



ELECTION LAW UPDATE -2008-

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INTRODUCTION

The Election Law Update is designed to be used as a guide by election officials when regarding key election issues. It is based upon a search for reported cases as well as unreported cases that the State Board is a party to or made aware of.

The Update is not an exhaustive review of every election law case. It is a starting point. It is not intended to replace the need to seek the advice of counsel. Please feel free to contact our office if you are aware of any cases that should be listed.

VOTING

Voting issues fall into three main categories:

- 1) registration and enrollment (who can vote at a particular election),
- 2) how a candidate gets on the ballot, and
- 3) casting the ballot (how a person actually casts their vote).

Registration and Enrollment

In order to vote in an election in New York State, a person must be registered to vote. N.Y.S. Const. Art II § 5; EL §5-100. Registration with the County Board of Elections will be sufficient for a person to vote in all races for public office that occur where they are a resident. N.Y.S. Const. Art II §6.

Residency

In determining residency, the Board may consider the applicant's financial independence, business pursuits, employment, income sources, residence for income tax purposes, age, marital status, residence of parents, spouse and children, if any, leaseholds, sites of personal and real property owned by the applicant, motor vehicle and other personal property registration and such other factors that it may reasonably deem necessary to determine the qualification of an applicant to vote within the Board's jurisdiction. EL §5-104(2). "The crucial factor in determining if an individual is qualified to register and vote from a particular residence is whether he or she has manifested an intent to adopt that residence as a permanent and principal home coupled by his or her physical presence there, 'without any aura of sham.'" *Thompson v. Karben*, 295 A.D. 2d 438, 439 (2nd Dep't 2002 *citing*, *People v. O'Hara*, 96 N.Y. 2d 378, 385 (2001), *quoting*, *Matter of Gallagher v. Dinkins*, 41 A.D. 2d 946, 947 (2d Dep't 1973); *aff'd*, 32 N.Y. 2d 839.

Parties

The term "party" means any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor. Election Law §1-104 (3). The term "major political parties" means the two parties which polled for their respective candidates for the office of governor the highest and next highest number of votes at the last preceding election for such office. Election Law §1-104 (24)

Changing Enrollment

Any registered voter may submit a change of enrollment, switching political parties or joining a political party at any time. However, the change does not become effective until the Tuesday following the general election provided it was submitted at least 25 days before the election. EL §5-

Underlined material is new for 2008.

304(3). Such delay in enrollment changes has been held to be constitutional. *See, VanWie v. Pataki*, 87 F. Supp 2d 148, (N.D.N.Y. 2000).

Affiliated Voters

Voters may choose to not enroll in a political party but rather be listed with a political organization. *See, Green Party of New York State v. New York State Board of Elections*, 389 F. 3d 411 (2d Cir. 2004). Voters may also choose to be unaffiliated with any party or organization. The voter would write in the name of the group they want to affiliate with on the "other" line on the voter registration form. However, the board of elections is only required to keep lists of those organizations which placed a candidate for governor on the ballot at the last gubernatorial election.

Political Party Enrollment and the Closed Primary

Generally, only those voters enrolled in a political party may vote in that party's primary election or participate in that party's caucus. EL §§ 8-302(4), 6-108(3) (towns), 6-204(4) and 15-108(2)(d) (villages). However, a party may choose to allow non-party members to vote in their primary election as specified by party rule. *State Committee of the Independence Party v. Berman*, 294 F. Supp. 2d 518 (S.D.N.Y. 2003). Where the Independence Party of Richmond County rules were silent with respect to non-party members voting in a party's primary, the Court held that the Executive Committee could adopt an ad-hoc resolution allowing the unaffiliated voters of Richmond County to vote for Independence Part candidates for Richmond County public offices in the primary election. *Independence Party of Richmond County v. Nero* 332 F. Supp. 2d 690 (2d Cir. 2005)

Casting the Ballot

Ballots shall be provided for every election at which public or party officers are to be nominated or elected. EL §7-100. Ballots are cast in two ways, directly on a voting machine or on some type of paper ballot. Whenever there are more offices or candidates than can fit on the voting machine, the board of elections may provide for the use of separate paper ballots for such offices. EL §7-200(4). Requiring a minor party's primary election to appear on a paper ballot is "... a minor burden regulating the mechanics of the electoral process, and can be amply justified by the State's interest in conducting efficient, fair and orderly primaries in a variety of political parties of different sizes." *Green Party of the State of New York v. Weiner*, 216 F. Supp. 2d 176, 191 (S.D.N.Y. 2002).

Polling Place Accessibility

Two identical cases were brought by the New York Attorney General against the boards of elections in Delaware and Schoharie counties, *New York v. County of Delaware*, 82 F. Supp 2d 12 (N.D.N.Y. 2000); *New York v. County of Schoharie*, 82 F. Supp 19 (N.D.N.Y. 2000) (A third case brought against Otsego county was settled). The District Court in granting a preliminary injunction

found that (1) the county board could be sued because of its role in selecting polling sites and (2) compliance with federal and state building requirements for handicapped accessibility would have to be implemented by counties to the extent “feasible.” The applicability of these cases beyond these two counties has not been established.

Write-In Voting

Write-in voting is required when there is a contested primary election for public office. Election Law §7-114(3).

A voter need not write in the first and last name of a candidate in every situation; the standard is whether the election inspectors can reasonably determine the intent of the voter when they cast their ballot. *Guilianelle v. Conway*, 265 A.D. 2d 594 (3rd Dep’t 1999).

Write-in votes must be cast in the appropriate place on the machine. *Tylec v. Iwanicki*, 266 A.D. 2d 886 (4th Dep’t 1999) *citing*, *Haynie v. Mahoney*, 48 N.Y. 2d 718, 719 (1979). No write-in ballot shall be voted for any person for any office whose name appears on the machine as a nominated or designated candidate for the office or position in question; Election Law §8-308(2). *Francis v. Palombo*, 2 A.D. 3d 1148 (3rd Dep’t 2003).

Absentee Voting

Mere proof that an absentee ballot voter is in the county on the day of the election is not sufficient to void the ballot, a challenger must show that the voter did not have a “good-faith belief” that they would be absent from the county on election day. *Sherwood v. Albany County Board of Elections*, 265 A.D. 2d 667 (3rd Dep’t 1999). Failure to complete the information required for the absentee ballot will void the ballot. *Carney v. Davignon*, 289 A.D. 2d 1096 (4th Dep’t 2001) *citing*, Election Law § 8-302 (3)(e)(ii), *Kolb v. Casella*, 270 A.D. 2d 964 *lv. denied*, 94 N.Y. 2d 764. Residents of Puerto Rico are not entitled to absentee ballots to vote for the office of President of the United States. *Romeu v. Cohen*, 265 F.3d 118 (2d Circ. Ct. Aps. 2001).

Review of Cast Ballots

Ballots where voters marked outside the voting square may not be counted. *Kolb v. Casella*, 270 A.D. 2d 964 (4th Dep’t 2000); *Boudreau v. Catanise*, 737 N.Y.S. 2d 469 (App. Div. 4th Dep’t 2002), *citing*, Election Law § 9-112 (1), *Pavlic v. Haley*, 20 A.D. 2d 592, *aff’d*, 13 N.Y. 2d 1111, *Kolb v. Cassella* 270 A.D. 2d 966.

