

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 and THE BOARD OF ELECTIONS IN
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.

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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. The subject of this Verified Petition is the referendum petition submitted by Petitioners on September 4, 2014 (“the second referendum petition”). It was submitted two months after the first petition was submitted seeking to place a referendum on the ballot for the 2014 general election, as required by §37 of the Municipal Home Rule Law.

3. As will be shown below, given the huge numbers of signatures that were wrongfully invalidated by the Respondents, the short time frame involved to file the within Order to Show Cause and Verified Petition, the short time frame in which the Respondent Board of Elections claims it must begin to build and print election day ballots, and the likely political chicanery employed by the Respondent Board of Elections in declaring so many valid signatures invalid, we will ask the court to adjudge the number of signatures submitted by Petitioners sufficient to achieve the ballot.
4. This proceeding seeks an order and judgment declaring the second referendum petition submitted by Petitioners on September 4, 2014 valid and in conformance with all laws, and annulling and setting aside the September 24, 2014 determination of Respondent City Clerk which certified that the petition did not comply with all requirements of law. The petition is herein incorporated by reference.
5. The September 24 letter from Respondent City Clerk refers to his earlier letter in connection with the first referendum petition filed by Petitioners to restate the alleged substantive defects in the proposed law. Petitioners, of course, object to each of these objections and refer the court to all of Petitioners' submissions in the lawsuit (docket #100814/2014) and reiterate each argument therein and incorporate them by reference.
6. In addition, the Respondent City Clerk claims in his letter that in the second referendum petition, of 33,366 signatures submitted by Petitioners, 26,023 were invalid, leaving only 7,343 valid signatures. 15,000 signatures are needed to obtain ballot status.

PARTIES

7. 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.
8. 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.
9. Respondent Michael McSweeney is the City Clerk of the City of New York. The City is a municipal corporation organized under the laws of the State of New York. The City Clerk is responsible for impartially determining the validity of citizen initiated referendum petitions.
10. The Board of Elections in the City of New York is the administrative agency charged with administering ballot access and elections in the City of New York. As to Candidate Petitions, it is the responsibility and duty of the Board of Elections to impartially determine the validity of said candidate petitions. Upon information and belief, employees of the Board of Elections of the City of the City of New York reviewed the signatures contained in the second referendum petition to determine their validity.

FACTS

11. MHRL § 37(7) requires that if the local legislative body does not adopt the first referendum petition submitted to the City Clerk, in no less than two months and no more than four months, the Petitioners must submit an additional petition in support of the referendum containing at least 15,000 valid signatures in order to achieve ballot status.

12. The local legislative body (the Council of the City of New York) did not adopt the referendum. Therefore, Petitioners submitted the aforementioned second referendum petition on the first available day to file, September 4, 2014.
13. The petition was signed by over 33,000 people, well in excess of the minimum 15,000 needed to qualify for the ballot.
14. More than 15,000 signatories to the Petition were qualified electors of the City of New York.
15. The signatures were reviewed, upon information and belief, by employees of the Respondent Board of Elections at the request of Respondent City Clerk.
16. Respondent hand delivered a letter of non-compliance in the mid-afternoon of Wednesday, September 24, right before the start of the Jewish holiday of Rosh Hashanah, which began on Wednesday evening and ended Friday evening.
17. The statutory deadline for the Petitioners to file and serve this Verified Petition and Order to Show Cause is Monday, September 29.
18. The Petitioners used the exact same strategies and methodologies in every material way in circulating the second referendum petition as they did in circulating the first.
19. Nevertheless, the percentage of people who signed the petition that the Respondents claim are not registered to vote climbed from 43% (28,404 out of 65,597) to a staggering 73% (26,023 out of 33,366).
20. Given the high statistical samples (over 65,000 in the first petition, over 33,000 in the second) and the same methodology used to gather signatures, a 30% difference in registrants (or 59% change) is statistically impossible without the Respondents having

used different standards to determine registrants from non-registrants.

21. Indeed, a sampling of 663 signatures in the first two volumes of the second referendum petition by the Petitioners of signatures invalidated by Respondents for having been signed by non-registrants revealed that 43%, or 288, were in fact the signatures of registered voters. Attached as exhibit A is the sample Petitioners took.
22. If the results from the sampling held after a final review of the entire Second Referendum Petition, it would mean that 10,653 signatures by registered voters were wrongfully declared invalid by the Respondents.
23. Such a number of “mistakes” represents a massive and almost certainly fraudulent disenfranchisement of New York City voters.
24. An additional 10,653 valid signatures would put Petitioners well in excess of the number needed to qualify for the ballot (17,996).

