

Document: Matter of Swiller v Lecuona, 2017 N.Y. Misc. LEXIS 3146

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Supreme Court of New York, Westchester County

August 16, 2017, Decided

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Reporter

2017 N.Y. Misc. LEXIS 3146 * | [2017 NY Slip Op 51057\(U\) **](#) | 56 Misc. 3d 1218(A)

[**1] Application of Willa R. **Swiller**, STEPHEN WALFISH, THOMAS M. ROACH, JR. JOHN M. MARTIN, JOHN KIRKPATRICK, JUSTIN BRASCH, Petitioners, against Milagros **Lecuona**, MICHAEL KRAVER, SAAD TURAB SIDDIQUI, ALAN D. GOLDMAN and DOUGLAS A. COLETY and REGINALD LAFAYETTE, as Commissioners of the Westchester County Board of Elections, Respondents. Milagros **Lecuona**, MICHAEL KRAVER, SAAD TURAB SIDDIQUI, ALAN D. GOLDMAN, Petitioners, against Willa R. **Swiller** and STEPHEN WALFISH and THE WESTCHESTER COUNTY BOARD OF ELECTIONS, Respondents.

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

Core Terms

petitions, signatures, Elections, candidates, designating, canvassers, invalidate, volumes, campaign, filling a vacancy, cover sheet, valid signature, common council, signer's, registered, court finds, validate, voter, subscribing witness, Respondents', abbreviation, petitioners', witnesses, parties, permeated, participated, reside, tacked, signing a petition, primary election

▼ Headnotes/Syllabus

Headnotes

Counsel: [*1] For Petitioners: [Thomas J. Abinanti](#) ▼, Esq.

For Respondent Candidates: [Guy T. Parisi](#) ▼, Esq.

For Respondent Commissioners: [Fay Jones](#) ▼, Esq., [Melissa-Jean Rotini](#) ▼, Esq., Assistant County Attorneys, Westchester County Attorney's Office.

For Intervenors: of the Westchester County Board of Elections, Craig E, Penn, Esq., [Julian D. Perlman](#) ▼, Esq., [Phillips Nizer LLP](#) ▼.

Judges: HON. [LAWRENCE H. ECKER](#) ▼, J.S.C.

Opinion by: [LAWRENCE H. ECKER](#) ▼

Opinion

[Lawrence H. Ecker](#) ▼, J.

Willa T. **Swiller** and Stephen Walfish, as objectors, and Thomas M. Roach, Jr., John M. Martin, John B. Kirkpatrick and Justin Brasch, as aggrieved candidates ("petitioners"), bring this first-captioned proceeding pursuant to [Election Law §16-102](#), inter alia, to invalidate a petition [\[**2\]](#) designating Milagros **Lecuona**, Michael Kraver, Saad Turab Siddiqui and Alan D. Goldman ("respondents") as candidates in a primary election to be held on September 12, 2017, for the nomination of the Democratic Party as its candidates for the public offices of Mayor (**Lecuona**) and Members of the Common Council (Kraver, Siddiqui and Goldman), respectively, of the City of White Plains. The second-captioned related proceeding seeks to validate that designating petition.

Heretofore, on July 11, 2017, Milagros **Lecuona**, [\[*2\]](#) Michael Kraver, Saad Turab Siddiqui and Alan D. Goldman filed a four-volume petition with cover sheets designating them as candidates in the primary election to be held on September 12, 2017, for the nomination of the Democratic Party as its candidates for the public offices of Mayor and Members of the Common Council, respectively, of the City of White Plains. Thereafter, on July 13, 2017, with the same designating petitions and signatures, the candidates re-filed four petitions with amended cover sheets as follows: The first two volumes labeled 1 of 3 and 2 of 3 listed all four candidates. **Lecuona** filed a separate third volume labeled 3 of 3 and Kraver, Siddiqui and Goldman also filed a separate third volume labeled 3 of 3. Thus, each candidate re-filed three volumes of designating petitioner.