Ballots may not be counted where (1) signature on the envelope is “substantially different” from the signature on the voter’s registration card, or (2) the voter failed to fill out the affidavit ballot envelope. *Kolb v. Casella*, 270 A.D. 2d 964 (4th Dep’t 2000), *citing*, *Hosley v. Valder*, 160 A.D. 2d 1094 (3rd Dep’t 1990).

Canvassing Ballots

Affidavit Voting

Affidavit ballots cast by voters at the wrong election district, but who were at the correct polling place should be counted. However, affidavit ballots cast by voters who were at the wrong election district and at the wrong polling place should not be counted. *Panio v. Sunderland*, 2005 NY Lexis 101 (NYS Ct. Of Aps. 2005).

Review of the Primary Election

The party seeking to challenge a primary election must establish the “. . .existence of irregularities ‘which are sufficiently large in number to establish the probability’ that the result of the election was affected.” *Thompson v. Board of Election of the County of Rockland*, 287 A.D. 2d 667 (2d Dep’t 2001).

Review of the General Election

The State Supreme Court is without jurisdiction on a challenge to the general election results. Only the Attorney General can challenge the results of a general election through a quo warranto action commenced pursuant to Executive Law § 63-b. *Delgado v. Sunderland*, 97 N.Y. 2d 420 (2002). Plaintiff must demonstrate an intentional government action before a federal court can entertain a challenge to an election. Unfortunate but unintended irregularities, such as a malfunctioning voting machine, are not grounds for challenging an election. *Shannon v. Jacobonite*, 394 F. 3d 90 (2d Circ. 2005).

The Supreme Court lacks jurisdiction to conduct its own canvass and determine a winner before the Board of Elections has conducted its canvass. Testa v. Ravitz, 84 NY2d 893 (1994). However, where the petitioners objected to the County Board’s invalidation of seven absentee ballots, the Court of Appeals held that the Supreme Court does have jurisdiction and the authority to direct a recanvass or the correction of an error. Alessio v. Carey 2008 Slip Op 1417 (February 15, 2008).

PETITIONS

This section highlights issues related to designating and independent petitions. It is divided into sections covering the basic form of the petition, candidate related issues, petition singer issues and subscribing witness issues. There are also sections covering opportunity to ballot petitions and alterations made to petitions.

Form of Petition

Petitions shall be in substantially the form set forth in the Law. EL §§ 6-132(1), 6-140.

The test of compliance should be whether or not the petition form contains the required information. A slight rearrangement as to how the information is presented or an insignificant deviation in the wording would not be a fatal defect. *See, Matter of Irvin v. Sachs*, 129 A.D. 2d 827 (2nd Dep't 1987).

Number of Signatures Needed

The number of signatures required for a particular office is determined from the enrollment lists released immediately preceding the signature gathering period, notwithstanding any subsequent reduction in the established number of enrolled voters. *Horwitz v. Egan*, 264 A.D. 2d 454 (2nd Dep't 1999).

The ballot access requirement of signatures from five percent of the relevant voter group ordinarily does not violate constitutional rights. *McMillan v. New York City Board of Elections*, 234 F.3d 1262 (2d Circ. 2000) *citing, Prestia v. O'Connor*, 178 F. 3d 86, 87 (2d Circ. 1999).

Cover Sheets

If there is substantial compliance and no evidence of confusion to either the voters or the board of elections, there is no basis to invalidate petitions for failure to comply with the petition cover sheet requirements. *Siems v. Lite*, 307 A.D. 2d 1016 (2nd Dep't 2003); *See also, Magelaner v Park*, 32 A.D. 3d 487 (2d Dep't 2006). A candidate must be notified and given the opportunity to cure any defects in a cover sheet. *Pearse v. New York City Board of Elections*, 10 A.D. 3d 461 (1st Dept. 2004).

Page Numbers

The pages of a petition shall be numbered. Election Law §6-134(2). Generally, the failure to number the sheets of a petition will invalidate the petition. *Braxton v. Mahoney*, 63 N.Y.2d 691 (1984).

There is a split in the Departments as to the correctability of the failure to number the pages of a petition.

The Second Department has held that no cure was allowed for a failure to number pages and the longstanding strict compliance with the page numbering requirement was upheld. *Jaffe v. Visconti*, 242 A.D. 2d 345 (2nd Dep't 1997), *leave to appeal denied*, 90 N.Y.2d 805.

The Fourth Department has taken the opposite view: "The three-day cure provision for designating petitions is available for technical violations of the regulations, including the omission of page numbers." *May v. Daly*, 254 A.D. 2d 688 (4th Dep't 1998), *leave to appeal denied*, 92 N.Y.2d 806. The court cited a lower court decision which allowed the new three day cure provision to apply when page numbers were missing, *Farrell v. Sunderland*, 173 Misc.2d 787 (Sup. Ct. Westchester County 1997) but failed to cite *Jaffe*.

The Third Department citing the *May* decision of the 4th Department allowed the three day cure provision of the election law to apply even when the page numbers were omitted. *Bonnett v. Miner*, 275 A.D. 2d 585 (3rd Dep't 2000).

Preamble

Date of election must be stated accurately and correctly. *Sternberg v. Hill*, 269 A.D. 2d 730 (3rd Dep't 2000); *Purtell v. Kuczek* 129 Misc.2d 166 (Sup. Ct. Montgomery County 1985) *aff'd.*, 112 A.D.2d 1092; *O'Connor v. Salerno*, 105 A.D.2d 487 (3rd Dep't 1984).

Committee to Fill Vacancies

The failure to list a committee to fill vacancies shall not be a fatal defect. EL §6-134(8). However, if a vacancy occurs which may be filled by a committee on vacancies and no committee is listed, the petition fails and the vacancy cannot be filled. Election Law §6-134(8); *Tinari v. Berger*, 196 A.D.2d 798 (2nd Dep't 1993), *leave to appeal denied*, 82 N.Y.2d 656.

Petition listing different committees to fill vacancies will not invalidate the petition when no vacancy has occurred. *Pascazi v. New York State Board of Elections*, 207 A.D.2d 650 (3rd Dep't 1994), *leave to appeal denied*, 84 N.Y.2d 802. A petition which names a committee on vacancies is not invalid because of the disqualification of one of the members of the committee on vacancies. *Brennan v. Power*, 307 N.Y. 818 (1954). But if it only has one eligible member, it is the functional equivalent of no committee. *Markel v. Smolinski*, 89 A.D.2d 1052 (4th Dep't 1982), *aff'd.*, 57 N.Y.2d 743; *see also*, *Hensley v. Efman*, 192 Misc. 2d 782 (Sup. Ct. Nassau County 2002) (death of one of the three members of vacancy committee invalidated the committee).

A candidate may be a member of the committee on vacancies. *Brandshaft v. Coveney*, 96 A.D.2d 914 (2nd Dep't 1983).

Committee on vacancies may fill a vacancy created by the post-primary declination of an independent candidate by filing documents as soon as practicable as provided in Election Law §6-158(13). *Cipolla v. Golisano*, 84 N.Y.2d 450 (1994).

