ELECTION LAW UPDATE 2021

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designating petition form does not render the petition invalid *(Collins v New York State Board of Elections,* 120 AD3d 882 [3d Dept 2014]).

Number of Signatures Needed

Election Law § 6-136 (designating petitions) and Election Law § 6-142 (independent nominating petitions) provide signature requirements for petitions.

The calculation of 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 AD2d 454 [2d Dept 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 F3d 1262 (2d Cir 2000), *citing Prestia v O'Connor*, 178 F3d 86, 87 [2d Cir 1999]).

The Fourth Department concluded in *Vescera v Stewart* (120 AD3d 990 [2014]) that citywide signature requirements apply to the office of "Member at Large of Common Council" as opposed to the "all the voters of…a councilmanic district" signature requirement.

Vescera also held the statutory provision preventing a smaller political subdivision from having a larger signature requirement than a larger political subdivision of which the smaller is a portion "has no application to public offices in political subdivisions for which a specific provision exists elsewhere in the statute." The court held:

> Election Law § 6-136 (2) (j) provides that the number of signatures required "[f]or any office to be filled by all the voters of any political subdivision, except as herein otherwise provided, contained within another political subdivision, [need] not . . . exceed the number of signatures required for the larger subdivision." Petitioners therefore contend that their designating petitions require only 500 signatures because the City of Utica is wholly within a single assembly district (*see* Election Law § 6-136 [2] [i]). We agree with the court, however, that the phrase "except as herein otherwise provided" modifies "any political subdivision," such that section 6-136 (2) (j) has no application to public offices in political subdivisions for which a specific provision exists elsewhere in the statute *(see generally Matter of Buffalo Columbus Hosp. v Axelrod,* 165 AD2d 605, 608 [1991]). Because section 6-136 (2) (e) applies to citywide public

> offices in the City of Utica, section 6-136 (2) (j) does not apply. The applicable signature requirement is therefore the lesser of 1,000 or five percent of the number of enrolled Democrats in the City of Utica. Here, the five percent figure, i.e., 708, is the lesser number, and the court properly determined that the designating petitions are invalid on the ground that they do not contain at least 708 valid signatures.

(*Vescera* at 991)

Invalidity of a Single Signature

The invalidity of a single signature, or a number of signatures, in the absence of fraud does not render the entire page invalid (*Matter of Kent v Bass*, 83 AD3d 898 [2d Dept 1981], *aff'd* 54 NY2d 776 [1981]; *DiSanzo v Addabo*, 76 AD3d 665 [2d Dept, 2010]).

No Requirement that Signatures Be Sequential

There is no requirement that signatures on a designating or independent nominating petition be in sequential date order (*see* Election Law § 6-134;*Matter of Kent v Bass*, 83 AD2d 898 [2d Dept 1981]; *Molloy v Scaringe*, 153 AD2d 78 [3d Dept. 1989]).

Cover Sheets

If a petition required a cover sheet under Election Law § 6-134 and 9 NYCRR § 6215.1 and none was filed, the failure to have filed a cover sheet during the filing period is not curable under 9 NYCRR § 6215.7 (*Matter of Armwood v McCloy*, 109 AD3d 558 [2d Dept 2013], lv denied 21 NY3d 861 [2013]). The Court of Appeals has held that filing a cover sheet is a strict requirement under the Election Law, and that failure to do so is a fatal defect. (*Seawright v Bd. of Elections in City of New York*, 35 NY 3d 227 [2020].

If a cover sheet is filed with the petition, and 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 petition cover sheet requirements (*Siems v Lite*, 307 AD2d 1016 [2d Dept 2003]; *see also Magelaner v Park*, 32 AD3d 487 [2d Dept 2006). Cover sheet requirements are set forth in Election Law § 6-134, which delegates to the State Board of Elections the duty of promulgating regulations on cover sheets. The State Board has promulgated those regulations at 9 NYCRR § 6215. A board of elections must review the petitions within two business days to determine compliance with the cover sheet requirements (Id. at § 6215.7[a]). A candidate must be

notified (id. at § 6215.7[b]) and given the opportunity to cure any defects in a cover sheet within three business days (Id. at § 6215.7[d]; *Pearse v New York City Board of Elections*, 10 AD3d 461 [1st Dept 2004]).

In *Saunders v Egriu*, a candidate filed a three-volume designating petition; one volume was related to being designated as a candidate for the Libertarian Party, and the other two volumes were related to being designated as a candidate for the Democratic Party. (*Saunders v Egriu*, 183 AD3d 1292 [4th Dept 2020], *lv to appeal denied*, 35 NY 905 [2020]). The candidate attempted to amend his cover sheets during the cure period but after the filing period in an attempt to split up the designating petition volumes, making one volume a separate designating petition for the Libertarian Party, and the other two volumes a separate designating petition for the Democratic Party. The Court found that the candidate could not amend the cover sheets after the filing period to create separate petitions. The court reasoned that the cover sheets may confuse potential objectors who may rely on the first cover sheet, which stated the designating petition was just for the Libertarian Party designation.

Even if never cured, minor cover sheet problems are often considered unsubstantial and not fatal. For example, an error in the spelling of a candidate's name on a cover sheet even when not timely cured was deemed not fatal to the petition absent evidence of fraud or deception. (*Terranova v Board of Elections in City of New York*, NY Slip Op 50509 [Supt Ct May 4, 2020]).

Page Numbers

The pages of a petition shall be numbered (Election Law § 6-134 [2]). While the failure to number the sheets of a petition will invalidate the petition (*Braxton v Mahoney,* 63 NY2d 691 [1984]), this defect is curable (*Matter of Zulauf v Martin*, 131 AD3d 656 [2d Dept 2015]; Election Law § 6-134 [2]; 9 NYCRR § 6215.7 [d]).

Prior to 2015, there was a split in the appellate divisions. The Second Department held in 1997 that no cure was permitted for a failure to number pages, and the longstanding rule of strict compliance with the page numbering requirement was upheld (*Jaffe v Visconti,* 242 AD2d 345 [2d Dept 1997], *lv denied* 90 NY2d 805 [1997]). In contrast, the Third and Fourth Departments took 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 AD2d 688 [4th Dept 1998], *lv denied* 92 NY2d 806 [1998]). The Third Department citing the *May* decision of the Fourth Department allowed the three-day cure provision of the election law to apply even when the page numbers were omitted (*Bonnett v Miner*, 275 AD2d 585 [3d Dept 2000]). In *Zulauf*, the Second Department recast its holding in *Jaffe* and now aligns to the Third and Fourth Department holdings (*Zulauf* at 656 [holding "[t]he addition of the three-day cure provision as part of the Ballot Access Law of 1996…has enabled candidates to correct technical errors, including the omission of page numbers" within the applicable period]).

Preamble

Date of election on petition must be stated accurately and correctly (*Sternberg v Hill*, 269 AD2d 730 [3d Dept 2000]; *Purtell v Kuczek,* 129 Misc2d 166 [Sup Ct Montgomery County 1985] *aff'd* 112 AD2d 1092; *O'Connor v Salerno,* 105 AD2d 487 [3d Dept 1984]; *Petroffski v Carinci*, 2021 NY Slip Op 31401 [Sup Ct Madison April 19, 2021]).

Committee to Fill Vacancies

The failure to list a committee to fill vacancies shall not be a fatal defect (Election Law § 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 AD2d 798 [2d Dept 1993], *lv denied* 82 NY2d 656 [1993]).

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 AD2d 650 [3d Dept 1994], *lv denied* 84 NY2d 802 [1994]). However, if a vacancy occurs, there is no committee to act. 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 NY 818 [1954]). But if it only has one eligible member, it is the functional equivalent of no committee (*Markel v Smolinski,* 89 AD2d 1052 [4th Dept1982], *aff'd* 57 NY2d 743 [1982]; *see also Hensley v Efman*, 192 Misc2d 782 [Sup Ct Nassau County 2002] [death of one of the three members of vacancy committee, prior to the filing of the petition invalidated the actions of the remaining members of the committee in filling a vacancy in a nomination]).

A candidate may be a member of the committee on vacancies (*Brandshaft v Coveney,* 96 AD2d 914 [2d Dept 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 NY2d 450 [1994]).

Candidate on Petition

Qualifications for Office

Boards must assume that the candidate meets constitutional and statutory qualification requirements. *Application of Lindgren*, 232 NY 59 (1921). Nomination of a candidate who is constitutionally and statutorily ineligible to serve is a nullity (*Brayman v Stevens*, 54 Misc2d 974 [Sup Ct Dutchess County 1967] *aff'd* 28 AD2d 1095; Election Law § 6-122). A candidate for City Council who does not meet the one year residency

requirement in the new district, even in a redistricting year, is ineligible for the office and his/her petition may be invalidated by the county board (*Matter of Adamczyk v Mohr*, 87 AD3d 833 [4th Dept 2011]; *see also Matter of Walsh v Katz*, 17 NY3d 336 [2011]; *Matter of Revera v Erie County Bd. of Elections*, 164 AD2d 976 [4th Dept 1990], *lv denied* 76 NY2d 705 [1990]; *Reid v Richards*, 89 AD2d 939 [1st Dept 1982]). Because the law of residency for voters and candidates is substantially the same, see section on Residency herein.

Running for Judicial Office

County Board faced with inquiries as to qualifications for judicial office and restrictions unique to judicial campaigns would be wise to refer such issues to the Office of Court Administration's Judicial Campaign Ethics Center: http://ww2.nycourts.gov/ip/jcec.

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 AD2d 455 [2d Dept 1999] *citing Burns v Wiltse*, 303 NY 319 [1951]. This prohibition does not preclude a candidate for judicial delegate from supporting the Supreme Court nomination of a person presently running for another judicial office (*Conti v Clyne*, 120 AD3d 884 [3d Dept 2014]). Also, a candidate running for one office who then owing to a later vacancy is nominated for another office does not violate the rule against seeking incompatible offices. (*Philips v Suffolk County Bd of Elections*, 21 AD 3d 509 [2nd Dept 2005]; *Matter of Scaringe v Green*, 2021 NY Slip Op 21114 [Sup Ct Albany April 21, 2021]).

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 over-designated petition cannot be saved by having the extra candidates decline (*Elgin v Smith*, 10 AD3d 483 [4th Dept 2004]).

Voter Registration of the Candidate

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

Enrollment and Authorization of the Candidate

If the candidate for office is not enrolled in the political party whose nomination the candidate seeks, such candidate must be authorized by such party to be the party's candidate—unless the candidate is running for judicial office, is nominated by caucus or a party in its first year (Election Law § 6-120 [4]; *Dorfman v Meisser,* 56 Misc2d 890 [Sup Ct Nassau County 1968], *aff'd* 30 AD2d 684, *aff'd* 22 NY2d 770). Failure to file the required certificate of authorization and acceptance of a non-party member invalidates the underlying designating petition (*Maurer v Monescalchi*, 264 AD2d 542 [3d Dept 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 [WDNY 2001] [unreported]). Once a certificate of authorization is issued, there is no legal mechanism for a committee, or chairperson, to withdraw the certificate of authorization. (*Lupenko v. Epstein*, Sup Ct, Albany County, April 27, 2020, Hartman, D, Index No. 3452-20).

The certificate of authorization can be submitted such that the signature of the secretary and presiding officer appear on two separate documents filed on two separate dates (*Farrell v Reid*, 131 AD3d 628 [2d Dept 2015]).

Unlike petitions, authorizations and acceptances are not invalidated because they fail to state the date of the election to which they relate because the statutory provisions governing authorizations and acceptances do "not specifically prescribe that the date of the primary election be specified in the certificate…" (*Kowal v Bargnesi*, 2021 NY Slip Op 3014 [4th Dept May 11, 2021]).