The **Lecuona** petitions contained 2,641 signatures and the Kraver, Siddiqui and Goldman petitions contained 2,202 signatures. 912 valid signatures were required for each candidate. **Swiller** and Walfish filed objections to the designating petitions with the Westchester County Board of Elections ("the Board"). The Board reviewed the objections and determined the **Lecuona** petitions contained 950 valid [\[*3\]](#) signatures, disqualifying 1,691 signatures as invalid. The Board found the Kraver, Siddiqui and Goldman petitioners contained 1,053 valid signatures after sustaining objections to 1,149 signatures. Thus, the Board determined **Lecuona**, Kraver, Siddiqui and Goldman had each submitted more than the required 912 signatures and their names would appear on the Democratic Party primary ballot for their respective offices in the City of White Plains in the September 12, 2017 Primary Election.

Petitioners then commenced a proceeding to invalidate the designating petitions. They allege in the invalidation petition that the designating petitions are insufficient, ineffective, false, fraudulent, invalid and null and void. Respondents commenced a related proceeding to validate the designating petition. The respective parties filed Verified Answers to the respective petitions. Respondents' Verified Answer to the Invalidation Petition included a Seventh Affirmative Defense and Objection in Point of Law stating, "Respondents' Designating Petition is valid and respondents will seek to validate each and every signature invalidated by Respondent Board of Elections." Verified Answer, page 3,

¶11. Petitioners **[*4]** did not file a Reply to the Verified Answer or raise an objection to the Affirmative Defense.

On August 8, 9, and 10, 2017, the court conducted a hearing on the issues raised in these proceedings at which testimony was taken and documentary evidence was received. During the hearing, on August 10th, upon petitioners' application, the court dismissed respondents' validation petition for lack of personal jurisdiction due to the failure to timely serve all the necessary parties. It was undisputed that service upon one of the objectors, Willa R. **Swiller**, was not completed by July 27, 2017, as the process server had attempted service pursuant to [CPLR 308\[4\]](#) ("nail and mail" service) on that date, but failed to mail the Order to Show Cause and supporting papers until the following day, July 28, 2017, which was late by one day by statute **[**3]** ([Election Law § 16-102\[2\]](#)) and the service requirements set forth in the Order to Show Cause. [Gadsen v Board of Elections, 57 NY2d 751, 440 N.E.2d 1329, 454 N.Y.S.2d 982 \[1982\]](#).

The following witnesses testified under oath at the hearing: **1** 

Tabitha Lee, a registered Democrat from Manhattan, was hired by Joel Williams, the campaign's Field Director, to canvass for signatures and spent 3-4 days doing so on July 10, 11, 13 and 14, 2017. She was paid about \$300 for 20 hours of work **[*5]** at \$15 per hour. She canvassed individuals on the street in high traffic areas in downtown White Plains including outside the Metro North train station, Galleria shopping mall and Mamaroneck Avenue. She asked each person whether he or she was a registered Democrat, but not whether he or she resided in White Plains. She relied on the signer's representation regarding their eligibility to sign the designating petition and did not look at the signer's address after he or she signed the petition.

Joel Williams was hired as Field Director of the **Lecuona** campaign during the last week of June. His voter registration history appeared to coincide with where he was working on political campaigns. As a Democrat, he had previously registered to vote in Pennsylvania in 2016, but never voted there as he moved to Florida before the election. Most recently, he registered to vote in Brooklyn in early June, 2017 at a residence at which he has never resided. Williams hired six or seven canvassers to obtain voter signatures and paid them in cash or by money order at the rate of \$15 per hour. He personally collected signatures on only one petition in the Mamaroneck downtown area. He was aware there were **[*6]** problems with some of the petition signatures, and did not review them "as well as I could have and should have."

Thomas Caruso, an attorney, serves as Campaign Chair for the **Lecuona** campaign. He is 2nd Vice Chair of the White Plains Democratic Committee and a regional Vice President of the New York Lawyers Democratic Council. He was a subscribing witness on four petitions. In the final days of the petition period, the campaign was sending canvassers to high volume places as it was far behind in signatures needed after the former campaign manager, James Hermann, had resigned from the campaign on June 27th, after performing his duties in a less than satisfactory manner. This put the campaign behind in its signature gathering efforts. He relied upon a volunteer lawyer, Alberto Torres, to review the petitions during the process of assembling and binding them prior to their filing.