Candidate

Qualifications for Office

Boards must assume that the candidate meets constitutional and statutory qualification requirements. *Application of Lindgren*, 232 N.Y. 59 (1921). Nomination of a candidate who is constitutionally and statutorily ineligible to serve is a nullity. *Brayman v. Stevens*, 54 Misc. 2d 974 (Sup. Ct. Dutchess County 1967) *aff'd*, 28 A.D. 2d 1095; Election Law § 6-122.

Running for Two Offices

“It is well settled that one may not run for two public offices where one would be precluded from holding both offices at the same time.” *Lawrence v. Spelman*, 264 A.D. 2d 455 (2nd Dep't 1999) *citing*, *Burns v. Wiltse*, 303 N.Y. 319 (1951).

Over Designations

If the petition contains a greater number of candidates than there are offices to be elected the entire petition is invalid. Election Law §6-134(3). Such an overdesignated petition cannot be saved by having the extra candidates decline. *Elgin v. Smith*, 10 A.D. 3d 483 (4th Dept. 2004).

Residency of Candidate

There is no state law requirement that a candidate (for a local office) be a resident of the district in which election is sought at the time the petition is filed. *Weidman v. Starkweather*, 80 N.Y.2d 955 (1992); and *Clark v. McCoy*, 196 A.D.2d 607 (2nd Dep't 1993) *leave to appeal denied*, 82 N.Y.2d 653.

Registration of the Candidate

There is no requirement that a person must be registered to vote to be a candidate for public office. *See*, Public Officers Law §3.

Enrollment and Authorization of the Candidate

If the candidate is not enrolled in the political party whose nomination they are seeking, they must have a certificate of authorization from the party to be the party's candidate, unless they are running for judicial office. Election Law §6-120(4). *Dorfman v. Meisser*, 56 Misc. 2d 890 (Sup. Ct.

Nassau County 1968) *aff'd.*, 30 A.D.2d 684 *aff'd.*, 22 N.Y.2d 770. Failure to file the authorization of a non-party member invalidates the underlying designating petition. *Maurer v. Monescalchi*, 264 A.D. 2d 542 (3rd Dep't 1999). There was no violation of a candidate's constitutional rights when a party does not file an authorization. *Rider v. Mohr*, 2001 WL 1117157 (W.D.N.Y. 2001).

Candidate's Identifying Information

Candidate must be identifiable from information provided. The law requires candidate's name, office being sought, place of residence, and post office address if not identical. Election Law §§6-132 (designating); 6-140 (independent); *see also*, *Ferris v. Sadowski*, 45 N.Y.2d 815 (1978).

Name

The name that a candidate uses on his or her petition is the name that will appear on the ballot. *See*, Election Law § 7-102. A candidate may be put on the petition and ballot under a name he or she has adopted in good faith and by which he is recognized in the community. *In re Steel*, 186 Misc. 98 (Sup. Ct. New York County 1946) *aff'd.*, 270 A.D. 806. The use of a nickname such as "Tom" for Thomas, "Jack" for John may be used on petition. *Gumbs v. Board of Elections*, 143 A.D.2d 235 (2nd Dep't 1988), *appeal denied*, 72 N.Y.2d 805. *See also Innamorato v Friscia*, 2007 N.Y. Misc Lexis 457 (Sup Ct Richmond County, February 5, 2007) ("Manny" for Emanuele) "In connection with the designation of a candidate on official ballots, the word "name" as used in the Election Law should be afforded its plain, ordinary and usual sense." *Lewis v. New York State Bd. of Elections*, 254 A.D. 2d 568 (3rd Dep't 1998) (citations omitted). Characterizations and designations before or after a candidate's name on an official ballot are generally impermissible. *Id.* Misspelling of name of candidate is not fatal absent intent to mislead. *Harfmann v. Sach*, 138 A.D.2d 551 (2nd Dep't 1988), *appeal denied*, 72 N.Y.2d 810. The failure to include the appellation "Jr." is no basis to invalidate the designating petition where there is no showing of any confusion upon the voters as to the candidate's identity. *Reagon v. LeJune*, 307 A.D. 2d 1015 (2nd Dep't 2003.)

Address of Candidate

Each sheet of petition must properly state place of residence. *Winn v. Washington County Board of Elections*, 196 A.D.2d 674 (3rd Dep't 1993), *leave to appeal denied*, 82 N.Y.2d 654. The statute does not require the candidate's address to include the town, city or village or any other political subdivision in which the candidate resides. *Finkelstein v. Cree*, 2003 N.Y. Misc. LEXIS 1074 (Tompkins County Sup., Ct. August 6, 2003). The address information must be sufficient to identify the candidate without misleading or confusing the signatories to the petition. *Eisenberg v. Strasser*, 307 A.D. 2d 1053 (2nd Dept. 2003).

Residence of Candidate

Candidate must reside at address shown on petition. *Finneran v. Hayduk*, 64 A.D.2d 937 (2nd Dep't 1978); *aff'd.* 45 N.Y. 2d 797; *Bastone v. Cocco*, 270 A.D. 2d 950 (3rd Dep't 1996), *leave to*

appeal denied, 88 N.Y., 2d 971; *Brigandi v. Barasch*, 144 A.D.2d 177 (3rd Dep't 1988) *appeal denied*, 72 N.Y.2d 810; *see also*, *Walkes v. Farrakhan*, 286 A.D. 2d 464 (2d Dep't 2001).

Title of Office

“It is settled that the name of the public office or party position sought must be clearly set forth on the designating petition.” *Bliss v. Nobles*, 297 A.D. 2d 457, 457-458 (3d Dep't 2002) *citing* Election Law §6-132(1); *Dunlea v. New York State Board of Elections*, 275 A.D. 2d 589, 590 (3d Dep't 2000). *Parker v. Savago*, 143 A.D. 2d 439, 441 (3d Dep't 1988). “The name of the office set forth in a candidate’s designating petition may be described in a variety of ways provided that the description thereof is specific enough . . .to preclude any reasonable probability of confusing or deceiving the signers, voters or board of elections.” *Lozano v. Scaringe*, 253 A.D. 2d 569 (3rd Dep't 1998), *leave to appeal denied*, 92 N.Y.2d 806, (citations omitted). *See also*, *Shaffer v. Norris*, 275 A.D. 2d 881 (4th Dep't 2000). Title of office need not be exact but must be identifiable. *Jacobson v. Schermerhorn*, 104 A.D.2d 534 (3rd Dep't 1984); *Denn v. Mahoney*, 64 A.D.2d 1007 (4th Dep't 1978). The petition as a whole may be read to determine the town of the office sought. *Carreto v. Sunderland*, 307 A.D. 2d 1004 (2nd Dep't 2003). A description of an office has two components, the title and the geographic territory covered by the office. *Dunlea v. New York State Board of Elections*, 275 A.D. 2d 589 (3rd Dep't 2000).

When districts overlap, the petition must clearly identify which office is being sought. “Because both a Member of the Assembly and a delegate to the judicial convention are selected from the 127th Assembly District (see Election Law § 6-124), simply denoting the geographic territory without reference to the title of the public office or position sought is not “sufficiently informative . . . so as to preclude any reasonable probability of confusing or deceiving the signers, voters or board of elections” *Hayes v New York State Board of Elections*, 32 A.D.3d 660 (3d Dept 2006) *citing Matter of Dipple v Devine*, 218 A.D.2d 918, 918-919, (1995), *lv denied* 86 N.Y.2d 704, 631 N.Y.S.2d 608, (1995).