Candidate's Identifying Information

Candidate must be identifiable from information provided. The law requires candidate's name, the specific office being sought, including district number if any, place of residence, and post office address if not identical (Election Law §§ 6-132 (designating); 6-140 (independent); *see also Ferris v Sadowski,* 45 NY2d 815 [1978]).

Name

The name that a candidate uses on his or her petition is the name that will appear on the ballot (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 or she is recognized in the community (*In re Steel,* 186 Misc 98 (Sup Ct New York County 1946), *aff'd* 270 AD 806 [1946]). The use of a nickname such as "Tom" for Thomas, "Jack" for John may be used on petition (*Gumbs v Board of Elections*, 143 AD2d 235 [2d Dept 1988]), *lv denied* 72 NY2d 805; *see also Innamorato v Friscia*, 2007 NY Misc Lexis 457 [Sup Ct Richmond County] ["Manny" for Emanuel]); *Eisenberg v Strasser*, 100 NY2d 590 [2003] ["Tony Eisenberg" for Anatoly Eyzenberg]). A candidate registered to vote

as “Meherunnisa” was permitted to use the name “Mary” on her petition having established “that she held herself out both professionally and personally as ‘Mary’ and that no intent existed to mislead signatories.” (*Jobaida v Board of Elections in City of New York*, Slip Op 50514 [NY Sup Ct May 4, 2020]). Atqiya Ahmed petitioned as “Mourmita” Ahmed, and the court held the petition valid. (*Ahmed v Board of Elections in the City of New York*, 2020 NY Slip Op 50515 [NY Sup Ct May 4, 2020].

When a candidate uses a form of their name that differs from their registration name, they are advised to inform the board of elections by letter to avoid any difficulty determining the candidate’s registration identify which determines acceptance (Election Law 6-146) and authorization (Election Law 6-120) requirements.

While the law affords flexibility as to the candidate’s name, the law is rigid that a “name” for ballot purposes does not include titles or descriptors. “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 AD2d 568 [3d Dept 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 AD2d 551 [2d Dept 1988]), *lv denied* 72 NY2d 810 [1988]). 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 AD2d 1015 [2d Dept 2003]).

Residence and Address of Candidate

Each sheet of petition must properly state the place of residence (*Winn v Washington County Board of Elections,* 196 AD2d 674 [3d Dept 1993], *lv denied*, 82 NY2d 654 [1993]). The address information must be sufficient to identify the candidate without misleading or confusing the signatories to the petition (*Eisenberg v Strasser*, 307 AD2d 1053 [2d Dept 2003]). Candidate must reside at address shown on petition (*Finneran v Hayduk,* 64 AD2d 937 [2d Dept 1978], *aff’d*. 45 NY2d 797 [1978]; *Bastone v Cocco*, 270 AD2d 950 [3d Dept 1996], *lv denied* 88 NY2d 971; *Brigandi v Barasch,* 144 AD2d 177 [3d Dept 1988], *lv denied* 72 NY2d 810; *see also Walkes v Farrakhan*, 286 AD2d 464 [2d Dept 2001]). While courts are forgiving of incorrect addresses where candidates move proximate to petitioning (*Matter of Ferris v Sadowski*, 45 NY2d 815 [1978]), evidence adduced at trial that a candidate moved from the address listed on his designating petition months prior to the petition’s circulation resulted in petition’s invalidation (*Matter of Marchionda v Casella*, 153 AD3d 1133 [4th Dept 2017]). The Appellate Division upheld candidate’s residence stated on petition when the candidate was actively renovating the property at the address on the petition and had signed a temporary lease elsewhere also located in the district (*Matter of McNiel v Martin,* 172 AD3d 1940 [4th Dept 2019]). The First Department has held that when a designating

petition omits a candidate's city, state, and/or zip code, it is not fatal defect as it substantially complied with the Election Law. (*Merber v. Board of Elections*, 172 A.D.3d 624 [1st Dep't 2019]). Notwithstanding the *Merber* decision, candidates should ensure that their address on the petition is complete and accurate.

Title of Office or Position

"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 AD2d 457, 457-458 [3d Dept 2002] citing Election Law § 6-132 [1]; *Dunlea v New York State Board of Elections*, 275 AD2d 589, 590 [3d Dept 2000]; *Parker v Savago*, 143 AD2d 439, 441 [3d Dept 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 AD2d 569 [3d Dept 1998]), *lv denied* 92 NY2d 806 [citations omitted]; s*ee also Shaffer v Norris*, 275 AD2d 881 [4th Dept 2000] and). Title of office need not be exact but must be identifiable (*Jacobson v Schermerhorn,* 104 AD2d 534 [3d Dept 1984]); *Denn v Mahoney,* 64 AD2d 1007 [4th Dept 1978]). The petition as a whole may be read to determine the town of the office sought (*Cerreto v Sunderland*, 307 AD2d 1004 [2d Dept 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 AD2d 589 [3d Dept 2000]; *see also Ighile v The Board of Elections in the City of New York,* 66 AD3d 899 [2d Dept 2009]). A description that only describes a geographic region is generally insufficient (*see Matter of Hayes v New York State Bd. of Elections*, 32 AD3d 660 [2006] [describing office as "127th Assembly District"]; *Matter of Bliss v Nobles*, 297 AD2d 457, 458 [2002] [describing office as "Assembly District 115"]*; Matter of Denn v Mahoney*, 64 AD2d 1007, 1008 [1978] [describing office as "147 Assembly District"]). However, the description "New York State Assembly—122nd District" was ruled to be sufficiently informative for a candidate seeking the office of Assembly member in the 122nd district as the term "New York State Assembly" adequately describes the office, and 122nd district describes the region (*Hicks v Walsh*, 76 AD3d 773 [3d Dept 2010]; *see also Williams v Fisher*, 183 AD3d 675 [2d Dept 2020] [holding that the description "New York State Assembly, District 92" adequately describes the office of New York State Assembly member of the 92nd district]).

In *Knpic v Burr*, a Court held that an office description was sufficient when a designating petition for a judicial delegate accurately reflected the office and geographic location but stated the wrong year (stating in the office description that the convention was in 2016 instead of 2020), finding that the incorrect year in the office description would be unlikely to cause confusion to the signers. (Index Np. 89223/2020

(Cattaraugus Supreme Court, 2020)(petition invalidated on other grounds)).

Because the Town Law includes both town supervisor and member of the town council in its definition of the "town board" (Town Law § 60 [1]), the Second Department held the description of a public office as "Town Board, Town of East Hampton" was insufficient as a matter of law because a signer would not know whether the candidate was seeking position of member of town council or supervisor (*Bragman v Larsen*, 153 AD3d 813 [2d Dept 2017).

Despite courts being forgiving in this area, departing from the statutory language on the petition presents peril—as the respondents learned in *Matter of Roberta James v. Westchester BOE*, 53 Misc.3d 423 [Sup Ct, Westchester 2016]). In *James* a petition for party committee did not include the phrase "or for election to a party position of such party" in the preamble. Instead of using the heading "Public Office or Party Position", the petition erroneously stated only "Public Office." The court invalidated the petition for party office because it did not specify it was a petition for party office. The *James* court noted the form failure gave rise to even more confusion because the petition also identified the position sought as "District Leader" instead of "member of the county committee", the latter being the party office title provided in the rules of the party. *Id.*

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 (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 AD3d 660 [3d Dept 2006] citing *Matter of Dipple v Devine*, 218 AD2d 918, 918-919, [3d Dept 1995], *lv denied* 86 NY2d 704 [1995]; *see also Sears v Kimmel*, 76 AD3d 1113 [3d Dept 2010]; *Notholt v Nassau County Board of Elections*, 131 AD3d 641 [2d Dept 2015] [for member of county committee listing only Assembly District and Election District number insufficient when more than one town in the Assembly District had the same Election District numbers). However, when the description of a petition for a Member of the Assembly was "Member of New York State 145th Assembly District", the word "member" adequately described the position being sought (*Zacher v Ceretto*, Sup Ct, Albany County, August 4, 2016, O'Connor, K, Index No. 4355/16). Owing to no possibility of confusion, description of office as "15th District Nassau County Legislature," instead of the correct nomenclature "Legislator," was found sufficient (*Matter of Fochtman v Coll*, 153 AD3d 1214 [2d Dept 2017]).

For a party position divided by gender (i.e. Member of State Committee – Female / Male), the gender specification for the position must be expressly stated. The gender of the particular position cannot be inferred from the name of the candidate (*Mintz v Board of Elections in City of New York*, 32 NY3d 1054 [2018]).

Signer of Petition

The Election Law requires date, name of signer, residence, and town or city for each signer (Election Law §§ 6-130, 6-132 [designating]); 6-138, 6-140 [independent]; *see also, Berger v Acito,* 64 AD2d 949 [3d Dept 1978], *lv denied* 45 NY2d 707 [1978]). All required information must be provided in ink (*In re. Bialis*, 92 NYS2d 450 [County Ct, Oneida County 1949] [otherwise fatal defect for that signature]). "Strict compliance with Election Law § 6-130 is mandated, as its requirements constitute 'a matter of substance and not of form' [internal citation omitted]" (*Canary v New York State Board of Elections*, 131 AD3d 792 [3d Dept 2015]).

Date

The signature on a petition must bear the date it was made (*De Barardinis v Sunderland*, 277 AD2d 187 [2d Dept 2000]). The date is a matter of prescribed content, strict compliance is required (*Vassos v New York City Board of Elections*, 286 AD2d 463 [2d Dept 2001]). Signatures dated after date of witness statement cannot be counted (*Velez v Nienes*, 164 AD2d 931 [2d Dept 1990] [dated before witness valid]); *McNulty v NcNab*, 96 AD2d 921 [2d Dept 1983] [dated after witness invalid]; Election Law §§ 6-130, 6-138(2); *Nunley v Cohen,* 258 AD 746 [2d Dept 1939]).

When the petition signature dates include the month and day, but not the year, the signatures are invalid as they do not strictly conform to statute. (*Avella v. Johnson*, 142 AD3d 1111 [2d Dept 2016].) However, signatures that only have the month and day, but not year, may be valid if the petition "sets forth at the top of each page the full date of the primary election and it also includes at the bottom of each page the full date that the subscribing witness or the notary public signed and authenticated the signatures." (*Id*. at 1112; *Matter of Struble v Chiavaroli,* (71 AD2d 1047 [1979], *aff'd* 48 NY2d 613 [1979]).

Name

A voter must place his or her signature on the petition. A printed name may appear above or below the signature. Not including a printed name in addition to the signature is not a fatal defect (Election Law § 6-134 [13]).

The form of the signature may be printed letters as opposed to cursive script. (*Controneo v Monroe County Board of Elections,* 166 Misc2d 63 [Sup Ct Monroe County 1995]). However, a "signature" upon a petition that is printed will likely be invalid if the signature exemplar on file with the board of election is not also in "printed" characters.

In *LaMarca v. Quirk* (110 AD3d 808 [2d Dept 2013]), the court held "printed" signatures on a petition that did not match the registration signature were not valid

absent evidence from the signatories or from any of the subscribing witnesses attesting that the individuals who signed the registration forms were the same individuals whose signatures appeared on the petition. In *Benson v. Eachus* (Sup Ct, Albany County, August 12, 2016, Weinstein, D., Index No. 4308/16), the court reasoned printed signatures that do not match the registration signatures are invalid even if the signatory testified that she signed the petition because Election Law § 6-134(5) requires that "(t)he use of titles, initials or customary abbreviations of given names by the signers of, or witnesses to, designating petitions or the use of customary abbreviations of addresses of such signers or witnesses, shall not invalidate such signatures or witness statement *provided that the identity of the signer or witness as a registered voter can be established by reference to the signature on the petition and that of a person whose name appears in the registration poll ledgers*." *(Id.)*.

