

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

D32225  
W/kmb

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

Argued - August 16, 2011

WILLIAM F. MASTRO, J.P.  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS  
SHERI S. ROMAN  
ROBERT J. MILLER, JJ.

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2011-07093

DECISION & ORDER

In the Matter of Rachael Rancourt, et al., appellants,  
v Matthew Kennedy, et al., respondents-respondents,  
et al., respondents.

(Index No. 4989/11)

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In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition designating (1) Matthew Kennedy as a candidate in a primary election to be held on September 13, 2011, for the nomination of the Independence Party as its candidate for the public office of Supervisor of the Town of Beekman, (2) Peter Zielenski as a candidate in a primary election to be held on September 13, 2011, for the nomination of the Independence Party as one of its candidates for the public office of Member of the Town Board of the Town of Beekman, (3) Joanne Ambrosini as a candidate of the Independence Party in a primary election to be held on September 13, 2011, for the nomination of the Independence Party as one of its candidates for the public office of Member of the Town Board of the Town of Beekman, (4) Anthony Coviello as a candidate in a primary election to be held on September 13, 2011, for the nomination of the Independence Party as its candidate for the public office of Highway Superintendent of the Town of Beekman, (5) Beth Gibson as a candidate in a primary election to be held on September 13, 2011, for the nomination of the Independence Party as one of its candidates for the public office of Town Justice of the Town of Beekman, (6) Bill Anshen as a candidate in a primary election to be held on September 13, 2011, for the nomination of the Independence Party as one of its candidates for the public office of Town Justice of the Town of Beekman, (7) Matthew Hanson as a candidate in a primary election to be held on September 13, 2011, for the nomination of the Independence Party as its candidate for the public office of Member of the Dutchess County Legislature, 22nd Legislative District, and (8) Melinda Magill as a candidate in a primary election to be held on September 13, 2011, for the nomination of the Independence Party as its candidate for the public office of Town Clerk of the Town of Beekman, the petitioners appeal

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from a final order of the Supreme Court, Dutchess County (Wood, J.), dated August 8, 2011, which denied the petition and dismissed the proceeding.

ORDERED that the final order is affirmed, without costs or disbursements.

To gain positions on the primary election ballot as candidates for the nomination of the Independence Party as its candidates for various town and county public offices, the potential candidates who circulated the combined designating petition that is the subject of the instant proceeding (hereinafter collectively the potential candidates) were required to obtain 28 valid signatures on their combined designating petition, representing five percent of the enrolled Independence Party voters in the Town of Beekman (*see* Election Law § 6-136[2]). The subscribing witnesses for the potential candidates' combined designating petition attested that they had obtained a total of 140 signatures. However, a review of the combined designating petition reveals that the subscribing witness statements overstated the number of signatures actually contained on each petition page. Notably, each of the pre-printed petition pages circulated by the potential candidates was missing signature line number six. In their affidavits offered in opposition to the petition to invalidate, the subscribing witnesses stated that they had relied upon the line number printed beside the last signature on each page to determine the total number of signatures on each petition page. Consequently, the subscribing witnesses inadvertently overstated, by one signature, the number of signatures on each page containing more than five signatures. The actual number of valid signatures on the combined designating petition collected by the subscribing witnesses totaled 126. Accordingly, the potential candidates still submitted more than four times as many signatures as was necessary for their names to be placed upon the primary election ballot as candidates for the nomination of the Independence Party as its candidates for several town and county public offices.

Contrary to the petitioners' argument, the overstatement of the signature totals on the combined designating petition is not such a gross irregularity as to warrant invalidation. Where, as here, 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 Staber v Fidler*, 110 AD2d 38, 39, *affd* 65 NY2d 529; *see* Election Law § 6-134[10]; *Matter of Ruggiero v Molinari*, 112 AD2d 1071, *affd* 65 NY2d 968; *Matter of Fox v Westchester County Bd. of Elections*, 112 AD2d 1063, 1064, *affd* 65 NY2d 971; *Matter of Bland v Board of Elections of City of N.Y.*, 112 AD2d 1053, *affd* 65 NY2d 962; *Matter of Brown v Sachs*, 57 AD2d 583; *cf. Matter of Fromson v Lefever*, 112 AD2d 1064, 1066, *affd sub nom. Matter of Barrett v Scaringe*, 65 NY2d 946; *see also Matter of Rancourt v Magill*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]). Accordingly, the Supreme Court properly denied the petition to invalidate and dismissed the proceeding.

MASTRO, J.P., LEVENTHAL, CHAMBERS, ROMAN and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court