Signer of Petition

Law requires date, name of signer, residence, and town or city. Election Law §§6-132 (designating); 6-140 (independent); *see also*, *Berger v. Acito*, 64 A.D.2d 949 (3rd Dep't 1978), *appeal denied*, 45 N.Y.2d 707. All columns must be completed if applicable and signature must be in ink *In re. Bialis*, 92 N.Y.S. 2d 450 (Oneida County. Ct. 1949) - otherwise fatal defect for that signature.

Date

Signature on a petition must bear the date it was made. *De Barardinis v. Sunderland*, 277 A.D. 2d 187 (2d Dep't 2000). The date is a matter of prescribed content, strict compliance is required. *Vassos v. New York City Board of Elections*, 286 A.D. 2d 463 (2d Dep't 2001). Signatures dated after date of witness statement cannot be counted. *Velez v. Nienes*, 164 A.D. 2d 931 (2nd Dep't

1990) (dated before witness valid); *McNulty v. McNab*, 96 A.D. 2d 921 (2nd Dep't 1983) (dated after witness invalid); EL §§ 6-130, 6-138(2); *Nunley v. Cohen*, 258 A.D. 746 (2nd Dep't 1939).

Name

Printed name may appear above or below signature, however, failure to print the name is not a fatal defect. Election Law §6-134(13). Printed rather than signed names are valid since signature includes a printed name. *Controneo v. Monroe County Board of Elections*, 166 Misc.2d 63 (Sup. Ct. Monroe County 1995).

A wife cannot sign as "Mrs. John Jones". She must use her name. She can sign as "Mrs. Mary Jones". *Lydan v. Sullivan*, 269 A.D. 942 (2nd Dep't 1945).

Signatures which only include the first name are invalid where they do not match the signatures in the poll ledgers. *Fusco v. Miele*, 275 A.D. 2d 426 (2nd Dep't 2000).

Residence

Residence of the signer should be their residence at the time they signed the petition. *Dye v. Callahan*, 42 A.D.2d 916 (3rd Dep't 1973). An address is acceptable if it matches the address listed in the board's registration list. Some latitude should be given if the address does not match but it appears that they are one and the same. *Regan v. Toole*, 63 N.Y.2d 681 (1984). It is not fatal if address does not contain the hamlet since the town is given. *Grancio v. Coveney*, 60 N.Y.2d 608 (1983). Customary abbreviations of addresses are acceptable. Election Law §6-134 (15). There is an opportunity to show post office address is correct. Election Law §6-134 (12). Where no such proof is provided that the postal address and the residence address are one and the same, the signatures are invalid. *Ligammari v. Norris*, 275 A.D. 2d 884 (4th Dep't 2000).

The residence address of the signatures on the designating petition is adequate and does not warrant invalidation of the designating petition where "there has been substantial compliance with the statutorily prescribed format" *Toporek v Beckwith*, 32 A.D.3d 684 (4th Dep't 2006), quoting, (*Matter of Belak v Rossi*, 96 A.D.2d 1011, 1012, 467 N.Y.S.2d 100, *lv denied* 60 N.Y.2d 552). The *Toporek* Court went on further to say that "[T]he Election Reform Act of 1992, amending section 6-134 (2) of the Election Law . . . , provides for liberal construction of the residence address requirement". *Toporek* at 685 citing, *Matter of Regan v Starkweather*, 186 A.D.2d 980, 981. Indeed, "where the information sought is apparent on the face of the form and the defect cannot possibly confuse, hinder or delay any attempt to ascertain or to determine the identity, status and address of the witnesses, the defect is not such as to mandate invalidation of all signatures on each of the several pages" *Toporek* at 685, citing, *Matter of Weiss v Mahoney*, 49 A.D.2d 796, 797.

Town or City

Signers to petition must provide town or city, as required by statute. *Stoppenbach v. Sweeney*, 98 N.Y. 2d 431 (2002), citing *Matter of Frome v. Board of Elections of Nassau County*, 57 N.Y. 2d 741, 742-743 (1982); *See also, Stark v Kelleher*, 32 A.D.3d 663 (3d Dep't 2006) . Name of village or hamlet not acceptable. *See, Zobel v. New York State Board of Elections*, 254 A.D. 2d 520 (3rd Dep't 1998); *Ptak v. Erie County Board of Elections*, 307A.D. 2d 1072 (4th Dep't 3003). Do not need to specify whether the municipality is a "town" or a "city". *Hinkley v. Egan*, 181 Misc. 2d 921 (Sup. Ct. Dutchess County. 1995). Strict compliance with the town or city requirement serves the purpose of facilitating the discovery of fraud and allows for rapid and efficient verification of signatures within the short time frame the election law allows. *Zobel v. New York State Bd. of Elections*, 254 A.D. 2d 520 (3rd Dep't 1998). If petition does not have a separate column for a town but the column for the address has the name of the town, for example, the address column is entitled "Town of Guilderland residence", it is valid because it contains all the required information. *Sheehan v. Aylward*, 54 N.Y.2d 934 (1981).

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. Election Law § 6-130. There is no requirement, however, that a signer list the hamlet or particular geographic area within the town or city in which he or she resides. *Gonzalez v Lavine*, 32 A.D. 3d 483 (2d Dep't 2006), citing *Matter of Grancio v Coveney*, 60 N.Y.2d 608, 610-611; *Matter of Cheevers v Gates*, 230 A.D.2d 948, 949. The Appellate Division held that the Supreme Court improperly determined that five signatures were invalid because the signers either omitted or incorrectly listed the hamlet within the town in which they reside. "Since the signers provided all the information required by Election Law § 6-130, including their correct street addresses and the towns in which they reside, their signatures were valid." *Gonzalez*, supra.

Signed Previous Petition

Signatures of persons who signed a previous designating, nominating or opportunity to ballot petition for the same office cannot be counted. Election Law §6-134(3); *McNulty v. McNab*, 96 A.D.2d 921 (2nd Dept 1983); *Angelo v. Marino*, 308 A.D. 2d (2nd Dep't 2003); *DiCicco v. Chemung County Board of Elections*, 93 N.Y. 2d 1008 (1999).

Witness Statement

Residency of Witness

A witness to a designating petition or an independent nominating petition must be a registered voter residing in New York State or a notary public. Election Law §§ 6-132 (designating petitions), 6-140 (independent petitions). The requirement in the Election Law that a subscribing witness must be a resident of a political subdivision has been ruled unconstitutional. *Lerman v.*

Board of Elections in the City of New York, 232 F. 3d 135, 145 (2d Circ. 2000) *cert. denied*, 535 U.S. 915; *see also LaBrake v. Dukes*, 96 N.Y. 2d 913 (2001) (designating petitions; *Chou v. New York State Board of Elections*, 332 F. Supp. 2d 510 (EDNY 2004) (independent nominating petitions). In reviewing the *Lerman*, *LaBrake* and *Chou* cases, please note that the Court did not rule on witness residency requirements under Election Law §15-108 (village petitions).