A wife cannot sign as "Mrs. John Jones". She must use her name. She can sign as "Mrs. Mary Jones" (*Lydan v Sullivan*, 269 AD 942 [2d Dept 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 AD2d 426 [2d Dept 2000]).

A power of attorney cannot sign a petition for a voter, as the statute requires the witness to attest that the signatory appeared before the witness and signed the petition (*see e.g. Fatata v Philips*, 140 AD3d 1295 [3d Dept 2016]; *see also Matter of Van Der Water v Czarny,* 153 AD3d 1555 [4th Dept 2017] [noting only invalid signature should be stricken, not entire petition page, absent "hidden infirmity" designed to confuse or hinder ascertainment of "identity, status and address" of a signatory].

Residence

A residence address shall be set forth in a petition "by indicating each signer's respective street address." (*Matter of Hayon v. Greenfield*, 109 A.D.3d 920 [2d Dept 2013]). An apartment number is not a required component of a residence address in a petition, (*Hennessy v Bd. of Elections of County of Oneida*, 175 AD3d 1777 [4th Dept 2019]; *see also Matter of Tully v Ketover*, 10 AD3d 436 [2d Dept 2004]).

Residence of the signer should be the signer's residence at the time the signer signs the petition (*Dye v Callahan*, 42 AD2d 916 [3d Dept 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 it is one and the same (*Regan v Toole,* 63 NY2d 681 [1984]). It is not fatal if address does not contain the hamlet since the town is given (*Grancio v Coveney,* 60 NY2d 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 AD2d 884 [4th Dept 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 AD3d 684 [4th Dept 2006], quoting *Matter of Belak v Rossi*, 96 AD2d 1011, 1012, *lv denied* 60 NY2d 552). The *Toporek* Court went on further to say that "the 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 AD2d 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 AD2d 796, 797).

When the stated address of the voter does not match the address on file with the board of election, courts uphold the validity of the signature if the voter is registered to vote in the county and the stated address is correct and in the correct jurisdiction for signing the petition (*Matter of Robeletto v Burch*, 242 AD2d 397 [3d Dept 1997]; *Bray v Marsolais*, 21 AD3d 1143 [3d Dept 2011]; *Sheldon v Bjork*, 142 A.D.3d 763 [4th Dept 2016]; *Robleto v Gowda*, 183 AD3d 673 [2d Dept 2020]). If the address on the petition does not match the records of the board of elections, the burden may shift to the proponent of the petition to show the address is valid through testimony or perhaps affidavits (*see e.g. Fall v Luthmann*, 109 AD3d 540 [2d Dept 2013]).

While the witness to a petition can fill in and subsequently correct the signer's address listed on a petition before filing, an inaccurate address on a petition is a fatal defect that cannot be cured by testimony at a hearing (*Canary v New York State Board of Elections*, 131 AD3d 792 [3d Dept 2015] [witness inserted incorrect street number]; Election Law § 6-134 [6]).

Town or City

Signers to petition must provide town or city, as required by statute (*Stoppenbach v Sweeney*, 98 NY 2d 431 [2002], citing *Matter of Frome v Board of Elections of Nassau County*, 57 NY2d 741, 742-743 [1982]; *Matter of Tischler v Hikind,* 98 AD3d 926 [2d Dept 2012]; *Stark v Kelleher*, 32 AD3d 663 [3d Dept 2006]; *Matter of Ptak v Erie County Board of Elections*, 307 AD2d 1072 [4th Dept 2003]; *but cf Matter of Giordano v Westchester Board of Elections,* 153 AD3d 821 [2d Dept 2017]). Name of village or hamlet is not acceptable *(Zobel v New York State Board of Elections*, 254 AD2d 520 [3d Dept 1998]; *Ptak v Erie County Board of Elections*, 307AD2d 1072 [4th Dept 2003]). Signers do not need to specify whether the municipality is a "town" or a "city" (*Hinkley v Egan*, 181 Misc2d 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 AD2d 520 [3d Dept1998]). 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 NY2d 934 [1981]).

There is no requirement 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 AD3d 483 [2d Dept 2006], citing *Matter of Grancio v Coveney*, 60 NY2d 608, 610-611; *Matter of Cheevers v Gates,* 230 AD2d 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* at 483).

Town information can be preprinted on form of petition (*Collins v New York State Board of Elections*, 120 AD3d 882 [3d Dept 2014]).

An erroneous or vague reference to a town cannot be corrected by testimony at a hearing. “Supreme court properly concluded that...signature is invalid, despite the fact that the correct town was established at the hearing” (*Canary v New York State Board of Elections*, 131 AD3d 792 [3d Dept 2015] [signer of petition listed merely “village” as his town]).

Signed Previous Petition

Signatures of persons who signed a previous designating, nominating or opportunity to ballot petition for the same office are not valid (Election Law § 6-134 [3]; *McNulty v McNab,* 96 AD2d 921 [2d Dept 1983]; *Angelo v Marino*, 309 AD2d [2d Dept 2003]; *DiCicco v Chemung County Board of Elections*, 93 NY 2d 1008 [1999]).

If the prior signature at issue is on an invalid petition, the validity of the subsequent signature depends on the type of petition at issue.

In *Keenan v Chemung County Board of Elections*, the Third Department held a person’s “signing of two designating petitions for a single office rendered the later signature on [a] designating petition not countable, regardless of the subsequent invalidation of the first petition” (43 AD3d 623 [2007]). However, “[a] voter who previously signed a designating petition which was subsequently invalidated is not barred from signing an opportunity-to-ballot petition” (*Jones v Cayuga County Board of Elections*, 123 AD 2d 517 [4th Dept 1986]*citing*, *Matter of Lobaito v. Molinaro,* 45 A.D.2d 940; *Matter of Lawrence v. Board of Elections of Nassau County,* 31 Misc.2d 330; *cf. Matter of Simon v. Power,* 50 Misc.2d 761, *rev’d. on other grounds* 26 A.D.2d 531, *rev’d. on other grounds* 17 N.Y.2d 924; *Matter of Gilmore v. Kugler,* 21 A.D.2d 293;

Matter of Stack v Harrington, 172 AD3d 1880 [3d Dept 2019] [upholding prior signature on opportunity to ballot petition where such signature was after the invalidation of the designating petition]).

For independent nominating petitions, a voter's prior signature on an invalid petition does not preclude the voter later validly signing an independent nominating petition (*see* Election Law § 6-138 [1] [providing rule for independent nominating petitions that a signature "shall not be counted if the name of a person who has signed…appears upon another valid and effective petition designating or nominating the same or a different candidate for the same office" (Election Law § 6-138 [1]).

Independent Body Name

Election Law § 6-138 states that in naming a party use of words "American," "United States,"…"New York State"…or any abbreviation thereof is not permitted. In *Hanna v Arcuri* the court dealt with the situation wherein a petition stating the name of the party as "New York Moderates" was filed with the state board of elections. The state board recognized the validity of the petition itself but notified the candidate that the party's name was going to be reflected as "Moderates" on the ballot. Petitioner claimed the state board acted erroneously and that the entire petition should be declared invalid. The court held that "no fraud was shown that would have required the invalidation of the petition and the Board acted properly in changing the name." In contrast, *DiResto v Cornell* (59 AD3d 643 [2d Dept 2009]) held "there is no authorization for a board of elections to grant a candidate the opportunity to select a new name when, as here, the original name selected for an independent body includes the name or part of a name of an existing party" (*See also Carey v Chiavaroli*, 97 AD2d 981 [4th Dept 1983]).

Witness Statement

Residency of Witness Stated on Petition

A witness to a designating petition or an independent nominating petition must be a registered voter[2] residing in New York State or a notary public (Election Law §§ 6-132 [designating petitions]; 6-140 [independent petitions]). A witness may be a voter in active or inactive status (*Matter of Bichotte v Adolphe*, 120 AD3d 674 [2d Dept 2014]). The previous requirement in the Election Law that a subscribing witness must be a resident of the political subdivision for which the petition is circulated was been ruled

[2] In *Free Libertarian Party Inc. v Spano* (16 CV 3054 [EDNY 2017]), the trial court held that New York's requirement that witnesses to independent nominating petitions be registered voters and thereby state residents was unconstitutional. The court's order, however, was vacated on Appeal on procedural grounds.

unconstitutional (*Lerman v Board of Elections in the City of New York*, 232 F3d 135, 145 [2d Cir 2000] *cert denied*, 535 U.S. 915 [2000]; *see also LaBrake v Dukes*, 96 NY2d 913 [2001] [designating petitions]; *Chou v New York State Board of Elections*, 332 F Supp 2d 510 [EDNY 2004]; *McGuire v Gamache*, 5 NY3d 444 [2005] [independent nominating petitions]).

The address of witness stated on a petition must be the current address of such voter. The address on the "residence address" line must include the street name and house number. The address required on the "residence address" line need not include the municipality or postal zip code (*Washburn v Kelsey*, 45 Misc3d 1216 [Sup.Ct. Dutchess Co. 2015]). Such address need not be the same as the record on file with the board of elections in as much as change of address within the jurisdiction of a board of elections does not change person's status as a "duly qualified voter" (*Bichotte v Adolphe*, 120 AD3d 674 [2d Dept 2014]; *Matter of Lee v Orange County Board of Elections*, 164 AD3d 717 [2d Dept 2018]; *Sheldon v Bjork*, 142 AD3d 763 [4th Dept 2016]).

Sometimes a witness's current address is not clear. A candidate completed the witness statement on her petition stating her residence address as an apartment for which she held a lease and into which she had moved furniture and personal items but into which she had not been able to move because a certificate of occupancy delay pushed back the beginning of the lease term. The court found the candidate did not make a materially false statement on her petition (*Vescera v Karp*, 131 AD3d 1338 [4th Dept 2015]). The court noted the candidate had registered to vote from the would-be address, changed her driver's license address to the apartment address and even had her mail forwarded there. The Fourth Department held "[a]lthough respondent had not yet moved to the address at the time she witnessed the signatures, the record establishes that the address was intended to be 'that place where [she] maintains a fixed, permanent and principal home' (Election Law § 1-104[22]). 'The determination of an individual's residence is dependent upon an individual's expressed intent and conduct" (*Vescera* at 1339, *quoting People v. O'Hara*, 96 NY2d 378,384 [2001]).

A subscribing witness displaced from her residence who intended to return there "once construction was completed" was held to have retained the voting residence. The Court noted that the witness had not established a fixed residence elsewhere. (*Matter of Walfish v Brezler*, 172 AD3d 1384 [2d Dept 2019])

In the Third and Fourth Department, unless the voter registration cancellation procedures of the Election Law are followed prior to petition circulation, the signatures collected by a subscribing witness who is registered to vote cannot be challenged on the basis of the subscribing witnesses' not residing at the address given. The decision of the Board of Elections to register a person at a particular address constitutes "presumptive evidence of [his] residence for voting purposes" (Election Law § 5-104 [2]; *Matter of Hosley v Curry,* 85 NY2d 447, 452 [1995]). "The Board's decision [to register] may not be collaterally attacked in a proceeding to invalidate a designating petition."

(*Carney v Ward,* 120 AD3d 995, 996 [4th Dept 2014]). In *VanSavage v Jones* the Third Department reached the same conclusion. Signatures gathered by a witness are valid even though the witness's registration was subsequently cancelled on the grounds that he did not live at the address and was a felon (*VanSavage v Jones,* 120 AD3d 887 [3d Dept 2014]).

"Where an alleged impropriety 'does not involve the substantive requirements of witness eligibility[,]' [i.e. that respondent is a duly qualified voter of the state and an enrolled voter of the same political party as the voters qualifies to sign the petition] and 'there is no implication of fraud, resort to strict construction should be avoided if it were to lead to injustice in the electoral process or the public perception of it' [internal citations omitted]. We therefore conclude, contrary to petitioner's contention, that strict construction of Election Law § 6-132 [2] is not necessary with respect to respondent's specification of the address on the witness statement" (*Vescera at 1339*).

