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## Representing Candidates For Public Office & Party Positions

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*So You're Interested in a Career in Politics: Opportunities and Ethical Considerations for Lawyers*  
*NY County Lawyer's Association – November 13, 2013*

**I. INTRODUCTION:** For candidates, the Election Law presents a set of hurdles to overcome in order to simply have his/her name appears on a ballot. For young attorneys, practicing Election Law presents the opportunity to assist candidates in overcoming these hurdles, as well as to get experience at the trial and appellate levels – all in a time frame that would turn the heads of learned practitioners!

<b>OFFICE</b>	<b>CITIZENSHIP</b>	<b>AGE</b>	<b>RESIDENCY</b>	<b>STATUTE</b>
President of the United States	Born a citizen	35 years	14 years in country	United States Constitution Art. II § 1
United States Senator	Citizen 9 years	30 years	Resident of state when elected	United States Constitution Art. I §3
NYS Governor/ Lt. Governor Attorney General Comptroller	Citizen	30 years	Resident of state 5 years immediately preceding election	New York State Constitution Art. IV § 2 and Art. V § 1
Representative in Congress	Citizen 7 years	25 years	Resident of state when elected	United States Constitution Art. I §2
New York State Senator / New York State Assembly	Citizen	18 years	Resident of state for 5 years and resident of district for 12 months immediately preceding election. (In a redistricting year, may be a resident of county for 12 months immediately preceding the election.)	New York State Constitution Art. III § 7  Public Officers Law § 3

New York is an “**Electoral fusion**” state: an arrangement where two or more political parties on a ballot list the same candidate, pooling the votes for that candidate.

However, for a political party to maintain “ballot status”, that party must earn 50,000 votes or more in each gubernatorial election. So every four years, minor parties seek out candidates who can meet this threshold.

## II. GETTING ON THE BALLOT – CANDIDATE PETITIONING

### A. ESSENTIAL ELEMENTS OF THE PETITION

#### 1. Each sheet of the petition must correctly set forth:

- a) the date of the election;
- b) the name of the candidate and the office or position sought;
- c) the candidate's residence, and if different, their mailing or post office address;
- d) information about the signer: date of signing, voter's residence address, town or city and
- e) information relating to the person who witnesses the signatures.
- f) Area for voters to sign! The voter need only sign the appropriate line. Other people can put it other information (printed name, date, address)
  - Voter may not sign for more candidates than there are openings for an office. (one seat open, then 1 signature for a candidate)

#### 2. Committee to Fill Vacancies – Election Law § 6-148, et. seq.: Should a candidate decline designation / be unable to run (death, incapacity, etc.), those listed on the Petition as a Committee to Fill Vacancies (at least 3 people) select a substitute candidate.

- a) A petition with no Committee to Fill Vacancies listed is not invalid, but any vacancy will not be filled. Election Law § 6-134(8); Tinari v. Berger, 196 A.D.2d 798 (2d Dept. 1993); *leave to appeal denied*, 82 N.Y. 2d 656

#### 3. Witnesses – Anyone who is eligible to sign a petition may be a witness, who affirms that they saw all voters sign the petition. Ex.: The subscribing witness to a designating petition must be an enrolled party member residing in NY State or a notary. . (Election Law § 6-132; §6-140). This is a substantive requirement. Hoshhauser v. Grinblat, 307 A.D.2d 1007 (2d Dept. 2003) *citing Staber v. Fidler*, 65 N.Y.2d 529 (1985).

- a) A Notary Public / Commissioner of Deeds may witness any kind of petition for any party.
- b) The witness is responsible for accounting for all alterations, corrections, errors, omissions. Failure to account for / explain may invalidate the entire page.
- c) Witness signature = oath subject to the penalties of perjury
- d) The law requires identification data including number of signatures on the sheet. Bernhardt v. Sachs, 57 A.D.2d 598 (2d Dept. 1977).

## ***B. TYPES OF PETITIONS – Article 6 of the Election Law***

1. **Designating Petitions – Election Law § 6-130, et. seq.:** For enrolled members of a political party w/ “Ballot status”
  - a) Form: Election Law § 6-132(1)
  - b) Minimum number of signatures required– Election Law § 6-136: 5% of the enrolled voters in the political unit OR set number depending on office.
    - 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 (2d Dept 1999).
2. **Independent Nominating Petitions – Election Law § 6-138: For Creation of a 3rd Party Ballot Line.** To run for office on a line other than an official party line, you must file an independent nominating petition. Any registered voter who has not already signed a designating petition, and who is qualified to vote for an office, may sign an independent nominating petition for that office.
  - a) Form: Election Law § 6-140
  - b) Similar rules to Designating Petitions (period to collect begins at the end of the Designating Petitioning period). However, any qualified voter can challenge an independent nominating petition as a citizen objector. Doran v. Scranton, 49 A.D.2d 976 (3d Dept. 1975).
  - c) Ex.: in 2013, Republican Mayoral Candidate John Catsimatidis “created” independent lines called “Liberal” and “Jobs! Jobs! Jobs!”
3. **Opportunity to Ballot Petitions – Election Law § 6-164:** Creates a primary election when there otherwise would not have been one. This does not put a candidate’s name on the ballot. - it allows the voter the ability to write in a candidate’s name.
  - a) Form: Election Law § 6-166
  - b) Committee to Receive Notices – Enrolled party members who act as contacts for the petition. Failure to list on an OTB Petition is a fatal defect. Werner v. Castiglione, 286 A.D.2d 553 (3d Dept. 2001); Lent v. Katz, 307 A.D.2d 1009 (2d Dept. 2003).

### **C. SUBMISSION OF PETITIONS TO BOE**

1. **Binding / Numbering of Petitions** – Election Law § 6-134(2): All sheets of each Petition Volume are to be SECURELY FASTENED and SEQUENTIALLY NUMBERED!

- a) Petition vs. Petition Volume – A securely fastened grouping of petition sheets for one or more candidates or group of candidates is a “petition volume”. All the pages of every volume, along with a cover sheet, is a “Petition”

2. **Cover Sheet** – 9 NYCRR § 6215.2: Cover Sheets must contain:

- a) Office & District Number
- b) Name Of Candidate & Residence
- c) ID Number of Volumes Comprising the Petition (supplied by BOE upon request)
- d) County Committee candidates may be annexed in a schedule, identifying volume number and page number.
- e) A statement that the petition contains the number, or in excess of the number of valid signatures
- f) Optional: Designation of a contact person for BOE to notify of non-compliance with the Election Law & regulations
- g) Candidates that submit less than ten pages within their respective designating petition need not submit a cover sheet. Matter of Bachety v. Canary, 112 A.D.2d 1058, 493 N.Y.S.2d 43 (2d Dept, 1985).

3. **Amended Cover Sheet:** A corrected Cover Sheet with the additional statement “This is to certify that I am authorized to file this Amended Cover Sheet” signed, dated

4. **Certificates of Authority / Acceptance**

- a) Under the Wilson-Pakula Act of 1947 (Election Law § 6-120(3) ), New York’s political party officials may authorize a person not registered as a party member to run as the party’s designated candidate. (“Fusion”)
- b) The Act was intended "to protect the integrity of political parties and to prevent the invasion into or the capture of control of political parties by persons not in sympathy with the principles of such political parties" by “restrict[ing] . . . the manner in which one could or could not invade the political party of which one was not a member to obtain party or public office.” Matter of Werbel v. Gernstein, 191 Misc. 275, 277 (Sup. Ct. Kings Cty. 1948), *aff’d* 273 App. Div. 917 (2d Dep’t 1948); *see also* Matter of Ingersoll v. Curran, 188 Misc. 1003, 1008 (Sup. Ct. Albany Cty. 1947), *aff’d* 297 N.Y. 522 (1947); Matter of Master v. Pohanka, 10 N.Y.3d 623, 626 (2008).