Party of Witness

The subscribing witness to a designating petition must be an enrolled member of the party. Election Law §6-132(2). The party enrollment of subscribing witness is a substantive requirement. *Hoshhauser v. Grinblat*, 307 A.D. 2d 1007 (2nd Dep't 2003) *citing, Staber v. Fidler*, 65 N.Y. 2d 529 (1985).

Witness Address and Identification Information

Witness need only provide town or city below signature and need not include this information on line in witness statement for witness address. *Barrett v. Brodsky*, 196 A.D.2d 603 (2nd Dep't 1983), *leave to appeal denied*, 82 N.Y.2d 653. Witness may have two different addresses within the same petition provided that both were accurate when the page was witnessed. *McManus v. Relin*, 286 A.D. 2d 855 (4th Dep't 2001).

Where a candidate who was a witness to a petition failed to complete the witness identification information below the witness signature line (town or city and county) the court found that since the petition already contained sufficient information at the top of the sheet to identify the witness, “. . . omission of redundant witness information was an inconsequential violation of the statute.” *Hurst v. Board of Elections of Broome County*, 265 A.D. 2d 590 (3rd Dep't 1999) *citing, Matter of Pulver v. Allen*, 242 A.D. 2d 398 (3d Dep't 1997) *lv. denied*, 90 N.Y. 2d 805; *see also, Curley v. Zacek*, 22 A.D. 3d 954 (3d Dep't 2005).

The Appellate Division has reiterated that where the witness failed to provide their town or city of residence, “such an error is not a fatal defect, particularly where the complete residence address of the subscribing witness appears elsewhere on the same page of the petition. *Arcuri v. Hojnacki*, 32 A.D.3d 658 (3d Dep't 2006). The Court went onto distinguish the Court of Appeals' decision in *Matter of Stoppenbach v. Sweeney* (98 N.Y.2d 431 [2002]); “inasmuch as that case involved an unremedied inaccuracy in the designation of the town or city by the actual signatories to the petition, not by a subscribing witness. Accordingly, we find no reason to disturb Supreme Court's decision.”

Completion of Witness Information

The failure of a subscribing witness to fill in all information on witness statement invalidates all signatures on that page of petition. *Sheldon v. Sperber*, 45 N.Y.2d 788 (1978), *but see, Hoare v.*

Davis, 207 A.D.2d 309 (1st Dep't 1994) (court allowed incorrect address of witness if no showing of deceit or fraud); *Pulver v. Allen*, 242 A.D. 2d 398 (3rd Dep't 1997), *leave to appeal denied*, 90 N.Y.2d 805. The information may be filled in by someone else but it should be completed before the subscribing witness signs the witness statement or in the presence of the witness. Election Law §6-134 (9). Information below the witness signature may be filled in by someone other than the witness, before or after the witness signs. Election Law §§6-132(2) and 6-140(1)(b); *see also*, *Pulver v. Allen*, 242 A.D. 2d 398 (3rd Dep't 1997), *leave to appeal denied*, 90 N.Y.2d 805.

Number of Signatures

Law requires identification data including number of signatures on sheet. *Bernhardt v. Sachs*, 57 A.D.2d 598 (2nd Dep't 1977). If number of signatures stated in witness statement is missing, entire sheet should be invalidated. *Esse v. Chiavaroli*, 71 A.D.2d 1046 (4th Dep't 1979) *but see*, *Etkin v. Thalmann*, 287 A.D. 2d 775 (3d Dep't 2001) (court allowed corrections to the number of signatures contained in the witness statement if it was filed before the petition filing period had expired). If number of signatures stated in witness statement is understated, count only the number stated. Election Law §6-134 (11). If the number is overstated, entire sheet is invalid. *Krueger v. Richards*, 93 A.D. 898 (2nd Dep't 1983) *aff'd* 59 N.Y.2d 680.

Witnessing Another Petition

If the witness has witnessed another petition for a different candidate for the same office but has not signed another petition, he or she may witness a petition for another candidate for the same office. *Sinagra v. Hogan*, 97 A.D.2d 643 (3rd Dep't 1983) *aff'd.*, 60 N.Y.2d 811. If the witness has signed a petition, he or she may not witness the petition of another candidate for the same office. *Gartner v. Salerno*, 74 A.D.2d 958 (3rd Dep't 1980), *appeal denied*, 49 N.Y.2d 704; *see also*, *Sinagra v. Hogan*, 97 A.D.2d 643 (3rd Dep't 1983) *aff'd.*, 60 N.Y.2d 811; *Rue v. Hill*, 287 A.D. 2d 781 (3d Dep't 2001).

Signing and Dating

Witness statements must be signed and dated. *Pabian v. McNab*, 9 Misc.2d 995 (Sup. Ct. Suffolk County 1957) *aff'd.*, 4 A.D.2d 834, *aff'd.* 3 N.Y.2d 888; *Higby v. Mahoney*, 48 N.Y.2d 15 (1979). The omission of the date on subscribing witness statement is fatal. *McKay v. Cochran*, 264 A.D. 2d 699 (2nd Dep't 1999), *Klemann v. Acito*, 64 A.D.2d 952 (3rd Dep't 1978) *aff'd.*, 45 N.Y.2d 796.

Signatures Taken by Notary or Commissioner of Deeds

If a signature is taken by a notary or commissioner of deeds, they must include their title or the sheet is invalid. *Fuentes v. Lopez*, 264 A.D. 2d 490 (2nd Dep't 1999), *Hunter v. Compagni*, 74 A.D.2d 1000 (4th Dep't 1980).

Failure to use the notarial stamp does not render the sheet invalid. *McKay v. Cochran*, 264 A.D. 2d 699 (2nd Dep't 1999); *see*, Executive Law §142-9 (defects which do not invalidate a notary).

If a signer is not sworn by the notary or commissioner of deeds, the signature of the person not sworn is invalid. *Napier v. Salerno*, 74 A.D.2d 960 (3rd Dep't 1980); *Boyle v. New York City Board of Elections*, 185 A.D.2d 953 (2nd Dep't 1992). *Leahy v. O'Rourke*, 307 A.D. 2d 1008 (2nd Dep't 2003).

The omission of the date on a notary statement renders page invalid. *Weiss v. Mahoney*, 49 A.D.2d 796 (4th Dep't 1975). However, a witness statement completed by a notary on the reverse side of a petition, while not the preferred form, does not warrant invalidation. *Bay v. Santoianni*, 264 A.D. 2d 488 (2nd Dep't 1999).

The signatures collected by a notary public who refused at trial to answer questions concerning the administration of oath to signatures and could not recall if he committed forgery, were invalidated. *McCoy v. Jenkins*, 242 A.D. 2d 349 (2nd Dep't 1997).

Signatures taken by a commissioner of deeds knowingly acting outside the boundaries of their commission are invalid. *Shuboney v. Monroe County Board of Elections*, 297 A.D. 2d 462 (4th Dept. 2002).

Alterations

Uninitialed alterations or corrections may be made to information on the signer's line, except the signature and date. Election Law §6-134 (6).