Elaine Summers, a registered Democrat, was walking in the downtown White Plains area with a friend on July 8, 2017 around 2:00 p.m. when she was approached separately within one or two blocks by three different women seeking her friend's and her signatures on **Lecuona's** designating petitions. The first woman asked **[*7]** if Summers and her friend would sign a petition for **Lecuona** to which Summers responded, "We are not from around here." The woman replied "You can sign anyway." After waving the canvasser off and continuing their walk, they were approached twice more by two other woman, each making the same request. When Summers repeated they were "not from around here," they were told by each woman, "You can sign anyway." She reported what had occurred to Tim James of the White Plains Democratic Committee whom she knew, as she had been a local campaign volunteer and a supporter of petitioner Mayor Thomas M. Roach, Jr.

Respondent Alan D. Goldman is a candidate for the White Plains Common Council. He **[**4]** is a registered Democrat who has never run for public office or carried candidate petitions. He attended a Democratic training session for petition canvassing prior to the petition period. He witnessed all the signatures on the petitions he circulated on July 8th, and signed as a subscribing witness on July 10th. Another individual filled in the dates on each signature line, but he was not sure who did so. He asked each person if he or she was a Democrat who lived in White Plains and relied upon their responses, **[*8]** although he did not look at their address after they signed the petition. He was unable to explain why people signed the petitions who did not live in White Plains. On July 10th, the candidates and campaign staff gathered at his print shop at 190 East Post Road in White Plains and he gave the petitions that he had witnessed to James Hermann. A Bronx lawyer, Alberto Torres, was present that evening and looked over the petitions before Goldman attended to hole-punching and binding the petitions for submission to the Board of Elections.

Respondent Milagros **Lecuona** is a candidate for White Plains Mayor. She carried some of the petitions herself and obtained signatures that largely went unchallenged. She did not interact with any paid petition canvassers other than a brief conversation with one woman on a subject unrelated to the petitions. Alberto Torres, a Bronx lawyer, was approached to assist with the petition assembling and filing as he was highly recommended by a mutual friend. She attended the meeting at Alan Goldman's print shop on July 10th where she saw Torres, Tom Caruso and the other candidates.

Christine Senteno has served as **Lecuona's** campaign manager since July 27, 2017, two **[*9]** weeks after the petition period ended. She did not participate in any petitioning activity.

Fraud

Petitioners contend the designating petitions should be invalidated because the designating petitions were permeated with fraud. Alternatively, they assert the candidates and officials of the campaign were closely involved in the petitioning process and were aware of and participated in a method of obtaining signatures that constituted a fraudulent practice and took no corrective steps, but instead authorized and acquiesced in the filing of the petitions. Respondents argue petitioners have failed to establish the petition process was permeated by fraud, or that any candidate participated in or had knowledge of any fraudulent practices.

A candidate's designating petition will be invalidated on the ground of fraud where there is a showing, by clear and convincing evidence, that the entire designating petition is permeated with fraud. *Matter of Ferraro v McNab*, 60 NY2d 601, 603, 454 N.E.2d 533, 467 N.Y.S.2d 193 [1983]; *Matter of Proskin v May*, 40 NY2d 829, 830, 355 N.E.2d 793, 387 N.Y.S.2d 564 [1976]; *Matter of Sgammato v Perillo*, 131 AD3d 648, 15 N.Y.S.3d 440 [2d Dept 2015]; *Matter of Powell v Tandy*, 131 AD3d 645, 15 N.Y.S.3d 428 [2d Dept 2015]; *Matter of Felder v Storobin*, 100 AD3d 11, 953 N.Y.S.2d 604 [2d Dept 2012], or where the candidate has participated in, or is chargeable with, knowledge of the fraud. *Matter of Sgammato v Perillo*, *supra*; *Matter of Powell v Tandy*, *supra*; *Matter of Steinert v Daly*, 118 AD3d 808, 987 N.Y.S.2d 232 [2d Dept 2014], even if there are a sufficient number of valid signatures on the remainder of the designating petition. *Matter of Sgammato v Perillo*, *supra*; *Matter of Felder v Storobin*, *supra*.