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 AD2d 1007 [2d Dept 2003], *citing Staber v Fidler*, 65 NY2d 529 [1985]) and the requirement has been held to be constitutional in *Maslow v Board of Elections* (658 F3d 291 [2d Cir 2011]). A designating petition's witness statement must identify the enrollment of the witness. If it does not, the sheet is invalid (*Matter of Craig v* Borrero, 172 AD3d 1944 [4th Dept 2019]).

Witness Identification Information

A witness need only provide town or city below signature and need not include this information online in witness statement for witness address (*Barrett v Brodsky,* 196 AD2d 603 [2d Dept 1983], *lv denied* 82 NY2d 653 [1983]). A witness may have two different addresses within the same petition provided that both were accurate when the page was witnessed (*McManus v Relin*, 286 AD2d 855 [4th Dept 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 AD2d 590 [3d Dept 1999], citing *Matter of Pulver v Allen*, 242 AD2d 398 [3d Dept 1997], *lv denied* 90 NY2d 805; *see also Curley v Zacek*, 22 AD3d 954 [3d Dept 2005]).

The Appellate Division has reiterated that where the witness/candidate 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 AD3d 658 [3d Dept 2006]).

It is important to note the difference in the "town or city" requirement for ***signers*** of a petition compared to ***witnesses***. The failure of a subscribing witness statement to contain the town or city in the witness identification section is not always a fatal defect as discussed above, but the failure to list the correct town or city on a signature line of a petition is typically fatal to the signature (*Matter of Stoppenbach v Sweeney* (98 NY2d 431 [2002]).

Completion of Witness Information

The failure of a subscribing witness to fill in all information on a witness statement invalidates all signatures on that petition page (*Sheldon v Sperber,* 45 NY2d 788 [1978])*, but see Hoare v Davis,* 207 AD2d 309 [1st Dept 1994] [court allowed incorrect address of witness if no showing of deceit or fraud]; *Pulver v Allen,* 242 AD2d 398 [3d Dept 1997], *lv denied* 90 NY2d 805 [1997]). 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 AD2d 398 [3d Dept 1997], *lv denied* 90 NY2d 805 [1997]).

Number of Signatures

The law requires identification data including number of signatures on sheet (*Bernhardt v Sachs,* 57 AD2d 598 [2d Dept 1977]). "Where [] there is no allegation of fraud and there was substantial compliance with the provisions of the Election Law, the inadvertent mistakes in the signature totals 'should not be the basis for the elimination of the right to vie for public office'" (*Matter of Rancourt v. Kennedy*, 87 AD3d 654, 656-657 [2d Dept 2011], quoting *Matter of Staber v Fidler,* 110 AD2d 38, 39 [2d Dept 1985], *aff'd* 65 NY2d 529 [1985]; Election Law § 6–134 [10]; *see also Matter of Ruggiero v Molinari,* 112 AD2d 1071 [2d Dept 1985], *aff'd* 65 NY2d 968; *Matter of Fox v Westchester County Bd. of Elections,* 112 AD2d 1063, 1064 [2d Dept 1985], *aff'd* 65 NY2d 971; *Matter of Bland v Board of Elections of City of N.Y.,* 112 AD2d 1053 [2d Dept 1985], *aff'd* 65 NY2d 962; *Matter of Brown v Sachs,* 57 AD2d 583 [2d Dept 1977]; *cf. Matter of Fromson v Lefever,* 112 AD2d 1064, 1066 [2d Dept 1985], *aff'd sub nom Matter of Barrett v Scaringe,* 65 NY2d 946 [1985]).

If the number of signatures stated in witness statement is understated, count only the number stated (Election Law § 6-134 [11]). When the number of signatures stated in

the witness statement is overstated "[a]bsent any allegation of fraud, the overstatement of the signature totals on pages…was not such a gross irregularity as to warrant invalidation" (*VanSavage v Jones,* 120 AD3d 887 [3d Dept 2014]).

In *Rancourt v Kennedy* (87 AD3d at 655-656), all of the petition sheets contained a misstatement of the number of signatures as the preprinted sheets contained no line 6, notwithstanding that each sheet contained an overstatement the Court upheld the validity of the petition (*See also Rancourt v Magilll*, 87 AD3d 656 [2d Dept 2011]).

If the number of signatures stated in witness statement is *missing*, the entire sheet should be invalidated (*Esse v Chiavaroli,* 71 AD2d 1046 [4th Dept 1979]; *Kepert v Tullo* 88 AD3d 826 [2d Dept 2014]). This otherwise fatal error may be correctable during the petition filing period. In *Etkin v Thalmann* (287 AD2d 775 [3d Dept 2001]) several pages of a petition were filed without any number of signatures stated in the witness statement. Before the end of the petition filing period, a statement from the subscribing witness was filed along with a copy of the defective petition pages with the missing information filled in on the copies. The Court held substantial compliance occurred during the time to file petitions.

Previously Witnessing or Signing Petition

Serving as a witness to a petition does not preclude a witness from witnessing any other petitions, even others for the same office – assuming the witness is otherwise eligible. However, the rule is quite different when a witness has ***signed*** a petition for a candidate. A person becomes ineligible to witness a petition "for ***another*** **candidate for the same office**" once he or she signs a petition for a candidate (Election Law §§ 6-132 [2]; 6-140). This rule was clarified by amendments to the Election Law enacted in 2017 (Laws of 2017 c 106). The same person can also witness an independent nominating petition for the same candidate for the same office.

Previous Participation in a Caucus

For town elections (Election Law §6-138 [1]), unlike village elections (Election Law § 6-208), there is no bar to a person participating in a caucus and also signing an Independent Nominating Petition. In fact, the County Board of Elections would not have a list of those who participated in the town caucus.

Signing and Dating

Witness statements must be signed and dated (*Pabian v McNab,* 9 Misc2d 995 (Sup Ct Suffolk County 1957), *aff'd* 4 AD2d 834 [2d Dept 1957], *aff'd* 3 NY2d 888 [1957]; *Higby v Mahoney,* 48 NY2d 15 [1979]). The omission of the date on subscribing witness statement is fatal (*McKay v Cochran*, 264 AD2d 699 [2d Dept 1999], *Klemann v*

Acito, 64 AD2d 952 [3d Dept 1978], *aff'd* 45 NY2d 796 [1978]). The execution of the Statement of Witness on a date after the signatures were gathered is permissible so long as the petition is otherwise properly witnessed and timely filed. (*Matter of Velez v Nieves*, 164 AD2d 931 [2d Dept 1990]; *see also Parascando v Monheit, 183 AD3d 671* [2d Dept 2020]). An inaccurate date in the witness statement can be fatal. In *Stevens v. Collins* (120 AD3d 696 [2nd Dept 2014]), the witness statement was dated "6-16-14" but the signatures on the page were all dated in July. That discrepancy was fatal to the signatures even though the notary witness testified that he simply placed the wrong date in the witness statement. The notary's testimony was not curative "inasmuch as the time to file petitions…as well as the time to amend or correct such petitions, had expired by the time the hearing was held" (*Stevens*, 120 AD3d at 697; *see also Quinn v Erie County Board of Elections*, 120 AD3d 992 [2d Dept 2014] [holding subscribing witness statement dated earlier than date on signature lines invalidated signatures, but "petitioners could have filed…affidavit attesting to his purported mistake on or before the last day provided by law for filing a designating petition…"]).

Signatures Taken by Notary or Commissioner of Deeds

When a notary public signs a designating petition, his or her signature and statements enjoy a "strong presumption of regularity" (*Matter of Bonner v Negron*, 87 AD3d 737 [2d Dept 2011]). However, as discussed below, this presumption can be rebutted.

A candidate who is a notary or commissioner of deeds is not prohibited from circulating his or her own petition in that capacity (*Matter of Braunfotel v Feiden*, 172 AD3d 1451 [2d Dept 2019]; *Rittersporn v Sadowski*, 48 NY2d 618 [1979]; *Harte v Kaplan*, 87 AD3d [3d Dept 2011].

If a signature is taken by a notary or commissioner of deeds, the witness must include the witness's title or the sheet is invalid (*Fuentes v Lopez*, 264 AD2d 490 [2d Dept 1999]; *Hunter v Compagni,* 74 AD2d 1000 [4th Dept 1980]). However, the failure to include the title "notary" or "commissioner of deeds" was held a "mere technical defect" when the notary provided the notary's identification number and the expiration date of that office. (*Matter of Marchionda v Casella*, 453 AD3d 1133 [4th Dept 2017]).

Failure to use the notary stamp does not render the sheet invalid (*McKay v Cochran*, 264 AD2d 699 [2d Dept 1999]; Executive Law §142-9 [defects which do not invalidate a notary]).

It is critical to note, however, If a signer is not duly sworn by the notary or commissioner of deeds, the signature of the person not sworn is invalid (*Napier v Salerno,* 74 AD2d 960 [3d Dept 1980]; *Boyle v New York City Board of Elections,* 185 AD2d 953 [2d Dept 1992]; *Leahy v O'Rourke*, 307 AD2d 1008 [2d Dept 2003], *Lebron v Clyne*, 65AD3d 801 [3d Dept 2009]; *Fuchs v Itkowitz*, 120 AD3d 682 [2d Dept 2014]; *MacKenzie v Ghartey*, 131 AD3d 638 [2d Dept 2015]). Substantial compliance is

required with respect to the oath requirement (*Mertz v Bradshaw*, 131 AD3d 794 [3d Dept 2015]). The Second Department offered guidance on how a notary or commissioner of deeds should obtain signatures in *Finn v Sherwood:*

> Jobson (the notary) testified that he introduced himself to each signatory, explained to them what they were signing, and administered to and took an oath from each signatory. Jobson thereby substantially complied with Election Law § 6–132 [3] (*see Matter of Kutner v Nassau County Bd. of Elections*, 65 AD3d 643, 644–645; *Matter of Liebler v Friedman*, 54 AD3d 697). What the signers are swearing to, in a designating petition is the information at the beginning of the petition wherein the signer states that he/she is a duly enrolled voter of the party and entitled to vote at the primary and that their place of residence is truly stated opposite their signature on the petition, and they do thereby designate the following named person or persons as candidate.
>
> (87 AD3d 1044 [2d Dept 2011]).

The omission of the date on which the authenticating notary statement was made renders the page invalid (*Weiss v Mahoney,* 49 AD2d 796 [4th Dept 1975]; *Sortino v Chiavaroli*, 59 AD2d 644 [4th Dept 1977], *aff'd* 42 NY2d 982 [1975]; *Boniello v Niagara County Board of Elections*, 131 AD3d 806 [4th Dept 2015]). 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 AD2d 488 [2d Dept 1999]). Further, the fact that notary's signature was stapled to signature sheets instead of "appended [to] the bottom" of each sheet as required by Election Law § 6-132 (2), did not require invalidation of signatures and opportunity to ballot petitions. *Matter of DiNonno v Castioni*, 43 AD3d 476 [2d Dept 2007]; *Sheldon v Bjork*, 142 A.D.3d 763 [4th Dept 2016].

The signatures collected by a notary public who refused at trial to answer questions concerning the administration of an oath to signatories and could not recall if he committed forgery, were invalidated (*McCoy v Jenkins,* 242 AD2d 349 [2d Dept 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 AD2d 462 [4th Dept 2002]).

Notary public and commissioner of deeds are not qualified to witness village designating or nominating petitions when the village election is conducted by the village clerk (Election Law § 15-108).

Alterations

Alterations to the Signers Line

Uninitialed alterations or corrections may be made to information on the signer's line of a petition, **except** the signature and date (Election Law § 6-134 [6]). Alterations to the signature or date must be initialed (*Andrews v Albany County Board of Elections,* 164 AD2d 960 [3d Dept 1990]); *King v Sunderland,* 175 AD2d 896 [2d 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 AD2d 730, 731 [3d Dept 2000]).