Alterations to the Signers Line

Alterations or corrections made in the signature line need not be initialed if not made to the signature or date. Election Law §6-134 (6). Other alterations or corrections must be initialed and should be dated. *Andrews v. Albany County Board of Elections*, 164 A.D.2d 960 (3rd Dep't 1990); *King v. Sunderland*, 175 A.D.2d 896 (2nd Dept 1991). Alterations to the signers date is permitted "...where the subscribing witness signed her initials next to the date corrections, such corrections are inconsequential and did not invalidate the signatures. *Strenberg v. Hill*, 269 A.D. 2d 730, 731 (3rd Dep't 2000).

Material Alteration

If unexplained material alteration is made to witness statement, the entire page should be invalid. *Jonas v. Velez*, 65 N.Y.2d 954 (1985); *Magee v. Camp* 253 A.D. 2d 573 (3rd Dep't 1998); *Berger v. Acito*, 64 A.D.2d 949 (3rd Dep't 1978), *appeal denied*, 45 N.Y.2d 707; *Nobles v. Grant*, 57 A.D.2d 600 (2nd Dep't 1977) *aff'd.*, 41 N.Y.2d 1048; *but see*, *Pulver v. Allen*, 242 A.D. 2d 398

(3rd Dep't 1997); *McGuire v Gamache*, 22 A.D. 3d 614 (2d Dep't 2005).

The alteration must be material, thus, unexplained alteration in witness statement changing "Reed Street" to "Reed Avenue" does not invalidate the petition sheet. *Pericak v. Hooper*, 207 A.D.2d 1003 (4th Dep't 1994). An overwriting which did not change what was originally written is not an alteration. *Schroeder v Smith*, 21 A.D. 3d 511 (2d Dep't 2005).

An affidavit may be submitted at time of filing to explain alterations but it may not be used to cure omissions. *Hunter v. Compagni*, 74 A.D.2d 1000 (4th Dep't 1980).

If incorrect information is crossed out and correct information put in the witness statement, but is not initialed or explained, the entire sheet is invalid. *Quinlin v. Pierce*, 254 A.D. 2d 690 (4th Dep't 1998); *Shoemaker v. Longo*, 186 A.D.2d 979 (4th Dep't 1992), *leave to appeal denied*, 80 N.Y.2d 755; *but see, Pulver v. Allen*, 242 A.D. 2d 398 (3rd Dep't 1997), *leave to appeal denied*, 90 N.Y.2d 805.

Opportunity to Ballot Petitions

Opportunity to ballot (OTB) petitions are filed to create a primary election when there otherwise would not have been one. EL §6-164. The opportunity to ballot does not put a candidate's name on the ballot, but rather allows voters the ability to write in a candidate's name. EL §6-164. A technically deficient designating petition is not a prerequisite for an OTB petition. *Coopersmith v. Hershberger*, 264 A.D. 2d 453 (2nd Dep't 1999). An OTB petition may be filed even when there is a valid designating petition has been filed. *Mullane v. Bauer*, 286 A.D. 2d 460 (2d Dep't 2001). Signature on an OTB petition is invalid if voter previously signed a valid petition for the same office. *Rabadi v. Galen*, 307 A.D. 2d 1014 (2nd Dept. 2003).

Failure to list a committee to receive notices on an OTB petition is a fatal defect. *Werner v. Castiglione*, 286 A.D. 2d 553 (3d Dep't 2001); *Lent v. Katz*, 307 A.D. 2d 1009 (2nd Dep't 2003).

NOMINATIONS

This section describes issues effecting caucuses.

Caucuses

Posting Notice of Caucus

In a village election case, the court in reviewing the posting requirements for the notice of a party caucus stated that, “the requirement for posting and filing of notice is obviously designed to ensure that the public, and more importantly to party nominations, the enrolled voters of the party, are adequately informed of the intention of the representatives of one of its political parties to fill a position on the ballot of an election affecting the voters of that municipality.” *Korniczky v. Sunderland*, 175 Misc. 2d 912 (Sup. Ct. Westchester County 1998). The court went on to say that, “the court views the notice requirements as mandatory in nature, and concludes that failure to strictly comply with such requirements voids the nomination.” *Id.* See also, *Scanlon v. Turco*, 264 A.D. 2d 863 (3rd Dep’t 1999). Failure to post or file the notice of caucus with the town clerk or the county board of elections renders the caucus and, consequently, the purported nominations invalid. *Gage v. Hammond*, 309 A.D. 2d 1061 (3rd Dept. 2003); *Chevere v. Sunderland*, 303 A.D. 2d 428, (2nd Dep’t 2003).

VACANCIES

A vacancy in a nomination or a designation may only occur upon a declination by the candidate, the death of the candidate, the disqualification of the candidate from holding the office, or a tie vote at a primary election. Election Law § 6-148 (1).

Certification of Vacancies

In a case coming out of the 1996 Molinari congressional seat vacancy, the court invalidated an independent petition because signatures collected before the vacancy in the office was certified by the State Board of Elections were not valid and could not be counted. *Vitaliano v. D'Emic*, 243 A.D.2d 662 (2nd Dep't 1997), *leave to appeal denied*, 90 N.Y.2d 812. The court indicated that the signatures could only have been collected after the State Board of Elections certified the existence of the vacancy. If the certification of vacancy is filed late, again the case here, the candidate's remedy is to commence a proceeding to compel filing of the certificate. *Vitaliano* at 663. The court did not address the statutory language for such petitions which clearly states that the time to begin collecting signatures begins to run from the date of the vacancy. *See*, Election Law §6-158 (10).

Disqualification

Notice of a violation of the Hatch Act prohibition on Federal employees from running for public office will disqualify a candidate. *Parete v. Hunt*, 287 A.D.2d 777 (3d Dep't 2001).

Substitutions

A candidate may be substituted when a designated candidate has declined the designation. See, Election Law § 6-148. The designating petition of a person not enrolled in the party is not valid, however, unless a Wilson-Pakula authorization has been filed. See, Election Law § 6-120. "In the absence of a valid designating petition, a declination does not create a vacancy within the meaning of the Election Law." *Hunter v New York State Board of Elections*, 32 A.D.3d 662 (3d Dep't 2006) (see *Matter of Leemhuis v State of New York, Bd. of Elections*, 186 A.D.2d 863, 588 N.Y.S.2d 816, 588 N.Y.S.2d 1022 [1992], *affg on op below* 155 Misc. 2d 531, 588 N.Y.S.2d 980 [1992]; *Matter of Nowik v Jablonski*, 133 A.D.2d 874, 875, 520 N.Y.S.2d 427 [1987]; *Matter of Gdanski v Rockland County Bd. of Elections*, 97 A.D.2d 744, 744-745, 468 N.Y.S.2d 53 [1983]).

CHALLENGES

This section addresses issues raised in challenging petitions through the objection process and by court action.

Objections

The board of elections is a purely ministerial board and “they had no power to deal with objections involving matters not appearing upon the face of the papers.” *Application of McGovern*, 291 N.Y. 104 (1943) *citing, Matter of Frankel v. Cheshire*, 212 A.D. 664, 671 (2d Dep’t 1925). Objections which allege fraud or forgery should not be ruled on by the board of elections but can only be ruled on by a court of competent jurisdiction. *See, Bednarsh v. Cohen*, 267 A.D. 133 (1st Dep’t 1943), *appeal denied*, 267 A.D. 760, *appeal denied*, 292 N.Y. 578.