There is little dispute that there were irregularities **[*10]** in the process of collecting signatures in the last two weeks of the petition period. In their fraud claim, petitioners focus on this late June - early July period when respondents became concerned about the quantity of signatures being gathered by the campaign and embarked on "a different approach" that involved hiring **[**5]** paid canvassers and sending them to public places in downtown White Plains with high pedestrian traffic. Some of the designating petitions carried by paid canvassers were done in a careless manner as they approached numerous individuals in high-traffic areas in downtown White Plains, including the areas around the train station and Galleria shopping mall. The methodology employed by the paid canvassers often showed little effort to assure that signatures would be obtained only by Democratic voters residing in the City of White Plains. For example, the canvassers operated without Democratic voter lists or access to such lists. In many instances, after signers wrote their addresses on the petition indicating their residence was not in White Plains, the canvassers made little or no effort to review the signer's address after the petition was signed and returned to the **[*11]** canvasser. The court notes little or no effort was made by subscribing witnesses to "scrub" the petitions of non-White Plains residents before or after the witnesses signed and acknowledged the petitions.

The above irregularities resulted in the Board invalidating many signatures following the filing of petitioners' objections. Other signatures were invalidated by the court upon petitioners' application during the hearing. While the court disapproves of the carelessness on the part of some of the paid canvassers, the court finds no evidence was adduced at the hearing of forged signatures or that canvassers engaged in pervasive improprieties or acts of deception that constituted fraud. Further, while petitioners' focus is with the paid petition canvassers, and properly so, they represented only six of the overall total of 60 subscribing witnesses, i.e., 10% of the witnesses. The paid petition canvassers obtained signatures on only 47 of the 356 petition pages (13.2%), as compared to the volunteer petition canvassers who were responsible for 299 of the 356 petition pages (87%). The remaining 10 petitions (3%) were obtained by two paid campaign staff, Joel Williams (1 petition) and James **[*12]** T. Herrman (9 petitions). The court finds the relatively low number of petitions attributable to the paid canvassers undermines petitioners' permeation claim.

In view of the foregoing, the court determines that plaintiffs have failed to establish, by clear and convincing evidence, that respondents' designating petitions were permeated with fraud. As a general rule, a candidate's designating petition will be invalidated on the ground of fraud only if there is a showing that the entire designating petition is permeated with fraud. *Matter of Ferraro v McNab*, *supra*, *Matter of Proskin v May*, *supra*; *Matter of Thomas v Simon*, 89 AD2d 952, 454 N.Y.S.2d 98 [2d Dept 1982], *aff'd* 57 NY2d 744, 440 N.E.2d 1335, 454 N.Y.S.2d 988 [1982]. Even if the court were to have found fraudulent activities on the part of some or all of the paid canvassers, it would be

insufficient to show, as a matter of law, by clear and convincing evidence, that the entire designating petition is permeated with fraud, especially where, as here, no candidate was found to have personally participated in fraud. *Matter of Meeks v Pruitt*, 185 AD2d 961, 587 N.Y.S.2d 26 [2d Dept 1992]; *Ragusa v Roper*, 286 AD2d 516, 517, 729 N.Y.S.2d 647 [2d Dept 2001], lv. denied, 96 NY2d 718, 758 N.E.2d 656, 732 N.Y.S.2d 630 [2001]. Here, there is no evidence that the respondent candidates participated in any fraud, or are chargeable with knowledge of any fraud.

Amended Cover Sheets

On July 11, 2017, respondents filed a cover sheet stating there were 4 volumes of designating petitions. On July 13, 2017, respondents [*13] filed an amended cover sheet that included a Master Cover Sheet (Petr's 5) stating there are 4 volumes, in 3 forms, to wit: Mayor and Common Council together on 1 of 3 and 2 of 3, a volume 3 of 3 for Mayor only, and a volume 3 [**6] of 3 for Common Council only. (See petitioners' Ex. 1 through Ex. 5). Volume 1 of 3 (formerly Volume 2 of 4/Petr's 1) and Volume 2 of 3 (not amended/Petr's 2) includes the mayor and 3 common council candidates.

On Petr's 1, 2 and 3, the names of Ellen Berger, Yvonne Gumowitz and Garry Klein appear as the candidates for the committee to fill vacancies. On Petr's 4, the names of three different individuals, namely Barbara Z. Monohan, Jonathan T. Gumowitz and Margaret I. Sanchez, appear as the candidates for the committee to fill vacancies. The petitions filed on July 11th and the page numbers of the volumes have not been changed.

