

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

D24410
C/hu

_____AD3d_____

Argued - September 10, 2009

PETER B. SKELOS, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
SHERI S. ROMAN, JJ.

2009-08426

DECISION & ORDER

In the Matter of Erlene J. King, respondent, v Board
of Elections in City of New York, appellant.

(Index No. 70035/09)

In a proceeding, in effect, pursuant to Election Law § 16-104, inter alia, to direct the Board of Elections in the City of New York to include the petitioner's name as a candidate on absentee ballots in a primary election to be held on September 15, 2009, for the nomination of the Democratic Party as its candidate for the public office of Member of the New York City Council, 45th Council District, and to reprint the absentee ballots, the Board of Elections in the City of New York appeals from a final order of the Supreme Court, Kings County (Schmidt, J.), dated September 3, 2009, which, among other things, granted the petition and directed it to include the petitioner's name as a candidate on the subject absentee ballots and to reprint those absentee ballots accordingly.

ORDERED that the final order is reversed, on the law, without costs or disbursements, the petition is denied, and the proceeding is dismissed.

Under the circumstances of this case, the petition must be denied and the proceeding must be dismissed, as meaningful relief cannot be afforded in accordance with the Election Law (*see* Election Law § 7-122[1][a]; *Matter of Hunter v Orange County Bd. of Elections*, 1 NY3d 813; *Matter of Breitenbach v Heffernan*, 245 App Div 374, *affd* 268 NY 718).

SKELOS, J.P., COVELLO, ANGIOLILLO and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

September 10, 2009

MATTER OF KING v BOARD OF ELECTIONS IN CITY OF NEW YORK