## 5. **BOE Cures**

- a) Within 2 days of receipt of Petition, the BOE reviews them to determine compliance with BOE Rules
  - i. Election Law § 3-212(5) – Commissioners meets to determine compliance. If there is non-compliance, the BOE notify candidates of curable defects.
- b) Within 3 days of written notice, a candidate may cure the violation of the Rules (One shot only – the Commissioners will meet again to review the cure!)
- c) *Prima facie* defects are not subject to cure. Results in immediate invalidation.
  - ii. Election Law § 6-134(2)

## 6. **Judicial Review of Petitions**

- a) Board of Elections may not reject a designating petition based upon a minor cover sheet error when the cover sheet is otherwise in substantial compliance with the Election Law and the underlying defect presents no danger of fraud or confusion to the Board or to the voters. Matter of Krance v. Chiamonte, 87 A.D.3d 669, 928 N.Y.S.2d 480 (2d Dept. 2011); Matter of Magelaner v. Park, 32 A.D.3d 487, 819 N.Y.S.2d 488 (2d Dept. 2006); Matter of Pearse v. New York City Board of Elections, 10 A.D.3d 461, 781 N.Y.S.2d 166 (2d Dept. 2004); Matter of Siems v. Lite, 307 A.D.2d 1016, 763 N.Y.S.2d 501 (2d Dept. 2003); see also Matter of Most v. Walker, 297 A.D.2d 356, 746 N.Y.S.2d 410 (2d Dept. 2002).
- b) The Court has not hesitated to order the reinstatement of designing petitions which were improperly rejected by the Board of Elections based upon “trivial” cover sheet errors. See Matter of Antoine v. Boyland, 21 Misc.3d 298, 863 N.Y.S.2d 358, 302-303 (Sup. Ct. Kings County, 2008).
- c) When a defect involves more than a mere technical defect subject to cure that would undermine procedural safeguards against fraud and confusion, then petitions must be rejected. Matter of Pecoraro v. Mahoney, 65 N.Y.2d 1026; Matter of Armwood v. McCloy, 109 A.D.3d 558 (2d Dept. 2013).
- d) Ministerial Error: What if the BOE makes a mistake?
  - Shredding of Petitions: BOE has an obligation to keep original petitions. Election Law § 3-220(6). But, when original petitions are shredded, copies supplied by the candidate is considered the “Best Evidence” for judicial review of validity of signatures. Matter of Kizner v. Riley, et. al., Sup. Ct. Kings County, Index No. 700002/2013 (Schmidt, D.).

### III. STAYING ON BALLOT / KNOCKING OFF THE BALLOT

#### A. Defects

##### 1. Grounds for Invalidation of Petition (Non-Fraud)

OBJECTION	CITATION
The Petition does not contain the minimum number of required valid signatures	Election Law § 6-136; <u>Horwitz v. Egan</u> , 264 A.D.2d 454 (2d Dept 1999).
Many of the signers were not registered or enrolled from the addresses given in the Petition	<u>Matter of Bray v. Marsolais</u> , 21 A.D.3d 1143; <u>Matter of Berger v. Acito</u> , 64 A.D.2d 949; <u>Matter of Williams v. Pinkett</u> , 59 A.D.2d 573.
Many of the signers did not sign their names to the Petition, either printing their name or omitting their first name	<u>Matter of Lane v. Meisser</u> , 24 A.D.2d, 720; <u>Matter of Fusco v. Miele</u> , 275 A.D.2d 426; <u>Matter of Hall v. Heffernan</u> , 185 Misc. 722, 744, <i>aff'd</i> 269 App Div 953, <i>aff'd</i> 295 NY 599
Witness statements have been altered	<u>Matter of McGuire v. Gamanche</u> , 22 A.D.3d 614, <i>aff'd</i> 5 N.Y.3d 444; <u>Matter of Rosmarin v. Belcastro</u> , 44 A.D.3d 1055
Dates have been altered	<u>Matter of McShane v. Coveney</u> , 37 NY2d 789; <u>Matter of Coleman v. Boone</u> , 230 A.D.2d 872
Dates are missing	<u>Matter of Parra v. Shiffman</u> , 64 A.D.2d 934; <u>Matter of Klemann v. Acito</u> , 64 A.D.2d 952
Signers are not enrolled as party members	Election Law § 6-132(1); <u>Goldstein v. Carlsen</u> , 59 A.D.2d 642, 643, <i>aff'd</i> 42 N.Y.2s 993;
Dates and/or addresses have been omitted, incomplete or are illegible	Election Law § 6-130; <u>Matter of Liepshutz v. Palmateer</u> , 65 N.Y.2d 965; <u>Matter of Hall v. Heffernan</u> , 185 Misc. 722, 744, <i>aff'd</i> 269 App Div 953, <i>aff'd</i> 295 NY 599; <u>Matter of Loeb v. Rivera</u> , 196 A.D.2d 617; <u>Matter of Lane v. Meisser</u> , 24 A.D.2d 720
Subscribing witnesses are not registered at the address indicated or do not actually reside at said address	<u>Matter of Bray v. Marsolais</u> , 21 A.D.3d 1143; <u>Matter of Berger v. Acito</u> , 64 A.D.2d 949;
Subscribing witnesses are not enrolled as party members	Election Law § 6-132(2); <u>Homer v. Board of Elections</u> , 71 A.D.2d 970; <u>Hochhauser v. Grinblat</u> , 307 A.D.2d 1007, <i>aff'g</i> Kings Cty. Index. No. 26694/2003 (Levine, J.)
Signers do not live in the political unit	Election Law § 6-132
Signers previously signed another candidate's designating petition for the same office	Election Law § 6-134(3); <u>Matter of Lavelle v. Gonzalez</u> , 59 N.Y.2d 670; <u>Matter of Keenan v. Chemung County Board of Elections</u> , 43 A.D.3d 623 (3d Dept 2007)
Signers previous signed the same designating petition for the same candidate twice or more	<u>Matter of McShane v. Coveney</u> , 37 N.Y.2d 789

The number of signatures is omitted or wrong;	<u>Matter of O'Brien v. Meisser</u> , 10 N.Y.2d 799; <u>Matter of Esse v. Chiavaroli</u> , 71A.D.2d 1046
Notaries public or Commissioners of Deeds failed to properly administer oaths when taking signatures;	<i>Facts &amp; circumstances test requiring a hearing with testimony</i>
Signatures and/or dates and/or addresses were illegible;	<u>Matter of Liepshutz v. Palmateer</u> , 65 N.Y.2d 965; <u>Matter of Hall v. Heffernan</u> , 185 Misc. 722, 744, <i>aff'd</i> 269 App Div 953, <i>aff'd</i> 295 NY 599
Material alterations have been made to the Petition by the signers and/ the subscribing witness that are not initialed	<u>Matter of Bernstein v. Nelson</u> , 124 Misc. 2d 287, <i>aff'd</i> 104 A.D.2d 462; <u>Matter of White v. McNab</u> , 40 N.Y.2d 912
The Petition is/are invalid for other grounds which will be established at the hearing of this proceeding.	<i>Facts &amp; circumstances test requiring a hearing with testimony</i>

**2. Grounds For Invalidation – Fraud:** The Court – not the referees - rule on forgery / fraud based on testimony from either handwriting experts, or other witnesses in order to establish whether the signature in question is fraudulent / forged. Matter of Rivera v. Ortiz, 207 A.D.2d 516.

- a) the signatures, including signatures obtained by the Respondent, were obtained by fraud;
- b) signers were paid to sign the Petition;
- c) signatures, including signatures obtained and witnessed by Respondent, have been forged;
- d) subscribing witnesses' initials have been forged
- e) the Petition is permeated with fraud;
- f) signatures were obtained prior to first day for circulation of designating petitions
- g) signatures were obtained after the last day of circulation of designating petitions
- h) many of the signatures were not personally signed by the persons whose names appear upon the Storobin Petition, but their names were signed by others
- i) the petitions are *permeated with fraud*.



## **B. Process**

1. **BOE – General Objections:** Must be filed no later than 3 days after the latest date on which any part of a petition / cover sheet was filed, even if not “claimed”.
2. **BOE – Specified Objections:** Submission of a line-by-line report from the objector, identified by volume number, page number and line number.
  - a) A copy of which must be served on the candidate
  - b) Filed within 6 days after the filing of general objections with proof of service.
  - c) Examined by Chief / Deputy Chief Clerk, who will generate a report, prepared in advance of Commissioner’s hearings, with line-by-line rulings available to all parties.
  - d) Commissioners of the BOE allow Objector & Candidate to be heard on the objections, and will vote on the validity of petitions
3. **Court – Petition to (In)Validate:** Article 16 of the Election Law
  - a) Parties can forgo BOE Procedures if they have “standing”. Election Law § 16-102: Only aggrieved candidates and objectors at the BOE may bring a proceeding.
    - Matter of Cipriano v. Graves, 87 A.D.3d 636 (2d Dept. 2011): If an aggrieved candidate is himself invalidated, he loses standing to sue.
    - Matter of Maltese v Anderson, 264 AD2d 457 (2d Dept. 1999): Chairman of a political party has no standing to challenge the designation of a candidate – including designation by petition.
  - b) Upon proper service, Court will order a referee-supervised “line-by-line” review of all petition pages; referees will hear and report on all objections. Election Law § 6-154;
  - c) Bills of particulars must be sufficiently specific. Wooten v. Barron, 242 A.D.2d 351.
  - d) Claims of Fraud
    - A candidate's designating petition will be invalidated on the ground of fraud if there is a showing that the entire petition is permeated with fraud (see Matter of Volino v Calvi, 87 AD3d 657, 658 (2d Dept. 2011); Matter of Harris v Duran, 76 AD3d 658, 659 (2d Dept. 2010); Matter of Drace v Sayegh, 43 AD3d 481 (2d Dept. 2007).