Petitioners argue that the unilateral amendment of the first cover sheets, filed on July 11th, could not be unilaterally amended by them on July 13th, which was the last day to file petitions. Respondents aver that the re-filing was at the direction of an official at the Board of Elections who on July 12th suggested the petitions be re-filed [*14] with a master cover sheet, such that the petitions and amended cover sheets were re-filed at the direction of the Board which was followed to the letter.

The court finds that the amendment of the cover sheets is not cause to invalidate the nominating petitions, and was in substantial compliance with the requirements of the statute. See *Election Law § 6-134(10)*; *9 NYCRR § 6215.6[a]*. *Election Law § 6-134(10)*, which pertains to designating petitions, states, in pertinent part, "[t]he provisions of this section shall be liberally construed not inconsistent with substantial compliance thereto." Here, the cover sheets of the designating petitions substantially complied with the requirements of the Election Law and the regulations of the New York State Board of Elections to allow for the Board to cumulatively count the signatures within the subject designating petitions to reach the required minimum number of valid signatures. *Matter of Krance v Chiaramonte*, 87 AD3d 669, 928 N.Y.S.2d 480 [2d Dept 2011]; *Matter of Siems v Lite*, 307 AD2d 1016, 763 N.Y.S.2d 501 [2d Dept 2003]; *Matter of Most v Walker*, 297 AD2d 356, 746 N.Y.S.2d 410 [2d Dept 2002].

On the facts adduced at the hearing, the court finds there was no danger of fraud or confusion either to the Board or to voters. *Matter of Hayon v Greenfield*, 109 AD3d 920, 972 N.Y.S.2d 592 [2d Dept 2013]; *Matter of Magelaner v Park*, 32 AD3d 487, 819 N.Y.S.2d 488 [2d Dept 2006]; *Matter of Montgomery v Jefferson*, 122 AD2d 907, 505 N.Y.S.2d 949 [2d Dept 1986], lv denied 68 NY2d 605, 497 N.E.2d 967, 506 N.Y.S.2d 1029 [1986]. That the re-numbering of the cover sheets created additional work for respondents in having to go back to check for changes of signers or witnesses is not proof of prejudice. Hence, the petitions [*15] and cover sheets on file as of July 13, 2017 are valid.

As noted in *Matter of Taylor v Clarke*, 46 Misc 3d 1215[A], 9 N.Y.S.3d 595, 2014 NY Slip Op 51921[U] [Sup Ct, Kings County 2014], the legislative intent in the Election Reform Act of 1992 (L. 1992, ch. 79) is to avoid penalizing a candidate for innocent violations of the Election Law that have no bearing on the underlying purpose of preventing fraud.

The Effect of Different Committees to Fill Vacancies in the Designating Petitions: Permissible "Tacking Together" or Separately Bound Petitions?

Petitioners argue that the first 3 petitions with one committee to fill vacancies may not be "tacked together" with the 4th petition that had a different committee to fill vacancies. This court disagrees and finds there is no impediment to adding together the petitions that include the common council candidates (Petr's 1, Petr's 2 and Petr's 3), notwithstanding the difference in the nominees for the committee to fill vacancies, as between Petr's 1 and 2, and Petr's 3. The court [**7] finds that this discrepancy is not fatal to the calculation of the number of signatures required for the nominating petitions for each candidate.

Petitioners rely upon *Matter of Frawley v. Regan*, 77 AD2d 937, 431 N.Y.S.2d 565 [2d Dept 1980] in support of their argument. In *Frawley*, the Court noted Special Term's determination that two separate volumes [*16] of signatures that named different individuals as members of the

committee to fill vacancies could not be "tacked together" to be considered a single petition. However, the Appellate Division did not specifically rule on that issue, but rather on the duplication of certain petition page numbers that required rejection of the second duplicate page where applicable.