Standing to Object

INDEPENDENT PETITIONS:

Any qualified voter can challenge an independent nominating petition as a citizen objector. *Doran v. Scranton*, 49 A.D.2d 976 (3rd Dep’t 1975). The objections must be signed by the objector. *Banker v. Apfeldorf*, 93 A.D.2d 848 (2nd Dep’t 1983).

OBJECTIONS TO PETITIONS:

Although an objector must be a registered voter in order to file objections, they do not have to be enrolled in the political party of a candidate for public office in order to file objections against the candidate. Election Law §6-154(2); *Matter of Van Sleet*, 16 N.Y.2d 848 (1965); *see also, Bonelli v. Bahren*, 196 A.D.2d 866 (2nd Dep’t 1993) (objector to a certificate of authorization has standing as a registered voter eligible to vote for the public office); *Queens County Republican Committee v. New York State Board of Elections*, F. Supp. 2d 341 (E.D.N.Y. 2002) (upholding constitutionality of non-party members to object to petition for public office).

NOMINATIONS FOR PARTY POSITION:

However, if the nomination is for party position and not for public office, the objector must be an enrolled member of that party. Election Law §6-154(2); *Bennett v. Justin*, 51 N.Y.2d 722 (1980). If the objector objects to the method of nomination (caucus or primary), the objector must be an enrolled member of the party. *Stempel v. Albany County Board of Elections*, 60 N.Y.2d 801(1983). A non-member of a political party lacks standing to challenge that party’s compliance with it’s own rules. *Matter of Nicolai v. Kellher, et al.* 45 AD3d 960 (3d Dept. 2007) See also, *Matter of Fehrman v. NYSBOE, et al.* 2008 NY Slip Op. 1611 (February 25, 2008) where the non-member not only lacked to standing to challenge the party rules, but further lost his standing to challenge as an aggrieved candidate pursuant to Election Law §16-102 when he abandoned his assertion that he was the party’s candidate and instead argued that the party had not validly nominated any candidate.

In Occhipinti v. Westchester Co. Bd of Elecs., 2008 Slip Op 2440 (March 14, 2008) the non-party petitioner, who was a political party chairman, did have standing to commence a proceeding challenging to the alleged failure to comply with the requirements governing nomination by party caucus in Election Law §15-108(2)(a).

JUDICIAL NOMINATING CONVENTIONS: In a proceeding challenging the validity of certificates of nomination and substitution relating to a judicial nominating convention, the petitioner could not maintain standing as an aggrieved candidate pursuant to Election Law §16-102 since he was not a member of the party and did not allege that, but for the purported irregularities in the manner by which the nominating convention was conducted, he would have received the nomination Nicolai v. McKay 45 AD3d 965 (3rd Dept 2007).

An objector to a petition for county committee must be enrolled to vote in the election district of the committee position to which they are objecting. *Lucariello v. Niebel*, 72 N.Y.2d 927 (1988); *see also, Galow v. Dutchess County Board of Elections*, 242 A.D. 2d 344 (2nd Dept 1997); *Cantatore v. Sunderland*, 196 A.D.2d 606 (2nd Dep't 1993).

When Objections Must be Received

General objections must be filed with board of elections within three days of the filing of the petition and the specifications of objections must be filed within six days of the filing of the general objections. EL §6-154(2).

The three days begin to run from the date that the petition is received by the board. *Miele v. Reda*, 243 A.D. 2d 566 (2nd Dep't 1997), *leave to appeal denied*, 90 N.Y.2d 811; *Benson v. Scaringe*, 84 A.D.2d 603 (3rd Dep't 1981), *appeal denied*, 54 N.Y.2d 609. The six days for specifications run from the date that the general objections are received at the board, if they are personally brought into the board, or from the date of the postmark of the general objections if they are mailed. *Bush v. Salerno*, 51 N.Y.2d 95 (1980). The courts may not extend the time to file specifications of objections. *Breitenstein v. Turco*, 254 A.D. 2d 566 (3rd Dep't 1998).

The time limits for filing of objections to certificates of nomination, authorization, acceptance, declination, substitution, etc. would also be measured from the date of receipt of the certificate. *Pierce v. Breen*, 86 N.Y.2d 455 (1995) (court allowed objections to a certificate of nomination to be filed within three days of last day to file the certificate when the certificate was filed before the first day the certificate was permitted to be filed).

Postmarks

If filing objections by mail they must be properly postmarked. The absence of a postmark on the envelope is a fatal defect. *Raimone v. Sanchez*, 253 A.D. 2d 506 (2nd Dep't 1998), *leave to appeal denied*, 92 N.Y.2d 806.

Rehearing

Once the board has made a determination on the petition, it may not reopen a hearing even if it receives new evidence after the hearing is closed. *Schneeberg v. New York State Board of Elections*, 78 A.D.2d 559 (3rd Dep't 1980) *rev'd on other grounds*, 51 N.Y.2d 814.

Service of Objections on the Candidate

Failure to adhere to a rule of the board of elections which requires service of the objections upon the candidate “. . .deprived the board of jurisdiction to properly consider the objections and thereafter to rule to invalidate the petition.” *Young v. Thalmann*, 286 A.D. 2d 550 (3d Dep't 2001).

Court Actions

Election matters are brought in the Supreme Court of the county involved. For our purposes, the Supreme Court is the lowest level court in the system. It is also the court with the broadest or widest jurisdiction, or authority and is generally in session on a daily basis. Most election matters are started by filing and serving an Order to Show Cause which requires the parties to appear before a judge on a specific day. Usually, any hearing the judge is inclined to hold will happen on that date. Decisions are often delivered orally from the bench the same day, or, if written, within a day or two, depending upon the judge's schedule.

If the losing party is so inclined, they can appeal the decision to the appropriate appellate division. The appellate divisions have specific blocks of time when they hear appeals, and will sometimes set aside specific days during that block of time for hearing elections cases. In the lower court, one judge hears the matter and makes the decision. At the appellate division, there is a five judge panel which hears the matter and renders a written opinion as expeditiously as possible.

The last level of appeal within the state system is to the Court of Appeals, which is the court of last resort. The number of days set aside for elections matters by this court is very limited. There is a very formal procedure whereby parties ask permission to bring an appeal. It has been several years since the Court of Appeals has heard an elections matter.

Table summarizing the types of election related court actions.