#### IV. ELECTION RE-COUNTS : Gauging the voter's intent

- A. **Canvassing of Paper Ballots:** Election Law § 9-209(2)(d) – Paper ballots are to be canvassed by bipartisan teams at the BOE who determine whether ballots should be counted. NY = voter intent state
1. Any party lawfully present may object to the casting or canvassing or the refusal to cast or canvass a ballot.
    - a) If the team agrees, the action is taken
    - b) Matter of O'Keefe v. Gentile, 757 N.Y.S.2d 689: If the team does not sustain the objection, the Court, in order to provide meaningful judicial review, requires the BOE to make a copy of the ballot before it is counted and seal it back inside the ballot envelope. See King. V. Smith, 308 A.D.2d 556.
- B. **Voting By Absentee Ballot:** To vote by absentee ballot, a qualified voter was required to make an application for an absentee ballot indicating the specific reason such voter would be absent from the county on the day of such election (see Election Law § 8-400[1], [2] ).
1. Without any absentee ballot application pertaining to the special general election, the Board had no legal authority to issue the absentee ballots. Matter of Mondello v. Nassau County Bd. of Elections, 6 A.D.3d 18, 22, 772 N.Y.S.2d 693 [2004]; Matter of Baker, 126 Misc. 49, 53, 213 N.Y.S. 524 [1925], affd." , Gross v. Albany County Board of Elections, 10 A.D.3d 476 (3rd Dept., 2004), emphasis added.
  2. Since 2010, absentee voters need no longer be burdened to provide proof to support reason for needing an absentee ballot (a turning point in Matter of Storobin v. Fidler, (Sup. Ct., Kings County Index. No. 700003/2012 (Schmidt, D.)
    - a) Fraud in collection of absentee ballots = examination of fact and circumstances, including testimony of handwriting experts and other relevant witnesses
- C. **Primary Challenges:** The Court may direct a new primary election when a Petitioner can meet a burden of proof establishing sufficient irregularities as to render impossible a determination as to who rightfully was nominated. Election Law 16-102(3); Matter of Piazza v. Rockland County Board of Elections, 17 Misc.3d 1111(A), [Sup. Ct. Rockland Cty., 2007]
1. Except when the BOE represents that it does not have enough time to set up a new primary. Then, the irregular results stand. Matter of Gallo v. Akselrod, (Sup. Ct. Kings County, Index No. 700023/2012 (Schmidt. J.)

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**"The profession I chose was politics; the profession I entered was the law."**

-Woodrow Wilson



## *Gene R. Berardelli Esq.*

**Gene Berardelli** was born and raised in the Sheepshead Bay neighborhood of Brooklyn, New York. He graduated from Manhattan College *summa cum laude* in 1999 with a Bachelor of Arts Degree in Government and International Studies, where he earned the College's Ryan Medal for Government, membership into the college's select Pen & Sword Society, and induction into multiple honor societies, including Phi Beta Kappa. He received his Juris Doctorate from Quinnipiac University School of Law in 2002 – at age 23 - where he won 2nd Place in Brief Writing (Best Overall Defendant's Brief) in the Mugel National Tax Moot Court Competition in Buffalo, NY (at that time, the highest finish in that competition in the law school's history) and earned the Law School's award for Outstanding Classroom Performance.



Gene is an associate at Novo Law Firm, a boutique personal injury law firm in downtown Manhattan, where he is currently the firm's associate in charge of its Premises Liability Department. In his five years of civil litigation practice, Gene has successfully represented clients in claims against such recognizable entities as the City of New York, JPMorgan Chase, Long Island Railroad, and Macy's and has reached several career milestones, including settling a seven-figure personal injury settlement, successfully arguing before the Appellate Division.

In 2007, Gene was first elected to the Kings County Republican Executive Committee as Vice Chair of the Law Committee, where he worked with Republican attorneys to help grow the Party in Brooklyn. As a volunteer on several different campaigns – and as a candidate for public office himself – Gene has been part of a leadership team that has overseen a “renaissance” of the Republican Party in Brooklyn, which has included Special Election wins for seats in the U.S. Congress and the NY State Senate in 2011 and 2012, respectively.

In 2011, Gene successfully argued his first Election Law appeal before the Second Department in Matter of Cipriano v. Graves, 87 A.D.3d 636 (2d Dept. 2011), reinstating a candidate for party position to the ballot. In 2011, Gene was elected Law Chairman for the Brooklyn GOP, and within 90 days of his election, he found himself successfully trying the high-profile 27<sup>th</sup> Senate recount in Matter of Fidler v. Storobin, Sup. Ct., Kings County, Index No. 700003/2012 (Schmidt, D.) which turned an 87-vote deficit into a 13-vote victory for Sen. David Storobin – the closest election in NY State Senate history (if not NY State history!). Gene has represented hundreds of candidates for public offices and party positions before the Board of Elections, in Supreme Court and at the Appellate Division.

For his work with the Republican Party, Gene was honored as Brooklyn Young Republican of the Year in 2012 and was appointed to Congressman Bob Turner's Service Academy Selection Committee in 2011 and 2012. This year, he was re-elected as Law Chairman for another two year term, and was invited to become a member of the City Bar's Election Law Committee.



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# Sample Election Law Forms

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FOR REPRESENTING CANDIDATES FOR PUBLIC OFFICE & PARTY POSITIONS

*So You're Interested in a Career in Politics: Opportunities and Ethical Considerations for Lawyers*

*NY County Lawyer's Association – November 13, 2013*

**SAMPLE**  
**DESIGNATING PETITION**  
**Sec.6-132, ELECTION LAW**

I, the undersigned, do hereby state that I am a duly enrolled voter of the Republican Party and entitled to vote at the next primary election of such party, to be held on September 10, 2013; that my place of residence is truly stated opposite my signature hereto, and that I do hereby designate the following named persons as candidates for the nomination of such party for public office or for election to a party position of such party:

Name of Candidate	Public Office	Place of Residence

I do hereby appoint:

all of whom are enrolled voters in the \_\_\_\_\_ Party, as a committee to fill vacancies in accordance with the provisions of the Election Law.

Name of Candidate	Public Office or Party Position	Place of Residence
Delegates to the _____ Judicial Convention, _____ Judicial District, from the _____ <sup>th</sup> Assembly District, _____ County	Alternate Delegates to the _____ Judicial Convention, _____ Judicial District from the _____ <sup>th</sup> Assembly District, _____ County	

Name of Candidate	Party Position	Place of Residence
	Member of _____ County Committee, _____ <sup>th</sup> Assembly District, _____ Election District	

I do hereby appoint:

all of whom are enrolled voters in the \_\_\_\_\_ Party, as a committee to fill vacancies in accordance with the provisions of the Election Law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

	DATE	NAME OF SIGNER	RESIDENCE	COUNTY
1.	_____/_____/2013 Print Here→			KINGS
2.	_____/_____/2013 Print Here→			KINGS
3.	_____/_____/2013 Print Here→			KINGS
4.	_____/_____/2013 Print Here→			KINGS
5.	_____/_____/2013 Print Here→			KINGS

Complete ONE of the Following:

**1) STATEMENT OF WITNESS**

I, \_\_\_\_\_ state: I am a duly qualified voter of the State of New York and I am an enrolled voter of the \_\_\_\_\_ Party. I now reside at \_\_\_\_\_. Each of the individuals whose names are subscribed to this petition sheet containing \_\_\_\_\_ signatures, subscribed the same in my presence on the dates above indicated and identified herself/himself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

\_\_\_\_\_/\_\_\_\_\_/20\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

**WITNESS IDENTIFICATION INFORMATION:** The following information for the witness named above must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

TOWN OR CITY: New York

COUNTY: \_\_\_\_\_

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

On the dates above indicated before me personally came each of the voters whose signatures appear on this petition sheet containing \_\_\_\_\_ signatures, who signed same in my presence and who, being duly sworn, each for herself/himself said that the foregoing statement made and subscribed by her/him, was true.