The court finds that more persuasive is *Matter of Pascazi v New State Bd. of Elections*, 207 AD2d 650, 652, 616 N.Y.S.2d 107 [3d Dept 1994], lv denied 84 NY2d 802, 641 N.E.2d 157, 617 N.Y.S.2d 136 [1994], decided subsequent to amendments to the Election Law that became effective on January 1, 1993. Citing *Election Law § 6-134(11)*, now *Election Law § 6-134(8)*, the Court held, consistent with legislative amendment, that the "failure to list a Committee to Fill Vacancies shall not invalidate a designating petition unless a vacancy occurs (*Matter of Tinari v Berger*, 196 AD2d 798, 602 N.Y.S.2d 20 [2d Dept 1993], lv denied 82 NY2d 656, 622 N.E.2d 306, 602 N.Y.S.2d 805 [1993])."

In *Pascazi, supra*, 44 sheets showing one committee to fill vacancies were interspersed with 7 sheets showing a different committee to fill vacancies. As stated by the Court, "Inasmuch as the Committee to Fill Vacancies is not an essential element of the designating petition, we see no reason to reach a different result where, as here, certain sheets of the designating petition list a Committee to Fill Vacancies which differs from the Committee to Fill Vacancies listed on the other sheets." [*17] *Id.* at 652. The *Pascazi* Court expressly rejected any implicit finding in *Frawley* that precluded the "tacking together" of petitions ("We also reject petitioner's claim that although the designating petition is bound together as a single volume, it is actually two separate volumes which cannot be tacked together. [*cf. Matter of Frawley v Regan*, 77 AD2d 937, 431 N.Y.S.2d 565])." This court agrees with the reasoning of *Pascazi* as consistent with the Election Reform Act of 1992 (L. 1992, ch. 79). Hence, notwithstanding the different committees to fill vacancies that exist in respondent Common Council candidates' 3 petition volumes, the petitions, as submitted, are valid in their totality.

Sufficiency of Subscribing Witness Addresses

Election Law § 6-132(2) requires that a subscribing witness list his or her current address on a designating petition sheet "so as to permit the rapid and efficient verification of signatures within the restrictive time periods imposed by the Election Law and thereby facilitate the discovery of fraud." *Matter of Logan-Charles v Rockland County Bd. Of Elections*, 131 AD3d 635, 15 N.Y.S.3d 690 [2d Dept 2015], quoting *Matter of Henry v Trotto*, 54 AD3d 424, 426, 862 N.Y.S.2d 605 [2d Dept 2008]; *Matter of Pisani v Kane*, 87 AD3d 650, 928 N.Y.S.2d 363 [2d Dept 2011]. The importance of this requirement is acknowledged, namely that the Board of Elections be able to identify where a witness is registered to vote, and in which party he or she has enrolled. Here, it is imperative that the witness be an [*18] enrolled member of the Democratic Party in New York.

Petitioners argue that several of the subscribing witnesses failed to include their full address in the Statement of Witness part of the designating petition, or that there was an error in the Witness Identification Information which requires the witness to state his/her Town/City and County. See *Election Law § 6-132(1)* and (2). In each instance where the court has sustained an objection by petitioners, the address was not either sufficient to identify the residence of the [**8] witness, or the witness failed to include the correct town/city and county where he or she resided, if different from White Plains. As to those instances where a witness used BX for Bronx, Manhattan for New York, or Brooklyn or Bklyn for Kings in the Witness Identification Information, but gave an accurate residence address in The Statement of Witness, the court overrules the objection, finding that there has been substantial compliance with the statute and no effort by the witness to perpetrate a fraud or impede the discovery of fraud.

Whether the Bronx or BX should be listed instead as New York City, or whether Manhattan should be listed instead as New York City, is of no moment, provided [*19] the address is accurate, and for those witnesses who reside within the five counties of New York, their county matches up to their residence. Further, as discussed infra, abbreviations are permitted. See *Matter of Frascone v Rockland County Bd. of Elections*, 87 AD3d 667, 928 N.Y.S.2d 478 [2d Dept 2011]; *Matter of Tully v Ketover*, 10 AD3d 436, 780 N.Y.S.2d 795 [2d Dept 2004]; *Matter of Hackett v Egan*, 196 AD2d 870, 602 N.Y.S.2d 163 [2d Dept 1993]; *Matter of Barrett v Brodsky*, 196 AD2d 603, 602 N.Y.S.2d 397 [2d Dept 1993].