Election/ Proceeding	Who Can Bring	Time to Commence	Proper Court	Election Law Section
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New York State Board of Elections Office of Special Counsel Election Law Update for 2008

Election/ Proceeding	Who Can Bring	Time to Commence	Proper Court	Election Law Section
Primary/Invalidate designating or OTB Petitions	aggrieved candidate; objector; party chairperson in a contested primary	Within 14 days of last day to file petition	Supreme Court	§§16-100; 16-102(1)(2)
Primary/Validate designating or OTB Petitions	candidate; committee to receive notices on OTB	Within the later of 14 days of last day to file or 3 days of invalidation	Supreme Court	§§16-100; 16-102(1)(2)
Primary Results	aggrieved candidate; chairman of party committee	Within 10 days of primary	Supreme Court	§§16-100; 16-102(1)(2)
General/Caucus proceedings or certificate of nomination	aggrieved candidate; enrolled objector for proceedings challenge; objector for challenge to certificate	Within 10 days of filing of certificate of nomination	Supreme Court or County Court	§§16-100; 16-102(1)(2)
General/invalidate nominating petition	aggrieved candidate; objector	Within 14 days of last day to file	Supreme Court or County Court	§§16-100; 16-102(1)(2)
General/validate nominating petition	aggrieved candidate	Within the later of 14 days of last day to file or 3 days of invalidation	Supreme Court or County Court	§§16-100; 16-102(1)(2)
General/Judicial Convention proceedings or certificate of nomination	aggrieved candidate; enrolled objector if challenge to proceedings; party chairperson; objector if challenge to certificate	Within 10 days of holding of convention	Supreme Court	§§16-100; 16-102(1)(2)
Special Election/Certificate of Nomination by Party Committee	objector; aggrieved candidate	Within 10 days of filing of certificate	Supreme Court or County Court	§§16-100; 16-102(1)(2)
Special Election/Invalidate nominating petition	aggrieved candidate; objector	Within 7 days of last day to file	Supreme Court or County Court	§§16-100; 16-102(1)(2)
Special Election/Validate nominating petition	aggrieved candidate	Within the later of 7 days of last day to file or 3 days of invalidation	Supreme Court or County Court	§§16-100; 16-102(1)(2)

Underlined material is new for 2008.

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Election/ Proceeding	Who Can Bring	Time to Commence	Proper Court	Election Law Section
Village Elections/invalidat e designating or independent nominating petition	aggrieved candidate; objector; party chairperson in a contested primary	Within 7 days of last day to file	Supreme Court or County Court	§§15-138; 16-100; 16-102(1)(2)
Village Election/validate designating or independent nominating petition	aggrieved candidate	Within the later of 7 days of last day to file or 3 days of invalidation	Supreme Court or County Court	§§15-138; 16-100; 16-102(1)(2)
Village Elections: Casting/Canvassing or refusal to cast/canvass ballots	candidate; chairman of party committee; voter whose ballot was not cast/canvassed	Within 10 days of the election	Supreme Court or County Court	§§16-100; 16-106(1)(5)
All other Elections: Casting/Canvassing or refusal to cast/canvass ballots	candidate; chairman of party committee; voter whose ballot was not cast/canvassed	Within 20 days of the election	Supreme Court	§16-106(1)(5)
General/Challenge return of canvass on statewide proposition	attorney general; chairman of party state committee	Within 20 days of election or alleged erroneous statement or determination	Supreme Court	§§16-100; 16-106(3)(5)
Right of individual to be registered	registered voter in subject county; the state board of elections	No limitation in the Election Law; within 4 months of the registration under CPLR §217	Supreme Court or County Court	§16-108(1)
Challenge board's denial to register individual	aggrieved voter	No limitation in the Election Law; within 4 months of the registration under CPLR §217	Supreme Court or County Court	§16-108(1)
Challenge board's denial to issue absentee ballot or application for same	aggrieved voter	No limitation in the Election Law; within 4 months of the registration under CPLR §217	Supreme Court or County Court	§16-108(4)

New York State Board of Elections Office of Special Counsel Election Law Update for 2008

Election/ Proceeding	Who Can Bring	Time to Commence	Proper Court	Election Law Section
Challenge denial of right to vote	aggrieved voter	No limitation in the Election Law; within 4 months of the registration under CPLR §217	Supreme Court or County Court In First & Second Departments, supreme court justices must be assigned to sit at local BOEs or other locations for this purpose; it is discretionary in the rest of the state.	§16-108(3)(6)

Table summarizing the New York State Court System.

NYS COURT OF APPEALS

Highest level state court, also called court of last resort.

APPELLATE DIVISION				
The statewide appellate court is the Appellate Division, which is divided into four departments. Each department is made up of several judicial districts. The departments, and the districts and corresponding counties are listed in the following table.				
First Department <u>1st JD</u> New York [Manhattan] <u>12th JD</u> Bronx	Second Department <u>2d JD:</u> Richmond [Staten Island] Kings [Brooklyn] <u>9th JD:</u> Dutchess Orange Putnam Rockland Westchester <u>10th JD:</u> Nassau Suffolk <u>11th JD:</u> Queens <u>*Chapter 690 of the Laws of 2007 creates a 13th JD consisting of the county of Richmond. The 2d JD will consist solely of Kings County.</u>	Third Department <u>3d JD:</u> Albany Columbia Greene Rensselaer <u>4th JD:</u> Clinton Essex Franklin Fulton Hamilton Montgomery <u>6th JD:</u> Broome Chemung	Chenango Cortland Delaware Schoharie Sullivan Ulster St. Lawrence Saratoga Schenectady Warren Washington Madison Otsego Schuyler Tioga Tompkins	Fourth Department <u>5TH JD:</u> Herkimer Jefferson Lewis <u>7th JD:</u> Cayuga Livingston Monroe Ontario <u>8th JD:</u> Allegany Cattaraugus Chautauqua Erie Onondaga Oneida Oswego Seneca Steuben Yates Wayne Genesee Niagara Orleans Wyoming

SUPREME COURT

Located in each county, this is a court with general, or wide jurisdiction or authority

CAMPAIGN FINANCIAL DISCLOSURE

This section describes court actions that impact the are of campaign financial disclosure.

Party Money in a Primary

There were two recent Court decisions related to Election Law § 2 - 126, "Party Funds - Restrictions on Expenditures." Election Law 2-126 prohibits a political party from spending money in a primary election; either its own (intra) or another party's (inter). These Court decisions found the statute to be unconstitutional.

In a State Court case which involved one party spending money in another party's primary (inter-party spending), the trial court found that the Working Families Party violated 2-126 by spending money relative to the Democratic Party Primary for District Attorney. The Appellate Division agreed with the Trial Court that the statute was violated by the Working Families Party. However, the Appellate Division found the statute, which is a blanket prohibition on party funds in a Primary, as applied, was unconstitutional, and reversed the decision of the Trial Court. The Appellate Division, held that the 2-126 expenditure limits, as applied to the Working Families Party, unconstitutionally burdened its First Amendment rights of political expression and association. *Avella v. Batt*, 33 AD3d 77, (3d Dep't 2006).

In a separate case, the Federal District Court agreed that Election Law 2-126 violated First Amendment protections afforded speech, expression and association. *Kermani v. New York State Board of Elections*, WL 2190716 (USDC NDNY 2006). On a motion for a preliminary injunction, plaintiffs stated that they wanted to spend party funds within their own primary election (intra party spending). They claimed that they were unconstitutionally prohibited by 2-126 and feared enforcement of the statute by the State Board of Elections. The District Court found that the plaintiffs established a likelihood of success on its claim that 2-126 violated their First Amendment protections of speech, expression and association. The Court prohibited and enjoined the State Board from enforcing the provisions of 2-126 as to independent expenditures by political parties in primary elections, and stayed application of the preliminary injunction for one year until July 25, 2007 as it applies to coordinated expenditures and contributions (transfers). The State Board is prohibited from enforcing 2-126 as to independent expenditures by a political party in a Primary, and that after July 25, 2007, the State Board will be prohibited and from enforcing the provisions of 2-126 with regards to coordinated expenditures and contributions (transfers) by political parties in a Primary.