\_\_\_\_\_/\_\_\_\_\_/20\_\_\_\_  
Date

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

**SAMPLE**  
**OPPORTUNITY TO BALLOT PETITION**  
**Secs.6-132 and 6-166, ELECTION LAW**

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

TITLE OF PARTY OFFICE / PARTY POSITION

I do hereby appoint (Names and addresses of at least three persons, all of whom are enrolled voters in said party) as a Committee to Receive Notices to fill vacancies in accordance with the provisions of the Election Law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

	DATE	NAME OF SIGNER	RESIDENCE	COUNTY
1.	_____/_____/2012	_____ Name: _____		KINGS
2.	_____/_____/2012	_____ Name: _____		KINGS
3.	_____/_____/2012	_____ Name: _____		KINGS
4.	_____/_____/2012	_____ Name: _____		KINGS
5.	_____/_____/2012	_____ Name: _____		KINGS
6.	_____/_____/2012	_____ Name: _____		KINGS
7.	_____/_____/2012	_____ Name: _____		KINGS
8.	_____/_____/2012	_____ Name: _____		KINGS
9.	_____/_____/2012	_____ Name: _____		KINGS
10.	_____/_____/2012	_____ Name: _____		KINGS

Complete ONE of the Following:

**1) STATEMENT OF WITNESS**

I, \_\_\_\_\_ state: I am a duly qualified voter of the State of New York and I am an enrolled voter of the \_\_\_\_\_ Party. I now reside at \_\_\_\_\_. Each of the individuals whose names are subscribed to this petition sheet containing \_\_\_\_\_ signatures, subscribed the same in my presence on the dates above indicated and identified herself/himself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

\_\_\_\_\_/\_\_\_\_\_/20\_\_\_\_  
 Date \_\_\_\_\_  
 Signature of Witness \_\_\_\_\_

**WITNESS IDENTIFICATION INFORMATION:** The following information for the witness named above must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

TOWN OR CITY: New York COUNTY: \_\_\_\_\_

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

On the dates above indicated before me personally came each of the voters whose signatures appear on this petition sheet containing \_\_\_\_\_ signatures, who signed same in my presence and who, being duly sworn, each for herself/himself said that the foregoing statement made and subscribed by her/him, was true.

\_\_\_\_\_/\_\_\_\_\_/20\_\_\_\_  
 Date \_\_\_\_\_  
 Signature and Official Title of Officer Administering Oath \_\_\_\_\_



**SAMPLE**  
**“INSERT PARTY NAME HERE!”**  
**INDEPENDENT NOMINATING PETITION**

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named person as a candidate for election to public office to be voted for at the election to be held on \_\_\_\_\_ and that I select the name \_\_\_\_\_ as the name of the independent body making the nomination and ☆ as the emblem of such body

Name of Candidate	Public Office	Place of Residence

I do hereby appoint:

all of whom are enrolled voters in the \_\_\_\_\_ Party, as a committee to fill vacancies in accordance with the provisions of the Election Law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

	DATE	NAME OF SIGNER	RESIDENCE	COUNTY
1.	_____/_____/2013 Print Here→	_____	_____	KINGS
2.	_____/_____/2013 Print Here→	_____	_____	KINGS
3.	_____/_____/2013 Print Here→	_____	_____	KINGS
4.	_____/_____/2013 Print Here→	_____	_____	KINGS
5.	_____/_____/2013 Print Here→	_____	_____	KINGS
6.	_____/_____/2013 Print Here→	_____	_____	KINGS
7.	_____/_____/2013 Print Here→	_____	_____	KINGS
8.	_____/_____/2013 Print Here→	_____	_____	KINGS
9.	_____/_____/2013 Print Here→	_____	_____	KINGS
10.	_____/_____/2013 Print Here→	_____	_____	KINGS

Complete ONE of the Following:

**1) STATEMENT OF WITNESS**

I, \_\_\_\_\_ state: I am a duly qualified voter of the State of New York. I now reside at \_\_\_\_\_. Each of the individuals whose names are subscribed to this petition sheet containing \_\_\_\_\_ signatures, subscribed the same in my presence on the dates above indicated and identified herself/himself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

\_\_\_\_\_/\_\_\_\_\_/20\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

**WITNESS IDENTIFICATION INFORMATION:** The following information for the witness named above must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

TOWN OR CITY: New York

COUNTY: \_\_\_\_\_

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

On the dates above indicated before me personally came each of the voters whose signatures appear on this petition sheet containing \_\_\_\_\_ signatures, who signed same in my presence and who, being duly sworn, each for herself/himself said that the foregoing statement made and subscribed by her/him, was true.

\_\_\_\_\_/\_\_\_\_\_/20\_\_\_\_  
Date

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

**SAMPLE COVER SHEET INFORMATION SHEET**  
**(Choose One)**  
 \_\_\_\_\_ **PARTY DESIGNATING**  
**OR**  
**INDEPENDENT NOMINATING**  
**OR**  
**OPPORTUNITY TO BALLOT**  
**PETITIONS**  
 \_\_\_\_\_ **COUNTY**

Name of Candidate	Party Position	Residence Address

Total Number of Volumes in Petition \_\_\_\_\_  
 Identification Numbers

[VOLUME NUMBERS)

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

Contact Person to Correct Deficiencies: NAME

Residence Address: ADDRESS

Office Address: ADDRESS

Tel. No.: PHONE NO.

Fax No.: FAX NO.

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

\_\_\_\_\_  
 Agent for Candidate



**SAMPLE AMENDED COVER SHEET INFORMATION SHEET**

**(Choose One)**

\_\_\_\_\_ **PARTY DESIGNATING**  
**OR**  
**INDEPENDENT NOMINATING**  
**OR**  
**OPPORTUNITY TO BALLOT**  
**PETITIONS**  
\_\_\_\_\_ **COUNTY**

Name of Candidate(s)	Public Office / Party Position	Residence Address

Total Number of Volumes in Petition Identification Numbers \_\_\_\_\_

[VOLUME NUMBERS)

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

Contact Person to Correct Deficiencies: NAME

Residence Address: ADDRESS

Office Address: ADDRESS

Tel. No.: PHONE NO.

Fax No.: FAX NO.

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

\_\_\_\_\_  
*Agent for Candidate*

**SAMPLE**  
**CERTIFICATE OF AUTHORIZATION**  
(Section 6-120, Election Law)

We, \_\_\_\_\_ and \_\_\_\_\_ Presiding Officer and Secretary of the \_\_\_\_\_ PARTY of \_\_\_\_\_ COUNTY, DO HEREBY CERTIFY THAT:

At a meeting of the \_\_\_\_\_ County \_\_\_\_\_ Committee held on \_\_\_\_\_, 20\_\_\_\_, a quorum being present, said committee, by majority vote of the members present, did consent and authorize the nomination / designation of CANDIDATE residing at ADDRESS for the office of "PUBLIC OFFICE", as a candidate of the \_\_\_\_\_ Party for public office indicated at the Primary Election to be held on September 10, 2013.

Said nomination / designation is authorized pursuant to Section 6-120 of the New York State Election Law.

IN WITNESS WHEREOF, we have set our hands this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
Secretary

STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_<sup>th</sup> day of July, 20\_\_\_\_ before me personally came \_\_\_\_\_ and \_\_\_\_\_ to me known and known to me to be the persons described in and who executed the foregoing instrument and they each duly acknowledged to me that they each executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

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

I, CANDIDATE residing at ADDRESS, having been designated / nominated by the \_\_\_\_\_ Party as a candidate for the office of \_\_\_\_\_ do hereby ACCEPT such designation / nomination and consent to be such a candidate of such party at a Primary Election to be held on \_\_\_\_\_, 20\_\_.

Said nomination / designation is authorized pursuant to Section 6-120 of the New York State Election Law.