In sum, on this objection, the court finds that in each case where the court did not sustain the objection, the residence address of the subscribing witness, including his or her county of residence, was sufficiently clear and accurate to fulfill the statutory requirement and purpose. Those petitions where this was the case are sustained as to the signatures that remain valid thereon.

Signer's Abbreviation of "W.P." for White Plains

On August 11, 2017, while the court was at the Board of Elections ruling upon petitioner's "line by line" objections, an Order to Show Cause was presented using the above-referenced index numbers, seeking permission to intervene in the instant proceeding. The application was filed on behalf of two registered Democrats who reside in White Plains, and all others similarly situated, whose names had

been struck from the petitions they signed because they listed their city as "W.P." rather than writing out White Plains. The court has disposed of the application **[*20]** to intervene by decision issued simultaneously herewith, in which intervention is denied. The gravamen of intervenors' claim is based upon the apparent policy, practice and rulings of the Board that it will not validate a signature if an abbreviation is used for the Town/City of the signer's address, including in this instance, the abbreviation "W.P." for White Plains. That is, in this case, the Board had declared invalid the signature of any signer who used the abbreviation "W.P. in his/her address as an abbreviation for White Plains.

Upon presentment of the Order to Show Cause, the court questioned respondents' counsel as to whether he adopted the position taken by the proposed intervenors, notwithstanding he had not filed specific objections in support of validation. Not surprisingly, he responded that he did. It was not until the court was presented with the Order to Show Cause on August 11th that it was aware that the Board had invalidated all voter signatures bearing the address "W.P."

As previously noted, the court dismissed the validation petition filed by respondents for lack of due service upon one of the petitioners, which negated the petition as to all petitioners. See [Matter of Gadsen v Board of Elections of City of NY, supra](#). **[*21]** However, the court is advised that in the event a petition is dismissed for procedural reasons, the substantive issues should nevertheless be litigated, such that there be a full record in the event of a modification or reversal of the procedural determination by an appellate court. Additionally, as noted, *supra*, respondents filed a Verified Answer in this proceeding which included a Seventh Affirmative Defense and **[**9]** Objection in Point of Law stating, "Respondents' Designating Petition is valid and respondents will seek to validate each and every signature invalidated by Respondent Board of Elections." Verified Answer, page 3, ¶11. Petitioner did not file a Reply to the Answer or raise an objection to the Affirmative Defense.

The court is mindful that as a matter of due process, opposing parties, and the court, are to be made aware of the objections that are to be taken under consideration by the court. See [Murray v Suffolk County Bd. of Elections, 98 AD3d 624, 949 N.Y.S.2d 657 \[2d Dept 2012\]](#); CPLR 3013.

Notwithstanding this rule, the court has determined that it is a provident exercise of its discretion to address the issue of the "W.P." signatures. See [Stavisky v Lee, 142 AD3d 933, 37 N.Y.S.3d 552 \[2d Dept 2016\]](#). It is the court's view that it is imperative that it consider the validity of the "W.P." signatures in order that there be no disenfranchisement of duly registered voters in a strictly city-wide election who are clearly identifiable **[*22]** as residing in the relevant jurisdiction, albeit by initials, and that this is consistent with the salutary efforts of the Election Law to include, rather than exclude, qualified voters from participating in the democratic process, particularly at the most "grass roots" level.

An individual who is otherwise lawfully entitled to sign a petition in support of his/her candidate of choice should not be automatically eliminated because he or she used an obvious, common sense, unequivocal manner in which he or she demonstrated residence in White Plains or "W.P." Hence, notwithstanding the absence of a specific objection of respondent to the Board's policy and rulings, the court finds there should be no bar to the consideration of these signatures. There is only one city involved in this election, namely White Plains, and only one city that the abbreviation "W.P." can represent in Westchester County, namely White Plains. **[2]**