Material Alteration

If unexplained material alteration is made to witness statement, the entire page should be invalid (*Jonas v Velez,* 65 NY2d 954 [1985)]; *Magee v Camp* 253 AD2d 573 [3d Dept 1998]; *Berger v Acito,* 64 AD2d 949 [3d Dept 1978], *lv denied* 45 NY2d 707; *Nobles v Grant,* 57 AD2d 600 [2d Dept 1977], *aff'd* 41 NY2d 1048; *but see Pulver v Allen,* 242 AD2d 398 [3d Dept 1997]; *McGuire v Gamache*, 22 AD3d 614 [2d Dept 2005]).

The alteration must be material. An unexplained alteration to a candidate's address changing "Reed Street" to "Reed Avenue" did not invalidate the petition sheet (*Pericak v Hooper,* 207 AD2d 1003 [4th Dept 1994]). An overwriting which did not change what was originally written is not an alteration (*Schroeder v Smith*, 21 AD3d 511 [2d Dept 2005]).

An affidavit may be submitted at time of filing to explain alterations, but it may not be used to cure omissions or make corrections (*Hunter v Compagni,* 74 AD2d 1000 [4th Dept 1980]; *Oberrman v Romannkowski*, 65 AD3d 992 [2d Dept 2009]; *but see Etkin v Thalmann*, 287 AD2d 775 [3d Dept 2001] [permitting resubmission during petitioning period to cure omission of number of signatures]).

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 AD2d 690 [4th Dept 1998]; *Shoemaker v Longo,* 186 AD2d 979 [4th Dept 1992], *lv denied*, 80 NY2d 755; *but see Pulver v Allen,* 242 AD2d 398 [3d Dept 1997], *lv denied* 90 NY2d 805 [1997]).

Fraud

Issues of fraud are generally reserved for court proceedings. Every fraudulent signature will be invalidated. Moreover, fraud that permeates a petition or fraud perpetrated by a candidate will invalidate the entire petition even if the number of

signatures tainted are mathematically insufficient to invalidate the petition. "A designating petition will be invalidated if the challenger shows, by clear and convincing evidence, 'that the entire petition is permeated with fraud or that the candidate participated in, or can be charged with knowledge of, fraudulent activity'" (*Matter of VanSavage v Jones*, 120 AD3d 887 [3d Dept 2014]; *see also Matter of Steinert v Daly*, 118 AD3d 808 [2d Dept 2014]). "[C]andidates are held to a higher standard than noncandidates under the Election Law" (*Matter of Burman v Subedi*, 172 AD3d 1882 [3d Dept 2019]; *see also Buttenschon v Salatino*, 464 AD3d 1588 [4th Dept 2018]). A trial Court's assessment of a candidate's credibility regarding fraud or knowledge of fraud is entitled to deference (*see Steinert; VanSavage supra).*

Generally, petition fraud cases turn on the specific facts and testimony of the case. Two cases decided on the same day in the Third Department in 2015 demonstrate the bounds of judicial forgiveness and strictness.

In *Vincent v Sira,* the candidate testified she did not administer an oath to 307 petition signers despite the assertion she signed in the witness statement (131 AD3d 787 [3d Dept 2015]). She also testified that she altered the title of the office on several sheets of the petition after they were signed – an act the court identified as a violation of Election Law § 17-122 [8]. Nonetheless, the court was forgiving, finding these facts did not establish clear and convincing proof of fraud and should only result in invalidation of all the tainted signatures. The court noted as an enrolled Republican the candidate could have completed the party witness statement for the 307 signatories with respect to whom she did not administer an oath. The court also noted the alteration of the title of the office while a clear violation of law "effected no material change, and…there was no evidence undermining the accuracy and veracity of the underlying voter signatures."

The same panel of Third Department judges on the same day came to a different conclusion on a question of candidate fraud (*Mattice v Hammond*, 131 AD3d 790 [3d Dept 2015]). In *Mattice*, a candidate for the party position of judicial delegate needed eight valid signatures to qualify for the ballot. He filed thirty-eight. The candidate witnessed all the signatures, and in three instances the candidate allowed the spouse to sign for the voter. At trial the candidate admitted the error and plead innocent ignorance. The lower court found the candidate had no nefarious motive and upheld the petition. In reversing the Third Department emphasized the candidate knew that "three of the signatures were not signed by the individuals to whom they were attributed" (*Id*. at 791). This constituted candidate participation in fraud sufficient to invalidate the petition, and the candidate's lack of "nefarious motive" was irrelevant.

The S*ira and Mattice* decisions are not easy to reconcile in as much as the candidate in *Sira* also knew the statements in the witness statement were false. Arguably, the difference is that in *Sira* the falsehoods did not implicate the "accuracy and veracity of the underlying voter signatures". In *Mattice*, the fact of a voter *signing* the petition was falsely stated.

Notably, the Court of Appeals recently held, in a 4-3 decision, that there are times where, as a matter of law, a petition must be found to be permeated with fraud, and thus invalid. In *Matter of Ferreyra v. Arroyo*, "512 out of 944 signatures submitted in the [designating] petition (were) backdated to dates preceding the candidate's receipt of the blank petition pages, and … 14 of the 28 subscribing witnesses swore that those signatures were placed on the designating petition before the blank petition pages were obtained from the printer (183 AD3d 473 [1st Dept 2020]). The lower courts held that the petitions were valid as the evidence showed the signatures themselves were not forged or otherwise improperly secured. The Court of Appeals reversed, holding that the magnitude of the fraud or irregularity of the signatures is enough to establish that the petition was permeated with fraud (*Ferreyra v Arroyo*, 35 NY3d 127 [2020]).

In *Matter of Overbaugh v Benoit*, the Court did not invalidate a petition on which the candidate's spouse had fraudulently procured a signature, noting there was no evidence the candidate participated in the procurement or submission of any fraudulent signature (172 AD3d 1874 [3d Dept 2019]; *compare Matter of Haygood v Hardwick*, 110 AD3d 931 [2d Dept 2013]).

In *Kalaj v LoFranco*, the Court found that a petitioner failed to show that an independent nominating petition was permeated by fraud where the petitioner contended that 1 out of approximately 195 signatures is invalid on the grounds of fraud. (2020 NY Slip Op 50364(U) [Orange County Sup Ct Mar. 9, 2020].

Opportunity to Ballot Petitions

Opportunity to ballot (OTB) petitions are filed to create a primary election when there otherwise would not have been one (Election Law § 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 (Election Law § 6-164). A technically deficient designating petition is not a prerequisite for an OTB petition (*Coopersmith v Hershberger*, 264 AD2d 453 [2d Dept 1999]). An OTB petition may be filed even when a valid designating petition has been filed (*Mullane v Bauer*, 286 AD2d 460 [2d Dept 2001]). Signature on an OTB petition is invalid if voter previously signed another petition for the same office (*Rabadi v Galen*, 307 AD2d 1014 [2d Dept 2003]).

Failure to list a committee to receive notices on an OTB petition is a fatal defect (*Werner v Castiglione*, 286 AD2d 553 [3d Dept 2001]; *Lent v Katz*, 307 AD2d 1009 [2d Dept 2003]), *Matter of Cassar v Larsen*, 109 AD3d 560 [2d Dept 2013]).

Chapter 456 of Laws of 2019 requires that each Opportunity to Ballot petition submitted to a board of elections now be accompanied by a certificate of acceptance completed by those appointed as the committee to receive notices.

Opportunity to Ballot as Equitable Remedy

When a petition or substitution of a candidate is invalid for technical reasons, a court, not the board of elections, can order an opportunity to ballot primary to allow the party to select a nominee (*Matter of Hunting v Power*, 20 NY2d 680 [1967]) The remedy is only proper "where the defects which require invalidation of a designating petition are technical in nature and do not call into serious question the existence of adequate support among eligible voters" (*Harden v Board of Election in City of NY*, 74 NY2d 796 [1989]). "Absent any indication that fraud was involved or that the voters who signed the invalid pages were not entitled to sign the petition, Supreme Court properly directed an opportunity to ballot" (*Hall v Dussault*, 109 AD 3d 679 [3d Dept 2013] [failure to administer oath by witness and use of wrong witness statement were errors invalidating petition but proper premise for opportunity to ballot remedy]; *cf Stevens v Collins*, 120 AD3d 696 [2d Dept 2014] [holding incorrect date in notary statement is a substantive defect which cannot support opportunity to ballot remedy]). The remedy is proper where certificate of substitution is incorrectly executed when the petition to which it relates was sufficient (*Griffin v Torres,* 131 AD3d 631 [2d Dept 2015]). Listing incorrect town or incorrect address for signer of petition are "substantive and not technical in nature" and do not support opportunity to ballot remedy (*Canary v New York State Board of Elections*, 131 Ad3d 792 [3d Dept 2015]). Appellate Division has granted the opportunity to ballot remedy even when it is requested for the first time on appeal (*Landry v Mansion*, 65 Ad3d 803 [3d Dept 2009].

The equitable remedy of an opportunity to ballot is not available when an opportunity ballot petition is defective due to technical errors (*Stevens v Collins*, 120 AD3d 696 [2d Dept 2014]).

Independent Nominations Placement on the Ballot

Election Law § 7-104 has been the subject of considerable litigation. In 2014, the Third Department affirmed a lower court ruling rejecting a challenge to the constitutionality of the statute. Two federal district court judges and one New York State Supreme Court judge declined to issue preliminary injunctions premised on the theory that this provision of the Election Law is unconstitutional.

"In short, controlling Court of Appeals precedent mandates a conclusion that Election Law § 7-104 (4) (c) is not unconstitutional as applied to petitioners and Supreme Court properly dismissed the petition" (*Cahill v Kellner*, 121 AD3d 1160 [3d Dept 2014]). In 2019, a similar action was brought in the Fourth Department, with the same result. (*Upstate Jobs Party v Czarny*, 175 AD3d 1780 [4th Dept 2019]).

In 2010, a United States District Court Judge in the Southern District of New York ruled that the State Board's refusal to allow a candidate for US Senate running as the

candidate of two independent bodies a separate line for each such nomination, where the refusal to allow multiple line for the candidate would create a hole in one of the independent body lines, violated his First and Fourteenth Amendment rights, albeit in a ruling which came after the election (*Credico v New York State Bd. of Elections*, 751 FSupp2d 417 [EDNY 2010]). In 2013, a United States District Court Judge in the Eastern District of New York when presented with the same issue declined to follow *Credico* and upheld the Nassau County Board of Elections' refusal to grant additional lines in violation of Election Law § 7-104 where the candidate had either been nominated by more than one party or by more than one independent body (*Gonsalves v New York State Bd. of Elections*, 974 FSupp2d 191 [EDNY 2013]).

NOMINATIONS

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*; s*ee also, Scanlon v Turco*, 264 AD2d 863 [3d Dept 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 AD2d 1061 [3d Dept 2003]; *Chevere v Sunderland*, 303 AD2d 428 [2d Dept 2003]).

Rule Limiting Nominees to Enrolled Party Members is Invalid

A town committee cannot adopt a caucus rule which mandates that only enrolled members of the party be nominated at caucus as such a rule would violate Election Law § 6-120 [4] (*Burkwit v Olson***,** 87 AD3d 1264 [4th Dept 2011]).