Date \_\_\_\_\_

\_\_\_\_\_  
CANDIDATE

STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 20\_\_ before me personally came CANDIDATE to me known and known to me to be the persons described in and who executed the foregoing instrument and they each duly acknowledged to me that they each executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

**SAMPLE**  
**SPECIFICATIONS OF OBJECTION – PAGE 2**

*(Use this for when the candidate submitted less signatures than required by the Election Law)*

TO: THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

OBJECTOR: OBJECTOR,(ADDRESS)

OBJECTOR'S CONTACT PERSON: ATTORNEY (ADDRESS) (PHONE)

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

NAME: CANDIDATE  
RESIDENCE: CANDIDATE'S ADDRESS  
PARTY POSITION: PUBLIC OFFICE / PARTY POSITION  
POLITICAL PARTY: REPUBLICAN

PETITION VOLUME IDENTIFICATION NUMBERS: (VOLUME NUMBERS)

CANDIDATE CONTACT PERSON: AGENT FOR CANDIDATE (ADDRESS) (PHONE)

TOTAL NUMBER OF SIGNATURES ON PETITIONS: (NUMBER SUBMITTED)  
NUMBER OF SIGNATURES REQUIRED: (THRESHOLD NUMBER)

*Pursuant to Election Law § 6-136, the above named candidate has failed to collect the required number of signatures consisting of 5% of the enrolled members of the party in the district to qualify his candidacy for the above-mentioned party position.*

*Based on the foregoing, the candidate's petitions must be invalidated.*

At an IAS Term, Special Elections Part of the Supreme Court of the State of New York, held in and for the County of \_\_\_\_\_, at the Courthouse at \_\_\_\_\_, NY on the \_\_\_\_\_ day of \_\_\_\_\_, 2013

PRESENT: \_\_\_\_\_, J.S.C.

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

Index No. \_\_\_\_\_

In the Matter of the Application of  
OBJECTOR / CANDIDATE-AGGRIEVED,

*Petitioner,*

ORDER TO SHOW CAUSE

- against -

CANDIDATE(S)

*Respondent-Candidates,*

- and -

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

*Respondent,*

For an Order Pursuant to Article 16 of the Election Law to declare the invalidity of designating petitions of candidates for [PUBLIC OFFICE / PARTY POSITION].

Upon reading the annexed Petition of [OBJECTOR / CANDIDATE AGGRIEVED), verified on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the annexed exhibits, and upon the original petitions purporting to designate each respective Respondent-Candidate herein as candidates in the September 10, 2013 Republican Primary for the Party Position of Member of Republican County Committee for various Election Districts in the 45th Assembly District, Kings County as listed below,

LET Respondents show cause before this Court, \_\_\_\_\_ Part at a motion term thereof, to be held at the Supreme Court, \_\_\_\_\_, Room \_\_\_\_\_, \_\_\_\_\_, New York on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_noon thereof, or as soon thereafter as counsel can be heard why an Order should not be granted:

1. Declaring insufficient, defective, invalid, null and void the petitions filed by or on behalf of Respondents with the Board of Elections in the City of New York purporting to designate Respondent(s) as candidate(s) for nomination for election for the Public Office / Party Position of \_\_\_\_\_;
2. Enjoining restraining and prohibiting the Board of Elections in the City of New York from printing and placing the names of the above-mentioned Respondents on the ballots to be used at such primary election; and
3. Such other and further relief as the Court deems necessary;

SUFFICIENT CAUSE BEING SHOWN, it is

ORDERED, that Respondent Board of Elections, in accordance with Section 3-220 (6) of the New York State Election Law and the duly adopted Rules of the Board of Elections in the City of New York, shall make available at the office of the Board where such records are maintained in the ordinary course of business during normal business hours, the aforesaid designating/independent nominating petition, cover sheet, and any amended cover sheet(s), identification number application form(s), and any other documents in support of or related to designation and/or nomination of the Candidate; together with the Objections and Specifications of Objections relating to the aforesaid petition; any written notification of a determination of non-compliance together with proof of service upon the Candidate; any writing purporting to cure or correct said determination of non-compliance as well as the determination of said Board on any Specifications of Objections. Any party seeking copies of the aforesaid documents shall, upon payment of the applicable fee as established by law and/or regulation, receive the same in the ordinary course of business; and it is further

ORDERED that all specification of objections not previously served and filed with Respondent Board of Elections in the City of New York shall be served upon the Respondents and filed with the Clerk of this Part on or before the return date herein; failure of which to serve and file same shall be deemed a waiver and further proof shall be precluded; and it is

ORDERED, that leave is hereby granted to Petitioner to submit upon the return date of this Order to Show Cause and the argument hereof such additional evidence, exhibits and other proof as may be necessary;

NOW, LET personal service pursuant to N.Y. C.P.L.R. § 308(1) of a copy of this Order together with the papers upon which it has been granted be made upon Respondents Board of Elections in the City of New York by leaving them at the office of the Board of Elections located at 32 Broadway, New York, NY on or before JULY 25, 2013 shall be timely and sufficient; and

LET service of a copy of this Order together with the papers upon which it has been granted be made on each respective Respondent-Candidate either by:

1. By depositing a copy of this Order together with the papers upon into a sealed envelope and placing it in into the care of custody of the United States Postal Service with sufficient postage and mailing the same via First Class Mail with Certificate of Mailing and on or before \_\_\_\_\_; or
2. Personal delivery of a copy of this Order together with the papers upon which it has been granted to each Respondent-Candidate on or before \_\_\_\_\_; or
3. Personal delivery of a copy of this Order together with the papers upon which it has been granted to a person of suitable age and discretion at the respective residences of each Respondent-Candidate as set forth in the designating petition filed on his/her behalf, and by enclosing the same in a securely sealed and duly postpaid wrapper addressed to each respective Respondent-Candidate at such address, and depositing the same in a Post Office branch regularly maintained by the United States Postal Service in the City of New York, mailing the same via first-class mail and obtaining a postmarked Certificate of Mailing on or before \_\_\_\_\_; or
4. Affixing a copy this Order together with the papers upon which it has been granted to the outer or other door of the residence of each respective Respondent Candidate set forth in the designating petition filed on his/her behalf, and by enclosing the same in a securely sealed and duly postpaid wrapper addressed to each respective Respondent-Candidate at such address, and depositing the same in a Post Office branch regularly maintained by the United States Postal Service in the City of New York, mailing the same via first-class mail and obtaining a postmarked Certificate of Mailing on or before \_\_\_\_\_;

shall be timely and sufficient.

ENTERED :

\_\_\_\_\_  
J.S.C.

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

*Index No.* \_\_\_\_\_

In the Matter of the Application of  
OBJECTOR / CANDIDATE-AGGRIEVED,

*Petitioner,*

VERIFIED PETITION

- against -

CANDIDATE(S)

*Respondent-Candidates,*

- and -

THE BOARD OF ELECTIONS IN THE CITY OF NEW  
YORK

*Respondent,*

For an Order Pursuant to Article 16 of the Election Law to  
declare the invalidity of designating petitions of  
candidates for [PUBLIC OFFICE / PARTY POSITION].

Petitioner OBJECTOR / CANDIDATE AGGRIEVED, by his/her attorney,  
\_\_\_\_\_, as and for his petition to invalidate, makes the following  
allegations:

1. Petitioner at all times mentioned herein is and has been a duly qualified voter of the  
State of New York residing at \_\_\_\_\_ and entitled to vote from  
\_\_\_\_\_, in the County of \_\_\_\_\_, City and State of New  
York.
2. Said Petitioner is also a candidate aggrieved for the public office / party position of  
[PUBLIC OFFICE / PARTY POSITION]. and as such, has standing pursuant to N.Y.  
Election Law § 16-102(1) to invalidate the petitions for the above-mentioned  
candidates. \*\*\* OR \*\*\*

Said Petitioner is also objector to the Designating Petitions / Independent  
Nominating Petitions of Respondent for the public office / party position of [PUBLIC  
OFFICE / PARTY POSITION]. and as such, has standing pursuant to N.Y. Election  
Law § 16-102(1) to invalidate the petitions for the above-mentioned candidates



3. Respondent Board of Elections in the City of New York (hereinafter “Board of Elections”) is constituted pursuant to the N.Y. Election Law and is charged with the responsibility of administering the election for the said party position.
4. Between (first date to submit petitions to the BOE) and (last date to submit petitions to the BOE), a petition was filed with the Board of Elections purported designating Respondent-Candidates a candidates for the public office / party position of [PUBLIC OFFICE / PARTY POSITION].
5. Upon information and belief, the Petitions is/are insufficient, ineffective, false, invalid and null and void.
6. Upon information and belief, Petitions is/are invalid by reason of the following:
  - a. The Petitions do not contain the minimum number of required valid signatures;
  - b. Many of the signers were not registered or enrolled from the addresses given in the Petitions;
  - c. Many of the signers did not sign their names to the Petitions, either printing their name or omitting their first name;
  - d. Witness statements have been altered;
  - e. Dates have been altered;
  - f. Signers are not enrolled \_\_\_\_\_ Party members;
  - g. Dates and/or addresses have been omitted or are illegible;
  - h. Subscribing witnesses are not registered at the address indicated or do not actually reside at said address;
  - i. Subscribing witnesses are not enrolled as Republicans;
  - j. Signers do not live in the political unit;
  - k. Signers previously signed another candidate’s designating petition for the same office;
  - l. Signers previously signed the same designating petition for the same candidate twice or more;
  - m. The number of signatures is omitted or wrong;