According to the Board of Elections, they have relied upon [Matter of Henry v Trotto, 20 Misc 3d 1134\[A\], 872 N.Y.S.2d 690, 2008 NY Slip Op 51727\[U\] \[Sup Ct, Suffolk County 2008\]](#), aff'd 54 AD3d 424, 862 N.Y.S.2d 605 [2d Dept 2008], when confronted with the use of initials such as "W.P." in the signer's address. However, in [Matter of Berney v Bosworth, 87 AD3d 948, 929 N.Y.S.2d 178 \[2d Dept 2011\]](#), the Court held that it was error for the trial court to have sustained objections where the signers had written **[*23]** "Town of N.H." for Town of North Hempstead," as residents of the Village of Great Neck. "The use of customary abbreviations of addresses shall not invalidate such signatures where the identity of the signer as a registered voter can be established by reference to the signature on the petition (see [Election Law § 6-134\[5\]](#)), The court notes that there are no villages in a city; hence, the [Berney](#) decision **[**10]** should clearly apply in this case. **[3]**

The Final Tally

At the appearance held at the Board of Elections, the parties agreed with the Board that without consideration of the "W.P." signatures, and subject to further rulings as to which the court had reserved, and after the "tacking" of all of the petitions, as herein sustained, the mayoral candidate had 887 valid signatures, and the 3 common council candidates had 970 valid signatures. The Board of Elections representatives, who throughout these proceedings, had testified under oath, and whose diligent efforts are greatly appreciated by the court, advised that there were 508 "W.P." signatures for the mayoral candidate, and 84 "W.P." signatures for the council candidates. The court now issues its decision as to the reserved signatures where petitioners' objections **[*24]** are sustained, and its finding as to the final tally of signatures:

157 Sustained

1514 Sustained

1322 Sustained

1388, 16, 18 Sustained x 3

1391, 2, 5 Sustained x 3

3995Sustained

Net additional sustained objections: Mayoral - 9; Common Council - 10.

Based upon these rulings, the mayoral candidate, Milagros **Lecuona**, has 878 valid signatures without considering the 508 "W.P." signatures. When they are included, it increases the total to 1386 valid signatures. The common council candidates, Michael Kraver, Saad Turab Siddiqui and Alan D. Goldman have 960 signatures, without considering the 84 "W.P." signatures, which when added in, total 1044 valid signatures. By stipulation of the parties, each candidate required 912 valid signatures.

In view of the foregoing, the court finds and determines that the designating petitions for all four candidate respondents have sufficient valid signatures to place their names on the ballot for the Democratic Party Primary Election on September 12, 2017. Accordingly, petitioner's application to invalidate is denied and the petition dismissed.

The court has considered the additional contentions of the parties not specifically addressed [***25**] herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED and ADJUDGED that the petition in the first-captioned proceeding to invalidate the designating petitions of candidates Milagros **Lecuona**, Michael Kraver, Saad Turab Siddiqui and Alan D. Goldman is denied and the petition dismissed; and it is hereby further

ORDERED and ADJUDGED that candidates Milagros **Lecuona**, Michael Kraver, Saad Turab Siddiqui and Alan D. Goldman's petition in the second-captioned proceeding to validate their designating petition is denied and the petition is dismissed for lack of personal jurisdiction; [****11**] and it is further

ORDERED that the Westchester County Board of Elections is directed to place the names of Milagros **Lecuona**, Michael Kraver, Saad Turab Siddiqui and Alan D. Goldman on the ballot for their respective offices for the Democratic Party Primary Election on September 12, 2017.

The foregoing constitutes the decision, order and judgment of the court.

Dated: August 16, 2017

White Plains, New York

HON. [LAWRENCE H. ECKER](#) ▼, J.S.C.

Footnotes

1 ▼

The court does not have the benefit of a hearing transcript.

2 ▼

On the morning of August 14th, the court and the parties met at the Board of Elections to begin the second day of "line by line" rulings. The court was advised by the representatives from the Board of Elections that there were 508 signatures for the mayoral position that used the "W.P." address and 84 signatures for the common council positions that used the "W.P." address. The court was advised that the Board of Elections worked through the night of August 11th in order to provide these figures. The court inquired of petitioners'

attorney whether he wished to pursue a "line by line" challenge of these signatures, and he waived the opportunity to do so. The parties then rested.

3

In its line by line review, this court struck signatures with addresses identified as not being within the city limits of White Plains, although bearing a White Plains address.

Content Type: Cases

Terms: SWILLER V LECUONA

Narrow By: -None-

Date and Time: Oct 13, 2017 04:37:37 p.m. EDT