Judicial Nominating Conventions

Delegates to Convention

Section 6-124 of Election Law requires that the number of judicial delegates from each Assembly District to a party nominating convention be substantially in accordance with the ratio of votes cast for the party's candidate for governor in the last election. In *Diamond v DeJoseph*, (121 AD3d 1283 [3d Dept 2014]), the court held the Conservative Party nominating convention at issue was in substantial compliance given the practical difficulties achieving perfect representation. The Court noted most districts were properly represented in proportion to their voting strength. In *Stack v Fisher* (121 AD3d 1280 [3d Dept 2014]), the Conservative judicial nominating Convention was also found duly proportional under Election Law § 6-124 even though three Assembly Districts representing 10% of voters did not send delegates and there were other deviations between the voting power of Assembly districts at the convention and the preceding vote for governor in those districts. The *Stack* Court analyzed voting power at the convention and concluded "smaller districts were undoubtedly overrepresented at the convention, as 40% of elected delegates represented only 24% of the Conservative Party votes cast…" (*Id.*). However, the Court noted, the two largest districts represented 40% of the delegates and had 40% of the votes (*Id.*)

The Court distinguished *Snell v Young*, (88 AD3d 1149 [3d Dept 2014]), observing in that case the Court invalidated the convention on a finding that "almost 60% of the voters were represented by 30% of elected delegates." "Substantial compliance is the touchstone of the statute and, under the circumstances present here, we find that goal to have been met."

In contrast, in *Dooher v Williams*, Judge DelConte found that when only a minority of assembly districts (7 of 18) and voters were properly represented in proportion to their voting strength, "substantial compliance" with Election Law § 6-124 was not possible. "While no appellate court has prescribed a bright-line rule or established a specific threshold to determine how many assembly districts comprising a total minimum percentage of voters are necessary to meet the proportional representation requirement, substantial compliance requires, at the very least, that the proportional represented assembly districts cumulatively comprise more than a majority of the total number of voters in the judicial district."(69 Misc 3d 662 [Sup Ct Onondaga 2020] *aff'd* 187 AD 3d 1692 [4th Dept 2020]).

Delegate Residency

Supreme Court in Alleghany County held delegates must reside in the Assembly District they will represent at the judicial nominating convention. The Fourth Department reversed the lower Court without reaching the merits of this holding: "[A]ssuming, arguendo, that a candidate for the position of delegate to a judicial district convention must reside within the geographic boundaries of the assembly district that

he or she seeks to represent…such requirement would not become operative until 'time of commencement of term' of the position…In this case, that date is…the date of the primary election" *Matter of Locke v Walsh*, 120 AD3d 997 [4th Dept 2014]). Notably the lower court declined to follow the Second Department holding in *Corbin v Goldstein* (64 AD2d 935 [2d Dept 1978] [holding judicial nominating delegate need only reside in the judicial district]).

Filing of Certificate of Nomination

A certificate of party nomination made a judicial district convention must be filed no later than the day after the last day to hold such convention, and the minutes of the convention shall be filed with 72 hours of the adjournment of the convention, Failure to timely file such documents is a fatal defect. (*Fuentes v. Catalano*, 165 A.D.3d 1010 [2d Dep't 2018]). A court may validate minutes that are filed untimely upon "a showing of both a compelling explanation for the deviation from the statutory requirements and of a prompt attempt to rectify the error in the failure to file certified minutes of a judicial [nominating] convention, invocation of judicial discretion may be appropriate" (*Vacca v Kosinski Harvey*, 176 AD3d 1305, 1305 [3d Dept 2019]). In the *Vacca* matter, the Third Department found there was a compelling explanation for why the minutes were untimely filed when: the judicial nominating convention was directly followed by a convention of the Committee to select a new county elections commissioner; the Committee consulted the filing deadlines set forth in the 2019 SBOE political calendar for judicial district conventions and mistakenly relied on the date for filing the certificate of nomination, which was August 15, 2019; and by the time the Committee was notified of the deficiencies in its filings, it had already submitted the actual convention minutes to the State Board.

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

An independent petition was invalidated because signatures collected before the vacancy in the congressional office was certified by the State Board of Elections were not valid and could not be counted (*Vitaliano v D'Emic*, 243 AD2d 662 [2d Dept 1997], *lv denied* 90 NY2d 812 [1997]). 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 not filed timely, 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 (Election Law § 6-158 [10]).

Disqualification

Hatch Act Disqualification

The Hatch Act is a federal law that prohibits federal government employees and certain others from seeking elective office in a partisan election. The Third Department held when a candidate receives a Hatch Act violation notice subjecting the candidate to loss of employment if the candidacy is continued, the candidate is thereby disqualified permitting the filing of a declination that creates a vacancy. (*Parete v Hunt*, 287 AD2d 777 [3d Dept 2001]). The Second Department rule is to the contrary (*In Matter of Li v Meehan*, 52 AD3d 544 [2d Dept 2008]). The Hatch Act was amended in 2012 to lessen the restrictions on political activities of Federal and some state and local employees but should be consulted directly if implicated. Information on the Hatch Act is provided at http://www.osc.gov. Requests for Hatch Act advisory opinions may be made by e-mail to: hatchact@osc.gov or the employee's agency's Hatch Act compliance officer.

Residency Disqualification

Candidate who, on Election Day, would lack the necessary residency for the public office sought, can be disqualified with another candidate being substituted by the political party which nominated him/her, even after the deadline to decline has passed (*Krysan v New York State Board of Elections*, 55 AD3d 1217 [3d Dept 2008]).

Substitutions

A candidate may be substituted when a designated candidate has properly declined the designation (Election Law § 6-148). But a substitution cannot fix an invalid petition. (*Ferrandino v Sammut*, 185 AD3d 992 [2nd Dept 2020] [noting [t]he legislature has not made failure to comply with a residency requirement a defect necessarily fatal to a designating petition; it has made the attempted designation of an election commissioner as a candidate for public office a nullity]).

"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 AD3d 662 [3d Dept 2006]; *see also Matter of Leemhuis v State of New York, Bd. of Elections*, 186 AD2d 863 [1992], *aff'd on op below* 155 Misc2d 531[1992]; *Matter of Nowik v Jablonski*, 133 AD2d 874, 875 [1987]; *Matter of Gdanski v Rockland*

County Bd. of Elections, 97 AD2d 744, 744-745 [1983]); *Matter of Turdik v Bernstein* 87 AD3d 748).

Certificates of authorization, when required by law, are required of both the declining and the substituted candidate. If a candidate who declines was required to file an authorization pursuant to Election Law § 6-120 but failed to timely do so, the original petition is invalid, and no substitution is possible (*Id*). Assuming the proper authorization of the declining candidate was filed as it must be, the substituted candidate must still, in addition, file their own authorization if one is required by Election Law § 6-120.

BALLOT ACCESS FILINGS

Failure to timely file required ballot access documents is fatal to the document's validity. This includes petitions, certificates of designation or nomination, acceptances, declinations, substitutions and objections. *(see* Election Law § 1-106 [2]; *Seawright v Board of Elections*, 35 NY3d 227 [2020]).

Ballot access documents can be filed in person at the correct board of elections between 9am and 5pm during the filing period.

New York City Rule: In New York City, the board of election is open until midnight on the last day to file to receive filings. For filings with the New York City Board of Elections, filings mut be received by the last day to file.

Outside of the City of New York, ballot access documents may be filed by mail or certain express delivery services (see NYSBOE website for exclusive list) and the time of mailing is credited as the time of filing under certain circumstances. Documents filed by mail/delivery service with boards of elections outside of New York City must meet two requirements: (1) The envelope containing the documents must be "postmarked" by midnight of the last day to file, and (2) the document must be received at the correct board of elections no later than "two business days after" the last day to file the document in person. If a document is filed by mail with the New York City Board of Elections, the rule is simple – it must be received by the filing deadline.

Westchester County Board of Elections on the last filing days when designating or nominating petitions are due, is open until midnight. Notably the Westchester County Board of Elections is not required to be open until midnight on the last day to file other ballot access documents (i.e. acceptances, etc.). Also, unlike New York City filers, those who file in Westchester by mail follow the rule applicable to all other board of elections, allowing the filing to be timely if postmarked by the last day and received within two days thereafter.

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 NY 104 [1943], citing *Matter of Frankel v Cheshire*, 212 AD 664, 671 [2d Dept 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 (*Bednarsh v Cohen*, 267 AD 133 [1st Dept 1943], *lv denied* 267 AD 760, *lv denied* 292 NY 578 [1943]).

Standing to Object

Independent Petitions

Any qualified voter in the relevant political subdivision can challenge an independent nominating petition as a citizen objector (*Doran v Scranton*, 49 AD2d 976 [3d Dept 1975]). The objections must be signed by the objector (*Banker v Apfeldorf,* 93 AD2d 848 [2d Dept 1983]).

Objections to Party Petitions / Certificates for Public Office

An objector must be a registered voter in the relevant political subdivision in order to file objections to a party certificate or petition related to a ***public office*** *(Matter of Augostini v Bernstein,* 172 AD3d 1946 [4th Dept 2019] [dismissing subsequent court proceeding brought by objector who was not a valid objector by virtue of not living in the jurisdiction of the office on petition objected to]).

The objector does not need to be enrolled in the political party stated on the petition or certificate for public office. (Election Law § 6-154 [2]; *Matter of Van Sleet,* 16 NY2d 848 [1965]; *see also Bonelli v Bahren,* 196 AD2d 866 [2d Dept 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 Supp2d 341 [EDNY 2002] [upholding constitutionality of non-party members to object to petition for public office]).

Objections Where Objector's Enrollment Matters

The objector to a petition ***for party position*** (*i.e*. petition for Member of County Committee or Member of State Committee) must, in addition to being a voter in the relevant political subdivision, be enrolled in the relevant political party (Election Law § 6-154 [2]; *Bennett v Justin,* 51 NY2d 722 [1980]). If the objector objects to the method of nomination (caucus or primary), the objector must be an enrolled member of the party to

bring suit (*Stempel v Albany County Board of Elections,* 60 NY2d 801 [1983]; *Pirozzolo v. Lia*, 142 AD3d 569 [2d Dept 2016]).

A non-member of a political party lacks standing to challenge that party's compliance with its own rules (*Matter* of *Nicolai v Kelleher*, 45 AD3d 960 [3d Dept 2007]; *see also Matter of Fehrman v New York State Board of Elections,*10 NY3d 759 [2008] [where the non-member not only lacked 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 County Board of Elections* (49 AD3d 674 [2d Dept 2008]), the non-party petitioner, who was a political party chairman, did have standing to commence a proceeding challenging the alleged failure to comply with the requirements governing nomination by party caucus in Election Law § 15-108 [2] [a].

Judicial Convention Objections

In a proceeding challenging the validity of certificates of nomination for supreme court candidates, 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 [3d Dept 2007]).

County Committee

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 NY2d 927 [1988]; *see also Galow v Dutchess County Board of Elections,* 242 AD2d 344 [2d Dept 1997]; *Cantatore v Sunderland,* 196 AD2d 606 [2d Dept 1993]; *Luthman v Gulino*, 131 AD3d 636 [2d Dept. 2015]). Even a candidate for county committee who does not live in the election district he is seeking to represent is not a proper objector at the board of elections to an opponent's petition (*Id*).

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 (Election Law § 6-154 [2]).

The three days begin to run from the date that the petition is received by the board (*Miele v Reda,* 243 AD2d 566 [2d Dept 1997], *lv denied* 90 NY2d 811 [1997]; *Benson v Scaringe,* 84 AD2d 603 [3d Dept 1981], *lv denied* 54 NY2d 609 [1981]). 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 NY2d 95 [1980]). The courts may not extend the time to file specifications of objections (*Breitenstein v Turco*, 254 AD2d 566 [3d Dept 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 NY2d 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]).

Objections were deemed valid where they were filed before 9:00 a.m. when the board was open and accepted the documents (*Fedak v Judge*, 71 AD3d 892 [2d Dept 2010]).