- n. Notaries public or Commissioners of Deeds failed to properly administer oaths when taking signatures;
  - o. Signatures and/or dates and/or addresses were illegible;
  - p. The Petitions is/are invalid for other grounds which will be established at the hearing of this proceeding.
7. As a result of the foregoing, the Petitions should be invalidated as to the Respondent-Candidate(s).
  8. Petitioner is continuing his/her investigation regarding the validity of the Petitions and requests leave and reserves the right to submit upon the argument and hearing of this application evidence by way of affidavits, testimony and documentary proof to substantiate and support this application.
  9. Petitioner requests leave to serve the accompanying Order to Show Cause and the papers upon which it is granted by methods other than personal service because this proceeding must be commenced within the rigid time limitations set by the Election Law and because, despite diligent effort, it may be impossible to effect personal service upon Respondent-Candidate or before such date, and because granting alternative means of service in Election Law matter is routinely granted.
  10. There has been no previous application for the relief sought herein.
  11. We are moving via Order to Show Cause in light of the imminent deadline for statute of limitations of (DATE).

WHEREFORE, Petitioner respectfully requests that the Court sign the Proposed Order to Show Cause and, after hearing the proceeding herein, grant a judgment in favor of Petitioner:

- I. Invalidating the Designating / Independent Nominating Petitions;
- II. Enjoining Respondent Board of Elections from including the names of Respondent-Candidates on the ballot of the (PRIMARY DATE) \_\_\_\_\_ party primary to nominate candidates for election to the public office / party position of [PUBLIC OFFICE / PARTY POSITION]; and
- III. Granting such other and further relief as this Court may deem just and proper.

Dated: Brooklyn, New York  
\_\_\_\_\_, 20\_\_\_\_

Respectfully submitted,

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*Attorney for Petitioner*  
OBJECTOR / AGGRIEVED CANDIDATE

Gene R. Berardelli

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

Index No. \_\_\_\_\_

In the Matter of the Application of  
OBJECTOR / CANDIDATE-AGGRIEVED,

*Petitioner,*

- against -

CANDIDATE(S)

*Respondent-Candidates,*

- and -

THE BOARD OF ELECTIONS IN THE CITY OF NEW  
YORK

*Respondent,*

For an Order Pursuant to Article 16 of the Election Law to  
declare the invalidity of designating petitions of  
candidates for [PUBLIC OFFICE / PARTY POSITION].

AFFIRMATION OF  
EMERGENCY

ATTORNEY, an attorney duly admitted to practice law in the State of New York affirms the  
following under the penalties of perjury:

1. I am the attorney for Petitioner OBJECTOR / CANDIDATE-AGGRIEVED. I submit  
this affirmation of emergency along with the attached Order to Show Cause.
2. We bring this emergency to the court's attention in order to expedite determining  
this instant matter in light of the imminent statute of limitations of (DATE).
3. In accordance with Rule 202.7, I gave notice to both (general counsel to the NYC  
BOARD OF ELECTIONS) and (attorney for Respondent NYC BOARD OF  
ELECTIONS) that our office would be appearing in Court on (DATE) at (TIME).

Dated: \_\_\_\_\_ Brooklyn, New York

\_\_\_\_\_, 20\_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
*Attorney for Petitioner*  
OBJECTOR / AGGRIEVED CANDIDATE

**VERIFICATION**

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

I, OBJECTOR / CANDIDATE-AGGRIEVED, being duly sworn, depose and say, that the deponent is the Petitioner in the within proceeding; that deponent has read the foregoing Petition and knows the contents thereof; that the same is true to deponents own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters deponent he believes them to be true.

\_\_\_\_\_  
PETITIONER / CANDIDATE-AGGRIEVED

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

\_\_\_\_\_  
NOTARY PUBLIC

*Gene R. Berardelli*

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*Index No.:* \_\_\_\_\_  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

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In the Matter of the Application of  
OBJECTOR / CANDIDATE-AGGRIEVED,

*Petitioner,*

- against -

CANDIDATE(S)

*Respondent-Candidates,*

- and -

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

*Respondent,*

For an Order Pursuant to Article 16 of the Election Law to declare the invalidity of designating petitions of candidates for [PUBLIC OFFICE / PARTY POSITION].

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**ORDER TO SHOW CAUSE AND VERIFIED PETITION**

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\_\_\_\_\_  
*Attorney for Petitioner*  
OBJECTOR / CANDIDATE-AGGRIEVED

---

ATTORNEY'S CERTIFICATION. Upon reasonable inquiry under the circumstances, I certify that the presentation of these papers or contentions therein is made in good faith and is not frivolous.

Dated: \_\_\_\_\_

\_\_\_\_\_

---

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

Index No. \_\_\_\_\_

In the Matter of the Application of  
OBJECTOR / CANDIDATE AGGRIEVED

*Petitioners- Aggrieved Candidates,*

- against -

OBJECTOR / CANDIDATE

*Respondent-Objectors,*

-and –

THE BOARD OF ELECTIONS IN THE CITY OF NEW  
YORK

*Respondent,*

For an Order Pursuant to Article 16 of the Election Law to  
declare the validity of designating petitions of candidates  
for [PUBLIC OFFICE / PARTY POSITION]

VERIFIED ANSWER WITH  
COUNTERCLAIMS

Respondent-Candidate does hereby set forth the following as and for their ANSWER to the  
allegations contained in the Petition:

1. The Respondent-Candidates deny having sufficient knowledge or information upon  
which to form a belief as to those allegations contained in the paragraphs numbered  
\_\_\_\_\_ and \_\_\_\_\_ of the Petition.
2. The Respondent-Candidates deny the allegations contained in paragraphs  
\_\_\_\_\_ and \_\_\_\_\_ of the Petition.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

3. The Petitioner(s) have failed to obtain jurisdiction over the Respondent-Candidate in  
accordance with the Election Law and the CPLR.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

4. The Petitioner(s) have failed to join or name necessary parties in accordance to the  
Election Law and CPLR.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

5. The Petitioner(s) have failed to state a cause of action upon which a claim can be based.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

6. The Petitioner(s) lack standing to commence this proceeding.

**AND AS FOR A COUNTERCLAIM**

7. Respondent-Candidates by their attorney, \_\_, as and for their petition to validate, makes the following allegations:
8. Petitioner at all times mentioned herein is and has been a duly qualified voters of the State of New York and enrolled members of the Republican Party, residing and entitled to vote in the \_\_\_\_\_ Party Primary Election, residing at \_\_\_\_\_ in the County of \_\_\_\_\_, City and State of New York, and appearing as candidates for \_\_\_\_\_.
9. Respondent CANDIDATE AGGRIEVED / OBJECTOR is a person registered to vote residing at \_\_\_\_\_ who challenged Petitioner's petitions filed at Respondent Board of Elections.
10. Respondent Board of Elections in the City of New York (hereinafter "Board of Elections") is constituted pursuant to the N.Y. Election Law and is charged with the responsibility of administering the election for the said party position.
11. Petitioner possesses standing to institute this proceeding pursuant to N.Y. Election Law § 16-102(1) as a candidate aggrieved.
12. Between \_\_\_\_\_ and \_\_\_\_\_, petitions were filed with the Board of Elections purportedly designating Petitioner as a candidate for \_\_\_\_\_ as listed above, in the primary election to be held on September 10, 2013
13. Said petitions were assigned volume identification number \_\_\_\_\_.
14. Upon information and belief, Petitioner is duly qualified for the designation as specified above.
15. Upon information and belief, cover sheets for Petitioner were filed on or about \_\_\_\_\_ in the Office of Respondent Board of Elections.
16. Upon information and belief, on or about \_\_\_\_\_, Respondent CANDIDATE AGGRIEVED / OBJECTOR filed general objections against Petitioner.



