

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

D32805
W/kmb

_____AD3d_____

Argued - October 25, 2011

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2011-09472

DECISION & ORDER

In the Matter of Gregory Fischer, etc., et al.,
appellants, v Suffolk County Board of Elections,
et al., respondents-respondents, et al., respondents.

(Index No. 29292/11)

In a proceeding, inter alia, in effect, pursuant to Election Law § 16-113 to direct a manual audit of the voter verifiable audit records, from all voting machines, applicable to the primary elections held on September 13, 2011, for the nominations of the Democratic Party as its candidates for the public offices of Supervisor of the Town of Riverhead and Member of the Town Council of the Town of Riverhead, the petitioners appeal from a final order of the Supreme Court, Suffolk County (Weber, J.), dated October 3, 2011, which, after a hearing, denied the petition and, in effect, dismissed the proceeding.

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

Contrary to the petitioners' contention, under the circumstances, the Supreme Court properly denied that branch of the petition which was to direct a manual audit of the voter verifiable audit records, from all voting machines, applicable to the primary elections held on September 13, 2011, for the nominations of the Democratic Party as its candidates for the public offices of Supervisor of the Town of Riverhead and Member of the Town Council of the Town of Riverhead (*see* Election Law § 16-113; *Matter of Johnson v Martins*, 15 NY3d 584, 588; *see also* Election Law § 9-126[2][c]).

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The petitioners' remaining contentions are either without merit or not properly before this Court.

RIVERA, J.P., ANGIOLILLO, BELEN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court