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 AD2d 506 [2d Dept 1998]), *lv denied* 92 NY2d 806 [1998]; Election Law § 1-106 [1]). "[T]he postmark date is the date that controls for purposes of determining if papers sent by mail have been timely filed" (*Gallo v Turco*, 131 AD3d 785 [3d Dept 2015]). In addition to a timely postmark, any document filed by mail must arrive at the board of elections no later than two days after the last day to file the document in person. However, in *Hardwick v Ward* (109 AD3d 1223 [4th Dept. 2013]) the Appellate Division affirmed a lower court ruling that allowed the late filing of a certificate of authorization which was postmarked the day after it was delivered to the Post Office due to a clerical error on the part of the Post Office.

"[A] postage meter stamp is not the equivalent of a postmark" (*Gallo v Turco*, 131 AD3d 785 [3d Dept 2015]).

Pursuant to Election Law § 1-106 documents may be filed by use of express delivery services designated pursuant to 7502 of the Internal Revenue Code. Documents sent through such delivery services are deemed the equivalent of a mailing by the United States Postal Service, and any date recorded or marked indicating when the item was received by the delivery service is the equivalent of a postmark. Only the following delivery services and products qualify: DHL Express 9:00, DHL Express 10:30, DHL Express 12:00, DHL Express Worldwide, DHL Express Envelope, DHL Import Express 10:30, DHL Import Express 12:00, DHL Import Express Worldwide, FedEx First Overnight, FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2 Day, FedEx International Next Flight Out, FedEx International Priority, FedEx International First, FedEx International Economy, UPS Next Day Air Early AM, UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, UPS Worldwide Express.

Rehearing

Once the board has made a determination on the petition objections, 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 AD2d 559 [3d Dept 1980], *rev'd on other grounds*, 51 NY2d 814 [1980]).

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 AD2d 550 [3d Dept 2001]). Such rules can apply to both general and specific objections (*Matter of Zalocha v Donovan*, 120 AD3d 994 [4th Dept 2014] [relying on Election Law § 6-1549(2); 9 NYCRR 6204.1]; *Matter of Grancio v Coveney*, 60 NY2d 608, 610]). In *Sauberman v Weinstock,* an objector served specific objections on a candidate via express mail, even though State Board of Elections rules required that the candidate be served via certified or registered mail (183 AD3d 1107 [3d Dept 2020]). The Court held that "(a)lthough (the objector) argue(s) that express mail overnight is the 'functional equivalent' of registered or certified mail, the (State Board of Elections regulations) are 'mandatory and may not be disregarded.'"

If a specific board of elections has no rule requiring service of objections, service is not required (*Wilson v Davis*, 131 AD3d 655 [2d Dept 2015]; *Boniello v Niagara County Board of Elections*, 131 AD3d 806 [4th Dept 2015]).

Joinder in Special Proceeding

In *Atwood v. Pridgen*, 37 N.Y.S.3d 164 [4th Dept 2016], objectors properly joined multiple candidates in special Election Law proceeding to invalidate the designating petitions of candidates for office of political party committee member in primary election. There existed the same series of transactions or occurrences, and there were common questions of law or fact, as candidates all sought to run for the same office and objectors sought to invalidate their designating petitions based on fraud, error, and misrepresentation in the collection of signatures on designating petitions.

LOCAL REFERENDA

Under Election Law §§ 4-108 and 16-104, a ballot proposal or abstract may be challenged on the basis that it is "misleading, ambiguous, illegal or inconsistent with existing law" (*Gruskoff v County of Suffolk*, 132 AD3d 923 [2d Dept 2015]). The Appellate Division, Fourth Department, had occasion to rule on the actions of a county

board in refusing to place a local referendum on the ballot, underscoring that the board of elections' authority to reject a ballot proposal is ministerial, and minor procedural or technical defects in the statutory procedures to place a referendum question on the ballot are not to be overstressed. (*Gaughan v Mohr,* 77 AD3d 1475 [4th Dept 2010]). The *Gaughan* Court used the following language in overruling the determination of the county board:

> Respondents contend that they properly rejected the referendum question from the ballot because it violated County Law §§ 100 and 102. We reject that contention. The revised form of the referendum question transmitted to the Erie County Board of Elections on September 27, 2010 complied with the procedural requirements set forth in County Law § 102 [1]. "This [C]ourt will not ... discourage the efforts of public officials by declaring some minor step omitted in the statutory procedure fatal[ ] or by overstressing the importance of some technical defect" (*Crell v O'Rourke,* 88 AD2d 83, 86 [4th Dept 2010], *aff'd* 57 NY2d 702 [2010]).
>
> We thus conclude that respondents abused their ministerial authority in rejecting the referendum question from the ballot (*see generally Matter of Lenihan v Blackwell,* 209 AD2d 1048, 1049, *lv denied* 84 NY2d 808; *Crell,* 88 AD2d at 85-86).

ELECTION LAW §3-300

The Court of Appeals, in *County of Erie v, CSEA Local 815* (19 NY3d 1070 [2012]) reaffirmed the principle, established in *County of Chautauqua v Chautauqua County Employees' Unit 6300 et al* (181 AD2d 1052 [4th Dept 1992]) and *Matter of Board of Elections of the County of Westchester v O'Rourke* (210 AD2d 402[2d Dept 1994]) that Election Law §3-300 requires that the county boards of elections have autonomy with the amount appropriated by the legislature with respect to salaries of employees and exclusive control of their personnel and the performance of their duties. The county may not bind the board by a collective bargaining agreement which infringes upon the prerogative of the commissioners under Election Law § 3-300 (*but see* Preemption of Election Law)

PREEMPTION OF ELECTION LAW

Applying a standard pre-emption analysis, the First Department held Article 14 of the Election Law does not preempt local contribution limits and source limits that are

stricter than those contained in article 14 (*McDonald v New York City Campaign Finance Bd.*, 117 AD3d 540 [1st Dept 2014]).

The Election Law includes a statutory preemption provision. Election Law § 1-102 provides "[w]here a specific provision of law exists in any other law which is inconsistent with the provisions of [the Election Law], such provision shall apply…." In *Castine v Zurlo*, Supreme Court addressed whether a local law adopted by a county can preempt the Election Law pursuant to Election Law § 1-102 (46 Misc. 3d 995 [Clinton County Sup Ct 2014]). Upon extensive review of the legislative history, the Court held the legislature intended only to permit other state laws to preempt the Election Law (*cf Castine v Zurlo*, 938 F Supp 2d 302, 313 [NDNY 2013] [reaching a different conclusion] *overruled in part by* 756 F3d 171, 178 [2d Cir. 2014] [describing application of Election Law §1-102 here as a "novel, complex matter involving the interplay between state and local law" and suggesting the District Court decline to exercise supplemental jurisdiction on the question—advice the District Court followed]).

CAMPAIGN FINANCIAL DISCLOSURE

Contribution Limit Constitutionality

United States Supreme Court

Citizen United v Federal Election Com'n, (558 US 310 [2010]).
(RE: Federal Limit on Corporate Expenditures)

"Government may regulate corporate political speech through identification and disclosure requirements, but it may not suppress that speech altogether" (Id. at 319). The government may not, under the First Amendment, suppress political speech on the basis of the speaker's corporate identity. The federal statute barring corporate and union independent expenditures for express advocacy or electioneering communications violated the First Amendment. The disclaimer and disclosure provisions of Bipartisan Campaign Reform Act of 2002 (BCRA) did not violate the First Amendment.

McCutcheon v Federal Election Com'n, (134 S Ct 1434 [2014]).
(RE: Federal Individual Aggregate Contribution Limit)

The federal statutory aggregate limits on how much money a donor may contribute in total to all political candidates or committees violates the First Amendment. "[T]he First Amendment safeguards an individual's right to participate in the public debate through political expression and political association," and "[w]hen an individual contributes money to a candidate, he exercises both of those rights" (*Id*. at 1448). According to the Supreme Court, in order to be valid, any regulation of campaign contributions must target "'quid *pro quo'* corruption or its appearance," that is, the "direct exchange of an official act for money," or "dollars for political favors" *(Id*. at 1441). The court held aggregate limits do not further this purpose.

United States Court of Appeals for the Second Circuit

Vermont Right to Life Committee, Inc. v Sorrell, (753 F3d 1189 [2nd Cir 2014]).
(RE: Vermont Contribution Limit on Coordinating Entities)

Vermont Right to Life (VRTL) created and is the umbrella organization for VRTL-Political Committee and VRTL- Fund for Independent Political Expenditures. VRTL-Political Committee makes direct contributions to candidates and is not an independent-expenditure-only group. There is no operational or structural barrier between the two

entities that share staff, resources and a fluidity of funds. VRTL- Fund for Independent Political Expenditures is enmeshed completely with and not distinguishable from VRTL-Political Committee.

The Second Circuit held the Vermont statute setting $2,000 limit on contributions to political committees from single source in any two-year general election cycle is not unconstitutionally vague and does not violate First Amendment. VRTL- Political Committee gives contributions to and coordinates with candidate campaigns, is not an independent-expenditure-only group and is subject to the limit. VRTL-Fund for Independent Political Expenditures is indistinguishable from VRTL-Political Committee and is therefore subject to the limit.

United Stated District Courts in New York

NY Progress and Protection PAC v Walsh, (17 F Supp 3d 319 [SDNY 2014]).
(RE: New York Individual Aggregate Contribution Limit)

The individual aggregate contribution limit of $150,000, as provided for in Election Law § 14-114(8), is unconstitutional as applied to contributions to independent expenditure committees because it violates the First Amendment.

Hispanic Leadership Fund, Inc. v Walsh, (42 F.Supp3d 365 [NDNY 2014]).
(RE: New York Limit on Corporate Contributions and Independent Expenditures)

Plaintiff Hispanic Leadership Fund, Inc (HLF), is a 501(c)(4) tax exempt social welfare organization and Plaintiff Freedom New York (FNY) is registered with the New York State Board of Elections as an independent expenditure committee. The Court held Election Law § 14-116 (2), which imposes a $5,000 limit on HLF, Inc.'s contribution to Freedom New York is unconstitutional because it violates the First Amendment. Election Law § 14-114 (8), which imposes an individual aggregate contribution limit of $150,000 on contributions made by individuals to FNY, was held unconstitutional because it violates the First Amendment.

New York State Board 2016 Opinion # 1

The State Board of Elections issued formal guidance and a formal opinion concluding: (1) "[T]he $150,000 aggregate contribution limit found in EL § 14-114 (8) is not enforceable," and (2) "[T]he $5,000 Corporate Limit, as relates to contributions from a corporation to an independent expenditure committee, is not enforceable" (NYBOE 2016 Opinion # 1)

Party Money in a Primary

The former Election Law § 2-126 prohibited a political party from spending money in a primary election; either its own (intra) or another party's (inter). This provision was declared unconstitutional, and the legislature repealed it in 2017 (*see, infra*, Notable Legislation).

NOTABLE RECENT LEGISLATION

2021 Laws

Laws Chaptered

Chapter 22
Reduces the number of signatures for designating petitions; provides dates for the signing and filing of designating petitions in 2021.

Chapter 37
Relates to the automatic voter registration process; amends certain voter registration processes and the agencies to be included as designated agencies.

Chapter 38
Permits county committees to amend their rules to permit committee members whose terms are expiring in 2021 to remain in their office for an additional one-year term.

Chapter 60
Relates to absentee ballots for school district elections during a declared disaster emergency; a voter can apply for an absentee ballot when they are unable to appear personally at the polling place of the school district in which they are a qualified voter because there is a risk of contracting or spreading a disease that may cause illness to the voter or to other members of the public.

Chapter 69
Removes the option to file an opportunity to ballot petition in the June 2021 primary election.

Chapter 74
Requires the county seat in Washington county to have at least one polling place designated for early voting.

