

*Sup. P. v. M. v. M. 10*  
At the ~~Special Election Part~~ of the Supreme Court of the State of New York, County of New York, at the Courthouse located at 60 Centre St., ~~Part Courtroom~~ on the 12 day of Aug, 2014.

PRESENT: **HON. CAROL EDMEAD**  
Hon. \_\_\_\_\_  
Justice of the Supreme Court

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

-----X  
In the Matter of the Application of

NEW YORK CITY COALITION FOR  
ACCOUNTABILITY NOW, INC., VALERIE  
LUCZNIKOWSKA, AND DONAL BUTTERFIELD  
Petitioners,

-against-

MICHAEL MCSWEENEY, CITY CLERK OF THE CITY  
OF NEW YORK,  
Respondent,

for an order, pursuant to Article 16 of the Election Law  
And Municipal Home Rule Law 24 and 37, to compel  
Respondent to certify that the Petition conforms with all  
requirements of law.

-----X  
**UPON** reading the annexed petition of NEW YORK CITY COALITION FOR

ACCOUNTABILITY NOW, INC., VALERIE LUCZNIKOWSKA, AND DONAL

BUTTERFIELD, verified on the 5<sup>th</sup> day of August, 2014, and upon the original Petition filed

on July 3, 2014 seeking to amend the Charter of the City of New York to Establish the High-Rise  
Safety Initiative ("Petition"),

**LET** the respondents herein show cause before this Court at the Supreme Court, 60 Centre

RECEIVED-MANHATTAN  
OFFICE OF THE CITY CLERK  
2014 AUG -9 P 12:45

Index #: 100 814/14  
ORDER TO SHOW CAUSE

Street, to be held in Room 341, on August 14, 2014 at ~~9:30~~<sup>10:00</sup> a.m. or as soon thereafter as counsel may be heard, why an Order should not be made herein:

1. Compelling Respondent to certify that the Petition conforms with all requirements of law;
2. Annuling and setting aside the determination of Respondent Michael McSweeney, City Clerk of the City of New York;
3. Declaring the Petition valid under Municipal Home Rule Law §§ 24 and 37;
4. Declaring that Petitioners are entitled to an immediate hearing resolving any outstanding evidentiary hearings;
5. Awarding Petitioners the attorneys' fees, costs and disbursements in connection with this proceeding; and
6. Granting such other and further relief as the Court may deem appropriate.

SUFFICIENT CAUSE BEING SHOWN, it is

**ORDERED** that leave is hereby granted to petitioners to submit upon the return day of this order to show cause and the argument hereof such additional evidence, exhibits and other proof as may be necessary; and it is further

**ORDERED** that leave is hereby granted to Petitioners to demand upon the return of this order to show cause and the argument hereof additional documents in the custody of Respondent and his agents and employees; and it is further

**ORDERED** that the respondent is hereby ordered and directed to produce upon the hearing of this order to show cause, the aforesaid Petition, the permanent personal registration

poll cards of voters in the City of New York, and any reports, worksheets, and any and all documents related to the "review" of the Petition conducted at the direction of the Respondent, for examination by this Court; and it is further

**ORDERED** that service of a copy of this order together with the papers upon which it is granted be made upon respondent Michael McSweeney, City Clerk of the City of New York by leaving them at the Executive Office of the City Clerk of the City of New York, located at 141 Worth Street, New York, NY, on or before August 12, 2014.

ENTER



Justice of the Supreme Court  
of the State of New York

**HON. CAROL EDMED**

Indy In - 100 814 / 14

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

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In the Matter of the Application of

NEW YORK CITY COALITION FOR  
ACCOUNTABILITY NOW, INC., VALERIE  
LUCZNIKOWSKA, AND DONAL BUTTERFIELD,  
Petitioners,

Index #: \_\_\_\_\_/14

-against-

VERIFIED PETITION

MICHAEL MCSWEENEY, CITY CLERK OF THE CITY  
OF NEW YORK,  
Respondent,

for an order, pursuant to Article 16 of the Election Law  
And Municipal Home Rule Law 24 and 37, to compel  
Respondent to certify that the Petition conforms with all  
requirements of law.

-----X

The Petitioners, by their attorneys Stoll, Glickman & Bellina, LLP, hereby allege as follows:

**INTRODUCTION**

1. This proceeding is brought pursuant to Municipal Home Rule Law §§ 24, 37 and Article 16 of the Election Law. As such, pursuant to Elec. Law § 16-116, the proceeding shall have preference over all other causes in this court.
2. This proceeding seeks an order and judgment declaring the petition ("petition"), submitted by Petitioners on July 3, 2014 valid and in conformance with all laws, and annulling and setting aside the August 4, 2014 determination of Respondent which certified that the petition did not comply with all requirements of law. The petition is herein incorporated by reference.

