

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D66904  
Q/afa

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 17, 2021

WILLIAM F. MASTRO, J.P.  
COLLEEN D. DUFFY  
ANGELA G. IANNACCI  
DEBORAH A. DOWLING, JJ.

---

2021-04270

DECISION & ORDER

In the Matter of Joann Ariola, et al., petitioners-respondents,  
v Danniell Maio, et al., appellants, et al., respondents.

(Index No. 708128/21)

---

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate petitions designating (1) Danniell Maio as a candidate in a primary election to be held on June 22, 2021, for the nomination of the Republican Party as its candidate for the public office of Queens Borough President, (2) Kathy Wu Parrino as a candidate in a primary election to be held on June 22, 2021, for the nomination of the Republican Party as its candidate for the public office of Judge of the Civil Court of the City of New York from the County of Queens, 3rd Municipal District, for assigned vacancy 11, (3) Philip A. McManus, Jr., and Margaret Wagner as candidates in a primary election to be held on June 22, 2021, for the Republican Party positions of Male Member and Female Member of the Republican State Committee from the 23rd Assembly District, (4) Phil Orenstein and Anita Uppal as candidates in a primary election to be held on June 22, 2021, for the Republican Party positions of Male Member and Female Member of the Republican State Committee from the 24th Assembly District, (5) Daniel Noble as a candidate in a primary election to be held on June 22, 2021, for the Republican Party position of Male Member of the Republican State Committee from the 27th Assembly District, and (6) David Abraham and Yanling Z. Wagner as candidates in a primary election to be held on June 22, 2021, for the Republican Party positions of Male Member and Female Member of the Republican State Committee from the 28th Assembly District, Danniell Maio, Kathy Wu Parrino, Philip A. McManus, Jr., Margaret Wagner, Phil Orenstein, Anita Uppal, Daniel Noble, David Abraham, and Yanling Z. Wagner appeal from a final order of the Supreme Court, Queens County (Robert I. Caloras, J.), entered June 11, 2021. The final order, insofar as appealed from, after a hearing, granted those branches of the petition which were, inter alia, to invalidate the appellants' designating petitions.

June 17, 2021

MATTER OF ARIOLA v MAIO

Page 1.

ORDERED that the final order is affirmed insofar as appealed from, without costs or disbursements.

The Supreme Court held a lengthy hearing in this proceeding pursuant to Election Law § 16-102, inter alia, to invalidate petitions designating the appellants as candidates for various public offices and party positions in the primary election to be held on June 22, 2021. In a final order entered June 11, 2021, the court, insofar as relevant to this appeal, granted certain branches of the petition, inter alia, to invalidate on the grounds that certain designating petitions were permeated with fraud and others were invalid due to cover sheet defects. We affirm the final order insofar as appealed from.

The inclusion of a candidate's name on a designating petition, without his or her consent, may constitute fraud (*see Matter of Richardson v Luizzo*, 64 AD2d 942, *affd* 45 NY2d 789). "While a single instance of adding another candidate's name without consent, standing alone, has been found insufficient to warrant the invalidation of an entire designating petition" (*Matter of Lynch v Duffy*, 172 AD3d 1370, 1373), a designating petition will be invalidated upon a showing that the entire petition is permeated with fraud (*see Matter of Felder v Storobin*, 100 AD3d 11, 15). Here, the petitioners demonstrated by clear and convincing evidence that the designating petitions of the appellants Danniell Maio, Kathy Wu Parrino, Philip A. McManus, Jr., Margaret Wagner, Daniel Noble, David Abraham, and Yanling Z. Wagner were permeated with fraud, as it is undisputed that those designating petitions included the names of several candidates who never affirmatively agreed to be listed thereon, and the hearing evidence amply supported the Supreme Court's determination that their inclusion was intentional and designed to mislead others. Thus, these designating petitions were properly invalidated on the ground of fraud (*see Matter of Lutfy v Gangemi*, 35 NY2d 179, 181-182; *Matter of Lynch v Duffy*, 172 AD3d at 1373; *Matter of Richardson v Luizzo*, 64 AD2d at 943).

Furthermore, contrary to the appellants' contention, the Supreme Court did not err in invalidating the petitions designating the appellants Phil Orenstein and Anita Uppal as candidates for the positions of Male Member and Female Member of the Republican State Committee from the 24th Assembly District. It was undisputed at the hearing that multiple cover sheets bearing identical time stamps were filed on behalf of those appellants. Accordingly, since it could not be determined which cover sheet was filed last and was therefore controlling under New York City Board of Elections Rule C7, the petitions designating those appellants were properly invalidated (*see Matter of Murray v Simon*, \_\_\_ AD3d \_\_\_, 2021 NY Slip Op 03136 [2d Dept]).

The appellants' remaining contentions are without merit.

MASTRO, J.P., DUFFY, IANNACCI and DOWLING, JJ., concur.

ENTER: 

Aprilanne Agostino  
Clerk of the Court