17. Upon information and belief, on or about \_\_\_\_\_, Respondent CANDIDATE AGGRIEVED / OBJECTOR filed specifications of objections against Petitioner.
18. Upon information and belief, said Petitions referred to herein was and still are in due and proper form as required by law and contains more than the requisite minimum number of signatures of duly enrolled voters of the Republican Party in the political units for which said designations were made, and the said Petitions are otherwise valid, proper sufficient and legally effective.
19. Upon information and belief, the aforesaid objections and specifications of objections to the designating petitions of Petitioner are or will be insufficient, many of them contained therein are or will be totally without merit or law or fact, and the content, format, and service of said objections and specification of objections did not or will not comply with the requirements set forth in the Election Law or the Rules of the Board of Elections in the City of New York.
20. Petitioner is aggrieved by virtue of the fact that such objections and specifications of objection have been filed, and will be further aggrieved if such objections and specifications of objections are sustained by Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK.
21. Upon information and belief, Petitioner believes that it is possible for Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK may make erroneous determinations of the several questions of law and fact raised by said objections and specifications of objections to Petitioner's designating petitions, which would, according to law and the principles of equity, be reviewed by the Court.
22. As a result of the foregoing, Petitioner's designating Petitions should be validated as to each and every respective Petitioner.
23. Petitioner is continuing their investigation regarding the validity of the County Committee Petitions and requests leave and reserves the right to submit upon the argument and hearing of this application evidence by way of affidavits, testimony and documentary proof to substantiate and support this application.
24. Petitioner requests leave to serve the accompanying Order to Show Cause and the papers upon which it is granted by methods other than personal service because this proceeding must be commenced within the rigid time limitations set by the Election Law and because, despite diligent effort, it may be impossible to effect personal service upon each and every Respondent or before such date, and because granting alternative means of service in Election Law matter is routinely granted.

25. There has been no previous application for the relief sought herein.

WHEREFORE, Respondent-Candidate respectfully requests that the Court sign the Proposed Order to Show Cause and, after hearing the proceeding herein, grant a judgment in favor of Petitioners:

- I. Denying the Petition in its entirety as to Respondent-Candidates;
- II. Declaring valid, proper, sufficient and legally effective the designating petitions filed in the Office of Respondent Board of Elections in the City of New York designating Respondent-Candidate as candidate(s) for nomination for election for the Public Officer / Party Position of (PUBLIC OFFICE / PARTY POSITION) as set forth herein;
- III. Directing, requiring and commanding Respondent Board of Elections in the City of New York to print and place the names of the Respondent-Candidates on the ballots to be used at such respective primary election; and
- IV. Enjoining and restraining Respondent Board of Elections in the City of New York from printing, issuing or distributing for use during said Primary Election any and all official ballots used in the 46th Assembly District, upon which Respondent-Candidates do not appear as candidates for Party Position of Member of Republican County Committee for various Election Districts in the 43rd Assembly District, Kings County as set forth herein; and
- V. Such other and further relief as the Court deems necessary;

Dated: Brooklyn, New York

July 26, 2013

Respectfully submitted,

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*Attorney for Respondents*

TO:  
Attorney for Petitioners-Agrieved Candidates

**ATTORNEY'S VERIFICATION**

GENE R. BERARDELLI, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney for Respondent-Candidates in the action within. I have read the annexed Verified Answer with Counterclaims and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

This verification is made by me because Petitioners are not presently in the county wherein I maintain my offices.

DATED:       New York, New York  
              July 26, 2013

*Gene R. Berardelli*

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*Index No. : 700002/2013*  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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In the Matter of the Application of  
OBJECTOR / CANDIDATE AGGRIEVED

*Petitioners- Aggrieved Candidates,*

- against -

OBJECTOR / CANDIDATE

*Respondent-Objectors,*

-and -

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

*Respondent,*

For an Order Pursuant to Article 16 of the Election Law to declare the validity of  
designating petitions of candidates for [PUBLIC OFFICE / PARTY POSITION]

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**VERIFIED ANSWER WITH COUNTERCLAIMS**

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*R. Bernardelli*  
\_\_\_\_\_  
*Attorney for Respondents*  
(RESPONDENT-CANDIDATES)

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ATTORNEY'S CERTIFICATION. Upon reasonable inquiry under the circumstances, I  
certify that the presentation of these papers or contentions therein is made in good faith  
and is not frivolous.

Dated:

\_\_\_\_\_

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At an IAS Term, Special Elections Part of the Supreme Court of the State of New York, held in and for the County of \_\_\_\_\_, at the Courthouse at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2013

PRESENT: \_\_\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Index No. \_\_\_\_\_

In the Matter of the Application of

CANDIDATE

*Petitioners,*

ORDER TO SHOW CAUSE

- against -

CANDIDATE AGGRIEVED / OBJECTOR,

*Respondent,*

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

*Respondent,*

For an Order Pursuant to Article 16 of the Election Law to declare the validity of designating petitions of candidates for \_\_\_\_\_

Upon reading the annexed Petition of Gene Berardelli, Esq. on behalf of Petitioners CANDIDATE verified on the \_\_\_\_\_ day of \_\_\_\_\_, the annexed exhibits, and upon the original petitions purporting to designate each respective Respondent-Candidate herein as candidates in the September 10, 2013 Republican Primary for the Party Position of Member of Republican County Committee for various Election Districts in the 45th Assembly District, Kings County as listed below,

LET Respondent show cause before this Court, Special Elections Proceedings Part at a motion term thereof, to be held at Kings County Supreme Court, 360 Adams Street, Room 541, Brooklyn, New York 11201 on the \_\_\_\_\_ day of July 2013, at \_\_\_\_\_ o'clock in the \_\_\_\_\_noon thereof, or as soon thereafter as counsel can be heard why an Order should not be granted:

1. Declaring valid, proper, sufficient and legally effective the designating petitions filed in the Office of Respondent Board of Elections in the City of New York designating

Petitioner as a candidate for nomination for election for \_\_\_\_\_ as set forth herein;

2. Directing, requiring and commanding Respondent Board of Elections in the City of New York to print and place the name of the above-mentioned Petitioner on the ballots to be used at such respective primary election; and
3. Enjoining and restraining Respondent Board of Elections in the City of New York from printing, issuing or distributing for use during said Primary Election any and all official ballots used in \_\_\_\_\_ District, upon which the name of Petitioner do not appear as candidates for \_\_\_\_\_ as set forth herein; and
4. Such other and further relief as the Court deems necessary;

SUFFICIENT CAUSE BEING SHOWN, it is

ORDERED, that Respondent Board of Elections, in accordance with Section 3-220 (6) of the New York State Election Law and the duly adopted Rules of the Board of Elections in the City of New York, shall make available at the office of the Board where such records are maintained in the ordinary course of business during normal business hours, the aforesaid designating/independent nominating petition, cover sheet, and any amended cover sheet(s), identification number application form(s), and any other documents in support of or related to designation and/or nomination of the Candidate; together with the Objections and Specifications of Objections relating to the aforesaid petition; any written notification of a determination of non-compliance together with proof of service upon the Candidate; any writing purporting to cure or correct said determination of non-compliance as well as the determination of said Board on any Specifications of Objections. Any party seeking copies of the aforesaid documents shall, upon payment of the applicable fee as established by law and/or regulation, receive the same in the ordinary course of business; and it is further

ORDERED that all specification of objections not previously served and filed with Respondent Board of Election in the City of New York shall be served upon the Respondents and filed with the Clerk of this Part on or before the return date herein; failure of which to serve and file same shall be deemed a waiver and further proof shall be precluded; and it is

ORDERED, that leave is hereby granted to Petitioner to submit upon the return date of this Order to Show Cause and the argument hereof such additional evidence, exhibits and other proof as may be necessary;

NOW, LET service of a copy of this Order together with the papers upon which it has been granted be made on each respective Respondent-Candidate either by:

5. By depositing a copy of this Order together with the papers upon into a sealed envelope and placing it in into the care of custody of the United States Postal Service with sufficient postage and mailing the same via First Class Mail with Certificate of Mailing and on or before \_\_\_\_\_; or
6. Personal delivery of a copy of this Order together with the papers upon which it has been granted to each Respondent-Candidate on or before \_\_\_\_\_; or
7. Personal delivery of a copy of this Order together with the papers upon which it has been granted to a person of suitable age and discretion at the respective residences of each Respondent-Candidate as set forth in the designating petition filed on his/her behalf, and by enclosing the same in a securely sealed and duly postpaid wrapper addressed to each respective Respondent-Candidate at such address, and depositing the same in a Post Office branch regularly maintained by the United States Postal Service in the City of New York, mailing the same via first-class mail and obtaining a postmarked Certificate of Mailing on or before \_\_\_\_\_; or
8. Affixing a copy this Order together with the papers upon which it has been granted to the outer or other door of the residence of each respective Respondent Candidate set forth in the designating petition filed on his/her behalf, and by enclosing the same in a securely sealed and duly postpaid wrapper addressed to each respective Respondent-Candidate at such address, and depositing the same in a Post Office branch regularly maintained by the United States Postal Service in the City of New York, mailing the same via first-class mail and obtaining a postmarked Certificate of Mailing on or before \_\_\_\_\_;

shall be timely and sufficient.