3. Noting that it is New Yorkers who are most affected by high-rise building collapses that occur within the City of New York, and first responders and clean up crews working for the City of New York who risk life and health to deal with such incidents, the petition submitted to the City Clerk seeks to amend the City Charter to require the City's own Department of Buildings ("DOB") to investigate such incidents.

### PARTIES

4. Petitioner New York City Coalition for Accountability Now ("NYCCAN") is a non-partisan not for profit corporation based in New York City, NY. NYCCAN submitted the petition that is the subject of this litigation.
5. Petitioners Valerie Lucznikowska and Donal Butterfield are residents of the City of New York, are qualified electors of the City of New York, and signatories to the Petition which is the subject of this action.
6. Respondent Michael McSweeney is the City Clerk of the City of New York. Respondent is charged under the Municipal Home Rule law with the responsibility of determining whether a citizen initiated petition is compliant or non-compliant with law. The City is a municipal corporation organized under the laws of the State of New York.

### FACTS

7. On July 3, 2014, the petition along with a cover letter (attached as exhibit "A") was filed by NYCCAN in the Office of the City Clerk of the City of New York in accordance with MHRL § 37, for the submission to the electors of the City of a proposed amendment to the Charter of the City of New York.
8. The petition was signed by over 67,000 people, well in excess of the minimum 30,000

needed to qualify for the ballot.

9. More than 30,000 signatories to the Petition were qualified electors of the City of New York.
10. The pre-printed language on each sheet was the same on each and every page submitted by petitioners NYCCAN. A copy is attached as Exhibit "B" and incorporated herein by reference.
11. On August 4, 2014, Petitioners were copied in a threadbare letter addressed to the Speaker of The City Council that the petition does not comply with all requirements of law (attached as exhibit "C" and incorporated herein by reference).
12. In each claimed instance of claimed non-compliance, the Respondent acted beyond his jurisdiction.
13. The Petitioners brought the within action within the statutory time frame and timely served the Respondent.
14. The following includes, but is not limited to, reasons that Respondent is erroneous in claiming that Petitioners petition is non-compliant.

### ARGUMENT

#### The City Clerk's Letter Did Not Specifically State in Which Respects the Petition Failed to Comply with Law

15. MHRL § 37(5) requires that the City Clerk set out specifically in what respects the petition fails to comply with law.
16. Respondent is given by statute 30 days to review the petition to determine whether it complies with law and to state with specificity why it does not.
17. Yet, Respondent's letter fails to provide any specific language or lack of language that

causes the petition to fail to meet requirements of law. He simply provides a boilerplate recitation of statutory and case law of the law governing citizen initiative petitions without connecting it to any fact specific to the petition.

18. On this basis alone, Petitioners request that Respondent's Certificate of non-compliance be deemed null and void.

The Petition is within the Proper Scope of a Petition Pursuant to MHRL § 37

19. "A local law amending a city charter (however extensively) or providing a new city charter, also may be adopted in accordance with the provisions of this action." MHRL § 37(1).
20. This petition amends the Charter of the City of New York by adding a new enumerated power and duty to the Department of Buildings' plethora of existing enumerated powers and duties granted to and required by Article 26 of the Charter.
21. As such, the proposed Amendment in the petition is directly related to, amends, alters and affects existing Charter provisions.
22. It is therefore well within the contemplated scope for a referendum contemplated by MHRL § 37.

The Proposed Amendment Would Not Grant Powers to the City that are Prohibited by State or Federal Law and Would Properly be Within the Jurisdiction of the City of New York

23. The proposed charter provisions explicitly limit the scope of the City's jurisdiction to high-rise building collapses that occur within the City of New York. See sec. 2.(k) of exhibit B.

24. Furthermore, the proposed charter provisions explicitly limit the scope of the City's jurisdiction to collapses in which the City conducted rescue or debris clean up operations in response to the collapse. *See* sec. 2(e) of exhibit B.

25. In addition, the proposed charter provisions specifically limit investigations to those that would not violate other laws. Should the particular circumstances of a collapse bar a DOB investigation, such investigation could not go forward under the proposed charter amendment. *See* sec. 3 of exhibit B.

The Proposed Amendment Provides a Reasonable Financing Plan that is Related to the Regulatory Plan it Proposes

26. The proposed amendment provides a reasonable financing plan that is steady, reliable, adequate, not speculative and particular.

27. Specifically, the amendment provides for a surcharge on applications for construction permits of .9%. It provides for triggers to both institute the surcharge and to end the surcharge. *See* sec. 6 of exhibit B.

28. The surcharge on applications for construction permits is directly and closely related to the regulatory scheme that construction permits pertain to, to wit, ensuring building safety.

29. Moreover, upon information and belief revenues generated by construction permits go to very similar activities proposed herein, such as post-collapse investigations.

The Respondent Unlawfully Declared Many Valid Signatures to be "Invalid"

30. For a signature to count as valid, a signer must truly state his current residence next to his signature. NY Elec. L. § 6-140. A signer who states an "address of record" rather than an actual current residential address commits a fraud.



