination tendered to me at a Special Meeting of the Members of the 73rd Assembly District Committee of the New York County Democratic Committee, held on July 7, 2011 at the community room at Brown Gardens, 225 E. 93rd Street, New York, N.Y. 10128.

Dated: New York, New York  
July 7, 2011

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DAN QUART  
1623 Third Avenue, Apt. 22F  
New York, NY 10128

STATE OF NEW YORK     )  
                                      : ss.:  
COUNTY OF NEW YORK    )

On the 7th day of July, 2011, before me, the undersigned, personally appeared DAN QUART, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Acceptance and Consent and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the foregoing Certificate of Acceptance and Consent of Nomination, and such individual made such appearance before the undersigned in the County of New York, State of New York.

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