ENTERED :

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J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Index No. \_\_\_\_\_

In the Matter of the Application of

CANDIDATE

*Petitioners,*

- against -

CANDIDATE AGGRIEVED / OBJECTOR,

*Respondent,*

THE BOARD OF ELECTIONS IN THE CITY OF NEW  
YORK

*Respondent,*

For an Order Pursuant to Article 16 of the Election Law to  
declare the validity of designating petitions of candidates  
for \_\_\_\_\_

VERIFIED PETITION TO  
VALIDATE

Petitioners CANDIDATE, by their attorney, GENE R. BERARDELLI, as and for his  
petition to invalidate, makes the following allegations:

12. Petitioner at all times mentioned herein is and has been a duly qualified voters of the  
State of New York and enrolled members of the Republican Party, residing and  
entitled to vote in the \_\_\_\_\_ Party Primary  
Election, residing at \_\_\_\_\_ in the County of \_\_\_\_\_, City and  
State of New York, and appearing as candidates for  
\_\_\_\_\_.
13. Respondent CANDIDATE AGGRIEVED / OBJECTOR is a person registered to vote  
residing at \_\_\_\_\_ who challenged Petitioner's  
petitions filed at Respondent Board of Elections.
14. Respondent Board of Elections in the City of New York (hereinafter "Board of  
Elections") is constituted pursuant to the N.Y. Election Law and is charged with the  
responsibility of administering the election for the said party position.
15. Petitioner possesses standing to institute this proceeding pursuant to N.Y. Election  
Law § 16-102(1) as a candidate aggrieved.



16. Between \_\_\_\_\_ and \_\_\_\_\_, petitions were filed with the Board of Elections purportedly designating Petitioner as a candidate for \_\_\_\_\_ as listed above, in the primary election to be held on September 10, 2013
17. Said petitions were assigned volume identification number \_\_\_\_\_.
18. Upon information and belief, Petitioner is duly qualified for the designation as specified above.
19. Upon information and belief, cover sheets for Petitioner were filed on or about \_\_\_\_\_ in the Office of Respondent Board of Elections.
20. Upon information and belief, on or about \_\_\_\_\_, Respondent CANDIDATE AGGRIEVED / OBJECTOR filed general objections against Petitioner.
21. Upon information and belief, on or about \_\_\_\_\_, Respondent CANDIDATE AGGRIEVED / OBJECTOR filed specifications of objections against Petitioner.
22. Upon information and belief, said Petitions referred to herein was and still are in due and proper form as required by law and contains more than the requisite minimum number of signatures of duly enrolled voters of the Republican Party in the political units for which said designations were made, and the said Petitions are otherwise valid, proper sufficient and legally effective.
23. Upon information and belief, the aforesaid objections and specifications of objections to the designating petitions of Petitioner are or will be insufficient, many of them contained therein are or will be totally without merit or law or fact, and the content, format, and service of said objections and specification of objections did not or will not comply with the requirements set forth in the Election Law or the Rules of the Board of Elections in the City of New York.
24. Petitioner is aggrieved by virtue of the fact that such objections and specifications of objection have been filed, and will be further aggrieved if such objections and specifications of objections are sustained by Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK.
25. Upon information and belief, Petitioner believes that it is possible for Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK may make erroneous determinations of the several questions of law and fact raised by said objections and

specifications of objections to Petitioner's designating petitions, which would, according to law and the principles of equity, be reviewed by the Court.

26. As a result of the foregoing, Petitioner's designating Petitions should be validated as to each and every respective Petitioner.
27. Petitioner is continuing their investigation regarding the validity of the County Committee Petitions and requests leave and reserves the right to submit upon the argument and hearing of this application evidence by way of affidavits, testimony and documentary proof to substantiate and support this application.
28. Petitioner requests leave to serve the accompanying Order to Show Cause and the papers upon which it is granted by methods other than personal service because this proceeding must be commenced within the rigid time limitations set by the Election Law and because, despite diligent effort, it may be impossible to effect personal service upon each and every Respondent or before such date, and because granting alternative means of service in Election Law matter is routinely granted.
29. There has been no previous application for the relief sought herein.

WHEREFORE, Petitioner respectfully requests that the Court sign the Proposed Order to Show Cause and, after hearing the proceeding herein, grant a judgment in favor of Petitioners:

- VI. Declaring valid, proper, sufficient and legally effective the designating petitions filed in the Office of Respondent Board of Elections in the City of New York designating Petitioners as candidate for nomination for election for the \_\_\_\_\_ as set forth herein;
- VII. Directing, requiring and commanding Respondent Board of Elections in the City of New York to print and place the names of the above-mentioned Petitioners on the ballots to be used at such respective primary election; and
- VIII. Enjoining and restraining Respondent Board of Elections in the City of New York from printing, issuing or distributing for use during said Primary Election any and all official ballots used in the 43<sup>rd</sup> Assembly District, upon which the names of each and every Petitioner do not appear

as candidates for Party Position of Member of Republican County Committee for various Election Districts in the 43rd Assembly District, Kings County as set forth herein; and

IX. Such other and further relief as the Court deems necessary;

Dated: Brooklyn, New York

July \_\_\_\_\_, 2013

Respectfully submitted,

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GENE BERARDELLI, ESQ.  
*Attorney for Petitioner*

*Gene R. Berardelli*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Index No. \_\_\_\_\_

In the Matter of the Application of

CANDIDATE

*Petitioners,*

- against -

CANDIDATE AGGRIEVED / OBJECTOR,

*Respondent,*

THE BOARD OF ELECTIONS IN THE CITY OF NEW  
YORK

*Respondent,*

For an Order Pursuant to Article 16 of the Election Law to  
declare the validity of designating petitions of candidates  
for \_\_\_\_\_

AFFIRMATION OF  
EMERGENCY

ATTORNEY, an attorney duly admitted to practice law in the State of New York affirms the following under the penalties of perjury:

4. I am the attorney for Petitioners. I submit this affirmation of emergency along with the attached Order to Show Cause.
5. We bring this emergency to the court's attention in order to expedite determining this instant matter in light of the imminent statute of limitations of July 25, 2013.
6. In accordance with Rule 202.7, I gave notice to both general counsel to the NYC BOARD OF ELECTIONS and attorney for Respondent NYC BOARD OF ELECTIONS that our office would be appearing in Court on July 24, 2013 at 2:15 PM.

Dated: Brooklyn, New York  
July \_\_\_\_\_, 2013

Respectfully submitted,

\_\_\_\_\_  
GENE BERARDELLI, ESQ.  
*Attorney for Petitioner*

**ATTORNEY'S VERIFICATION**

GENE R. BERARDELLI, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney for Petitioners in the action within. I have read the annexed Verified Petition and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

This verification is made by me because Petitioners are not presently in the county wherein I maintain my offices.

DATED: New York, New York

July 23, 2013

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GENE R. BERARDELLI

*Gene R. Berardelli*

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*Index No.:* \_\_\_\_\_  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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In the Matter of the Application of

CANDIDATE

*Petitioners,*

- against -

CANDIDATE AGGRIEVED / OBJECTOR,

*Respondent,*

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

*Respondent,*

For an Order Pursuant to Article 16 of the Election Law to declare the validity of designating petitions of candidates for \_\_\_\_\_

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**ORDER TO SHOW CAUSE AND VERIFIED PETITION**

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GENE R. BERARDELLI, ESQ.  
*Attorney for Petitioner*  
CANDIDATE  
299 Broadway, 17th Floor  
New York, New York 10007  
(347) 301-6143

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ATTORNEY'S CERTIFICATION. Upon reasonable inquiry under the circumstances, I certify that the presentation of these papers or contentions therein is made in good faith and is not frivolous.

Dated: October 21, 2013

*Gene Berardelli*

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Gene Berardelli, Esq.

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