31. Nevertheless, upon information and belief the Respondent declared signatures invalid because of a “failure of the signers to insert certain requisite information such as... their address of record as a qualified voter.”
32. Respondent has the capability through its agent the Board of Elections in the City of New York (“BOE”) to check signatures on the petition against the signatures of people registered under the same name to determine if the signer is indeed a registered voter and qualified elector as required by the Municipal Home Rule Law. The BOE in fact does this routinely in the context of candidate petition challenges and in the case of other citizen initiative petitions to determine whether a signature is valid or not.
33. The proposed amendment complies with all requirements of the law, and contrary to Respondent’s Certificate of Non-Compliance (attached as Exhibit “C”), it:
- A. Contains the requisite number of valid signatures;
  - B. Contains a fully sufficient and lawful funding source;
  - C. It fairly and honestly informs voters of the purpose of the petition, to wit, to direct the Department of Buildings to investigate high-rise collapses; and
  - D. Is not advisory in nature and provides concrete actions that implicate fundamental municipal concerns.
34. Petitioners request 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.

**35. There has been no previous application for the relief sought herein, and no other adequate relief available other than the relief requested herein.**

WHEREFORE, petitioners respectfully request that the Court sign the proposed order to show cause, and after hearing the within proceeding, grant a judgment in favor of Petitioners:

1. Compelling Respondent to certify that the Petition conforms with all requirements of law;
2. Annuling and setting aside the determination of Respondent;
3. Declaring the Petition valid under Municipal Home Rule Law §§ 24 and 37 (attached as exhibit "D");
4. Awarding Petitioners the attorneys' fees and costs incurred in connection with this proceeding;
5. Awarding such other and further relief as may to the Court seem just and proper.

Dated: New York, New York  
August 5, 2014

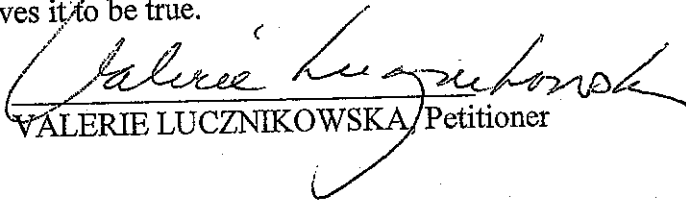
Stoll, Glickman & Bellina, LLP  
Attorneys for Petitioner

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VERIFICATION

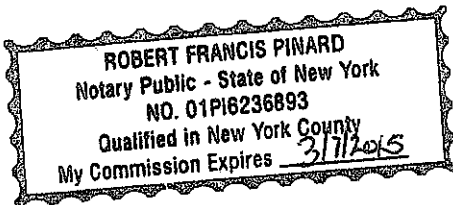
STATE OF NEW YORK )  
                  New York ) ss.:  
COUNTY OF KINGS )

VALERIE LUCZNIKOWSKA, being duly sworn, says as follows: she is the petitioner in the within proceeding, has read the foregoing petition and knows the contents thereof; the same is true to petitioner's own knowledge, except as to matters stated to be alleged upon information and belief, and as to those matters, she believes it to be true.

  
VALERIE LUCZNIKOWSKA, Petitioner

Sworn to before me this  
4 day of August, 2014

  
Notary Public



VERIFICATION

STATE OF NEW YORK )

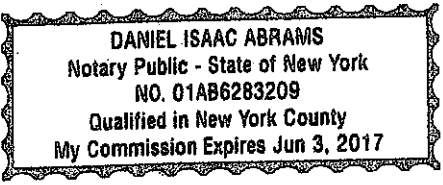
                  New York ) ss.:  
COUNTY OF ~~KINGS~~ )

DONAL BUTTERFIELD, being duly sworn, says as follows: he is the petitioner in the within proceeding, has read the foregoing petition and knows the contents thereof; the same is true to petitioner's own knowledge, except as to matters stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

*Donal Butterfield*  
DONAL BUTTERFIELD, Petitioner

Sworn to before me this  
4<sup>th</sup> day of August, 2014

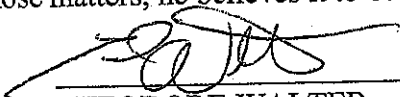
*Daniel Isaac Abrams*  
Notary Public




VERIFICATION

STATE OF NEW YORK )  
                  New York ) ss.:  
COUNTY OF ~~KINGS~~ )

THEODORE WALTER, AS PRESIDENT AND ON BEHALF OF NEW YORK CITY COALITION FOR ACCOUNTABILITY NOW, INC., being duly sworn, says as follows: he is the petitioner in the within proceeding, has read the foregoing petition and knows the contents thereof; the same is true to petitioner's own knowledge, except as to matters stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

  
\_\_\_\_\_  
THEODORE WALTER, on behalf of Petitioner  
New York City Coalition for Accountability Now,  
INC.

Sworn to before me this  
4 day of August, 2014

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

