

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

D28360
Y/nl

_____AD3d_____

Argued - August 31, 2010

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2010-08103

DECISION & ORDER

In the Matter of Mary Patricia Flynn, et al., appellants,
v Ken Auerbach, et al., respondents-respondents,
et al., respondents.

(Index No. 10-25898)

In a proceeding pursuant to Election Law § 16-102, inter alia, to validate a petition for an opportunity to ballot by providing for write-in candidates pursuant to Election Law § 6-164 in a primary election to be held on September 14, 2010, for the nomination of the Conservative Party as its candidate for the public office of the Representative in Congress from the 1st Congressional District, Mary Patricia Flynn, Douglas M. Dwyer, and Terrence Flanagan appeal from a final order of the Supreme Court, Suffolk County (Whelan, J.), dated August 20, 2010, which, after a hearing, denied their petition to validate the opportunity-to-ballot petition and, in effect, dismissed the proceeding.

ORDERED that the final order is reversed, on the law and the facts, without costs or disbursements, the petition, inter alia, to validate the opportunity-to-ballot petition is granted, and the Suffolk County Board of Elections is directed to conduct a primary election on September 14, 2010, giving members of the Conservative Party an opportunity to write in the name of a person for nomination as the candidate of the Conservative Party for the public office of Representative in Congress from the 1st Congressional District (*see Matter of Johannesen v Flynn*, _____ AD3d_ _____ [decided herewith]).

ANGIOLILLO, J.P., DICKERSON, ENG, BELEN and LOTT, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court

August 31, 2010

MATTER OF FLYNN v AUERBACH