Chapter 81
Relates to the number of signatures of enrolled voters needed on a designating petition for any town office and the number of signatures required on a designating petition for a village election

Chapter 90
Relates to the number of signatures for independent nominating petitions; Decreases the number of signatures for independent nominating petitions of candidates for public office; now 2.5%

Chapter 103
Relates to voting and registration for voting by formerly incarcerated individuals convicted of a felony and to repeal certain provisions of the election law relating thereto

Chapter 110
Authorizes a change of location of early voting polling places for certain special, primary and run-off primary elections when no voters of the municipality with the highest population within the county are eligible to vote.

Chapter 188
Relates to the number of supreme court justices in certain districts.

Chapter 241
Requires the board of elections for the voting district in which an old polling place is located to post at the entrance of the old polling location a notice informing voters that the polling place has been moved and providing the street address of the new location.

Chapter 249
Relates to electronic applications for absentee ballots.

Chapter 250
Relates to the mailing and receipt of absentee ballots.

Chapter 260
Increases the number of registrants an election district may contain with the approval of the county board of elections; increases number on county committee.

Chapter 273
Relates to absentee voting application deadlines; all applications requesting an absentee ballot by mail must be received by the board of elections no later than the fifteenth day before the election for a ballot is first requested; applications delivered in person shall be received no later than the day before such election.

Chapter 276
Relates to candidate declination; Provides that a person designated as a candidate for two or more party nominations for an office to be filled at the time of a general election

who is not nominated at a primary election by one or more such parties may decline the nomination of one or more parties not later than ten days after the primary election.

Chapter 279
Relates to absentee voting by residents of nursing homes and other long-term care facilities; provides that inspectors of the board of elections shall not physically deliver ballots to residents of such facilities.

Chapter 310
Provides for online and in-person instruction and examination of election inspectors, poll clerks and election coordinators.

Chapter 320
Relates to the dates by which the governor may make proclamation of a special election to fill certain offices; provides that a special election shall not be held to fill a vacancy in any other office subject to a proclamation by the governor unless the vacancy occurs before the first day of April of the last year of the term of office.

Bills Passed By Both Houses (not yet signed)

A00465/S01555
Relates to the confidentiality of registration records for victims of domestic violence; requires victims of domestic violence wishing to make their registration records confidential to deliver a signed written statement swearing or affirming that they are victims of domestic violence and due to the threat of physical or emotional harm they wish to keep their registration record confidential.

A04136/S01133
Relates to the definition of the term "name" for purposes of designating or nominating a candidate for public office or party position

A04186/S06395
Provides an online absentee ballot tracking system to allow a voter who has submitted an application for an absentee ballot to track the status of an absentee application and an absentee ballot on the state board or local board website.
A05424/S04306B

Enacts the "Make Voting Easy Act"; requires the board of elections to designate a number of early voting polling places based on the number of registered voters in each county; relates to the hours polls are open for early voting.

A05783/S00264
Relates to absentee voting application deadlines; all applications requesting an absentee ballot by mail must be received by the board of elections no later than the fifteenth day before the election for a ballot is first requested; applications delivered in person shall be received no later than the day before such election.

A06970/S06482
Establishes an electronic absentee ballot application transmittal system through which voters may apply for and submit an absentee ballot online.

A07761/S07191
Provides a write-in ballot cast in a party primary resulting from the filing of a valid opportunity to ballot petition for a candidate not enrolled in such party shall be void and not counted; makes related provisions.

A07931/S01027
Relates to the canvassing of absentee, military and special ballots and ballots cast in affidavit envelopes; repealer.

Concurrent Resolutions (Ballot Proposals)

A00502/S00517
Removes ten-day advance voter registration requirement; Amends the constitution to delete the requirement that registration for purposes of voting be completed at least ten days before election day and provides that laws be made to adequately safeguard against deception in the exercise of the right of suffrage.

A01368/S00528
Relates to the right to clean air and water and a healthful environment.

A01916/S00515
Relates to the functioning of the independent redistricting commission; repealer; Relates to the number of state senators and inclusion of incarcerated persons in the federal census for population determination for redistricting purposes and to the functioning of the independent redistricting commission in the determination of district lines for congressional and state legislative offices.

A03109/S00514
Relates to the jurisdiction over the classes of actions and proceedings which shall be originated in the New York city civil court; Increases the amount from $25,000 to $50,000 for actions and proceedings in the New York city civil court.

A04431/S00514
Authorizes ballot by mail by removing cause for absentee ballot voting.

2020 Laws

Chapter 21
Provides for the mailing of annual voter registrant checks no more than 90 days before a primary election, and no less than 85 days before a primary election, so such mailings will not occur during the early voting period for such primary.

Chapter 24
Reduces the signature threshold for designating petitions for the 2020 election; makes changes to the filing deadlines; and removes the filing of an Opportunity to Ballot petition for the June 23rd Primary Election.

Chapter 33
Provides for chapter amendments to Chapter 456 of Laws of 2019, which requires that each Opportunity to Ballot petition submitted to a board of elections be accompanied by a certificate of acceptance completed by those appointed as the committee to receive notices. The chapter amendments replace the term "nomination" with "appointment" and "nominated" with "appointed" as the correct terms of art as it relates to committees to receive notices for opportunity to ballot petitions.

Chapter 34
Provides for chapter amendments to Chapter 465 of Laws of 2019, which eliminates duplicate financial disclosure reports for candidates and authorized political committees who file with New York City Campaign Finance Board. The chapter amendments clarify that if a local campaign finance board violates any one or more requirements outlined in the Election Law, then the capacity for campaign filers to satisfy filing requirements locally is revoked.

Chapter 55
Part JJ provides for a manual recount where the margin of victory is twenty votes or less, where the margin of victory is 0.5% or less; or in a contest where one million or more ballots have been cast and the margin of victory is less than 5,000 votes.

Part XX, Subpart M provides for chapter amendments to Chapter 587 of the Laws of 2019, which require SUNY and CUNY to provide voter registration forms and absentee ballots to students, and for these locations to assist in completion of these documents

Part XX, Subpart N provides for chapter amendments to Chapter 717 of the Laws of 2019, relating to the requirement that a BOE shall cast and canvass a voter's affidavit ballot if it substantially complies with law. The chapter amendments define substantial compliance as when the board can determine the voter's eligibility based on the statement of the affiant or records of the board.

Part AAA amends the time off to vote law. The amended time off to vote law provides that if a voter may receive up to two hours of paid time off to vote if the voter does not have four consecutive hours to vote, either from the opening of the polls to the beginning of your work shift, or between the end of your working shift and the closing of the polls.

Chapter 56

Part TT provides that: "if a candidate for office of the president of the United States…publicly announces that they are no longer seeking the nomination for the office of president of the United States, or if the candidate announces that they are terminating or suspending their campaign, or if the candidate sends a letter to the state board of elections indicating they no longer wish to appear on the ballot, the state board of elections may determine…that the candidate is no longer eligible and omit said candidate from the ballot; provided, however, that for any candidate of a major political party, such determination shall be solely made by the commissioners of the state board of elections who have been appointed on the recommendation of such political party or the legislative leaders of such political party, and no other commissioner of the state board of elections shall participate"

Chapter 58

Part ZZZ codifies the New York State public financing program; establishes the New York state campaign finance fund; establishes the NYS campaign finance fund check-off; amends the definition of a party to political organizations that, in last preceding election for governor received, at least two percent of the total votes cast for its candidate for governor, or one hundred thirty thousand votes, whichever is greater, and at least two percent of the total votes cast for its candidate for president, or one hundred thirty thousand votes, whichever is greater, in a year when a president is elected; and changed the threshold for statewide independent nominating petitions to forty-five thousand signatures from registered voters, or one percent of the total number of votes, excluding blank and void ballots, cast for the office of governor at the last

gubernatorial election, whichever is less, of whom at least [one] five hundred, or one percent of enrolled voters, whichever is less, shall reside in each of one-half of the congressional districts of the State.

Chapter 87
Provides for chapter amendments to Chapter 454 of Laws of 2019, which requires that political communications disclose the identity of the political committee that made the expenditure for the communication. The chapter amendments clarify that the exceptions for campaign or ballot provision committees do not apply to reporting requirements for independent expenditure committees.

Chapter 91
Permits electronic application for absentee ballots and removes requirement that such application be signed by the voter and provides that this provision expires on December 31, 2020.

Chapter 138
Permits absentee ballot applications to be sent to county boards of elections for processing earlier than 30 days. Expires on December 31, 2020.

Chapter 139
Amends section 8-400 of the Election Law. Defines the term "illness" for the purposes of absentee voting to include instances where a voter is unable to appear personally at the polling place of the election district in which they are a qualified voter because there is a risk of contracting or spreading a disease-causing illness to the voter or to other members of the public. Expires January 1, 2022.

Chapter 140
Amends section 8-412 of the Election Law. All absentee ballots that do not bear or display a dated postmark shall be presumed to have been timely mailed or delivered if such ballot bears a time stamp of the receiving board of elections indicating receipt by such board on the day after the election.

Chapter 141
Amends section 9-209 of the Election Law. Requires boards of elections to notify absentee voters when their absentee ballots contained certain deficiencies; establishes a procedure for absentee voters to respond to notice of deficiency from the board of elections; and provides the voter an opportunity to submit an affirmation to cure the deficiency.

Chapter 200
Amends 4-117 of the Election Law. Requires boards of elections to print in bold type the date and time of all upcoming primary and general elections on address verification notices sent out prior to elections.

Chapter 232
Amends section 8-104 of the Election Law. Prohibits the making of any change, alteration or modification to any entrance to or exit from a polling place unless such change, alteration or modification is necessary to maintain public safety due to the occurrence of an emergency and requires the posting of signage in relation to such change, alteration or modification.

Chapter 344
Amends section 8-600 of the Election Law. Requires municipalities with the highest population in each county to have at least one polling place designated for early voting.

Chapter 350
Implements a system of automatic voter registration, ("AVR") within certain designated state agency applications. The bill specifically designates the Department of Motor Vehicles (DMV) Department of Health (DOH), the Office of Temporary and Disability Assistance (OTDA); Department of Labor (DOL); Office of Vocational and Educational Services for Individuals with Disabilities; County and City Departments of Social Services, and the New York City Housing Authority (NYCHA), as agencies participating in AVR. Takes effect January 1, 2023.

2019 Laws

Chapter 2
Allows pre-registration of 16 and 17-year-olds.

Chapter 3
Provides for statewide transfer of voter registrations.

Chapter 4
Applies $5,000 aggregate annual contribution limits to Limited Liability Companies (LLC) contributions and provides other disclosure requirements.

Chapter 5
Provides for a June Primary Election and related changes.

Chapter 6

Provides for nine days of early voting before each primary, general and special election conducted by boards of elections, excepting village elections.

Chapter 46
Changes the deadline for new Parties to file certificates of nomination in their first year of existence to September 1.

Chapter 136
Authorizes the use of campaign funds for childcare expenses where they are incurred in the campaign or in the execution of the duties of public office or party position.

Chapter 150
Permits victims of domestic violence to cast a special ballot by mail.

Chapter 257
Changes the current two weeks prior to election deadline to send special ballots to election workers to anytime up to close of polls on election day.

Chapter 290
Sets out ballot access process for the Presidential Primary and elect delegates to national conventions.

Chapter 316
Allows changes of party enrollment to take effect immediately, except that changes of enrollment received in the period between February 14 and seven days after the primary would be effective on the seventh day after the June Primary.

Chapter 409
Requires that an arrow be added to the ballot to indicate the ballot is two sided when there is a ballot proposal.

Chapter 410
Requires the posting of candidate and ballot information on State Board and County Boards of Elections websites.

Chapter 411
Updates the instructions used on ballots and standardizes them across state; eliminates the NYC only provision in Election Law 7-116(6).

Chapter 412
Requires county boards to publish local office contribution limits on their county website.

Chapter 413
Requires boards of elections to notify all eligible voters of any special elections being held in their jurisdiction.