ARGUMENT

The Short Time Frame to File this Order to Show Cause and to Resolve it Prior to the Printing of Ballots Makes it Advantageous for Respondents to Wrongfully Invalidate Thousands – and Perhaps Tens of Thousands, of Signatures

25. The Respondent City Clerk had up to 20 days under the Statute to deliver a letter to the legislative body and the petitioners stating whether the referendum petition complies with law. Id.
26. On the twentieth day, just a few hours before the beginning of Rosh Hashanah, Respondent McSweeney caused to be delivered such letter.
27. Petitioners requested a hard copy or electronic copy of the clerk’s specifications of objections, which were provided the next day, Thursday, September 25 at about 1:00 PM

on the first day of Rosh Hashanah.

28. The Petitioners had one full day, Friday, September 26, to review the electronic copy of the clerk's specifications of objections.

29. As the statute of limitations to file and serve this Order to Show Cause and Verified Petition is Monday, September 29 (five days from service of the City Clerk's letter), the Petitioners could not review more invalidations today, as this Verified Petition had to be filed in the morning to ensure it was signed and served timely.

30. With respect to the first submitted referendum petition, Respondent City Clerk has argued emphatically before this court that the Order to Show Cause and Verified Petition must include a full Bill of Particulars with a line by line objection to each signature the City Clerk declared invalid.

31. In the case here, the Petitioners had at most one and a half business days to review the invalidated signatures, and the entire time fell on Rosh-Hashanah.

32. If Respondents have their way, the wrongful invalidation of such a huge number of signatures with the knowledge of the extremely short time frames the referendum petition is up against would have the effect of wrongfully disenfranchising the nearly 100,000 people who signed the petition and wrongfully deny the sacred right, granted by the State Constitution and statute, for citizens to petition their government by referendum.

The Unfortunate Role of Politics in the Administration of Elections by the Board of Elections in the City of New York Enables Political Chicanery

33. In December 2013, the New York City Department of Investigation published a report on, among other things, the New York City Board of Elections' hiring practices. Herein

incorporated by reference and available at:

<http://www.nyc.gov/html/doi/downloads/pdf/2013/dec%202013/BOE%20Unit%20Report12-30-2013.pdf>.

34. The report notes that employees are not hired based on merit in a transparent process, but based on political connections – often to the Republican or Democratic County Committees, in an opaque process.
35. It further notes that employees of the New York City Board of Elections, whether they like it or not, are expected and demanded that they participate in partisan political activities under threat of termination.
36. In addition, the report describes that the Board of Elections does not advise employees of their whistleblower protection rights guaranteed by law.
37. These circumstances undermine what ought to be the impartial role the Board of Elections plays in elections.
38. Given that a person's hiring and continued employment at the Board of Elections depends on his or her ongoing good relationship with politicians with an interest, for example, of who and what appears on the ballot, and without access to information about whistleblower protections, employees feel pressured to act in the interests of the politicians who hire them, not necessarily in the best interest of impartially administered elections.

CONCLUSION

39. Given the statistical unlikelihood that the percentage of non-registrants in the second referendum petition shot up by 59%, the short time frames involved with the process, and

the control that politicians exert over employees at the Board of Elections, the conclusion that the Board of Elections' invalidation of this petition is fraudulent is difficult to escape.

40. Requiring a full line by line review by the Petitioners and this court for so many wrongly and likely fraudulently invalidated signatures, which would in all likelihood not be completed prior to the time the Respondent Board of Elections must print ballots, would only reward Respondent for its gross negligence or fraudulence.

41. 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.

42. **There has been no previous application for the relief sought 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 Respondents to certify that the second referendum petition conforms with all requirements of law;
2. Compelling Respondents to specifically certify that the second referendum petition contains in excess of the required number of valid signatures should the Respondent Board of Elections invoke a date for printing that make the completion of a full review by Petitioners and this court impracticable.
3. Annuling and setting aside the determination of Respondents;
4. Declaring the Petition valid under Municipal Home Rule Law §§ 24 and 37;

5. Awarding Petitioners the attorneys' fees and costs incurred in connection with this proceeding;
6. Awarding such other and further relief as may to the Court seem just and proper.

Dated: New York, New York
September 29, 2014

Stoll, Glickman & Bellina, LLP
Attorneys for Petitioner

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VERIFICATION

I, the undersigned, an attorney admitted to practice in the Courts of the State of New York, state that I am the attorney of record for the Petitioners in the within action; that I have read the foregoing Bill of Particulars and know its contents; that it is true to my own knowledge, except as to matters alleged to be on information and belief, and as to those matters I believe it to be true.

The reason that this verification is made by me and not by the Petitioners is because the Petitioners are not located in the county in which your affirmant maintains his office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Records contained in my file and conversations had with the Petitioners.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Brooklyn, New York
September 29, 2014

Leo Glickman

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CITY OF NEW YORK
Respondents,

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

Order To Show Cause

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

DATED: September 29, 2014

SIGNATURE: _____
PRINT SIGNERS NAME: LEO GLICKMAN, ESQ.

Dated:

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Attorney(s) for Petitioners