

**Choudhury v Gibbs**

2022 NY Slip Op 30028(U)

January 6, 2022

Supreme Court, New York County

Docket Number: Index No. 161587/2021

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. CAROL EDMEAD PART 35**

*Justice*

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JUHAIB CHOUDHURY, GABY CARRERAS,

Petitioners,

- v -

EDWARD GIBBS, THE NEW YORK COUNTY  
DEMOCRATIC PARTY, THE DEMOCRATIC DISTRICT  
COMMITTEE OF THE NEW YORK COUNTY  
DEMOCRATIC PARTY, JOHANNA GARCIA, BARRY  
WEINBERG, THE BOARD OF ELECTIONS FOR THE CITY  
OF NEW YORK

Respondents.

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INDEX NO. 161587/2021  
MOTION DATE 12/28/2021  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 7, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for ELECTION LAW.

In this Election Law proceeding, Petitioner-Objector Juhaib Choudhury and Petitioner-Candidate-Agrieved Gaby Benjamine Carreras (collectively, Petitioners) seek, by Order to Show Cause (OSC), an Order pursuant to Election Law Articles 1, 6 and 16 and CPLR 78 3001, finding a violation of the Rules and Regulations of the Democratic Party of the County of New York, thereby:

- (i) Declaring insufficient, defective, invalid, null and void the New York County Democratic Party Certificate of Nomination and Certificate of Acceptance filed with the New York City Board of Elections (“BOE”) purporting to designate and/or nominate Respondent- Candidate Edward Gibbs as a candidate for the purported Public Office of 68th Assembly District, State of New York in the Special Election to be held on January 18, 2022; and

(ii) Enjoining, restraining, and prohibiting the BOE from executing or allowing the Name of Respondent-Candidate to be printed or placed on the official ballots to be used either at the January 18, 2022 Special Election for the Public Office of Member of Assembly, 68th Assembly District, State of New York on the Democratic Party Line; or that of any other candidate purporting to fill the vacancy occurring by reason of his disqualification upon the official ballots of said January 18, 2022 Special Election on the Democratic Party line.

(Motion Seq. 001).

In the underlying Petition in support of the instant OSC (NYSCEF doc No. 1), Petitioner argues that Respondent-Candidate should be removed from the ballot for the January 18, 2022 Special Election for the Public Office of Member of Assembly, 68th Assembly District, as Respondent New York County Democratic Party (“NY County Democratic Party”) nominated Respondent-Candidate for the aforesaid public office at a meeting held December 18, 2021 that was not properly noticed per the Rules and Regulations of the NY County Democratic Party (“the Party Rules”). Therefore, the December 18, 2021 meeting was held in violation and in contravention of the Party Rules, rendering Respondent-Candidate’s nomination invalid.

In opposition, counsel for Respondent-Candidate, and Respondents NY County Democratic Party, the Democratic District Committee of the New York County Democratic Party (the “Democratic District Committee”) and Joanne Garcia and Barry Weinberg, Chairperson and Secretary of the NY County Democratic Party Authorization Meeting (“Ms. Garcia and Mr. Weinberg”) (collectively, “Democratic Party Respondents”), argues that the instant petition should be denied and this proceeding dismissed as: (i) Petitioners failed to serve

Democratic Party Respondents<sup>1</sup> properly; ii) Petitioners failed to name a necessary party, and there is no “Petitioner-Candidate-Agrieved” named “Gaby Benjamine Carreras;” iii) Petitioners’ specific objections at the Board of Elections were not served properly, and even if they were the objections are factually inaccurate and wrong; and iv) the District Committee meeting that occurred on December 18, 2021 was properly and timely noticed per the rules of the NY County Democratic Party (NYSCEF doc No. 10).

At a Microsoft Teams conference held January 5, 2022, the Court first addressed counsel’s argument that Democratic Party Respondents were not properly served. Petitioners’ counsel directed the Court’s attention to an Affidavit of Service (“the Affidavit”) (NYSCEF doc No. 18) filed earlier the same day, January 5, 2022, that reflected service by overnight mail on Democratic Party Respondents as directed by the Court in its initialization of Petitioners’ OSC. The Court proceeded to review the Affidavit<sup>2</sup> and found that Petitioner failed to effect service on the following Respondents:

*NY County Democratic Party*

The Affidavit states that “New York County Democratic Party” was served at 461 Park Avenue #10, New York, New York 10022. Democratic Party Respondents’ counsel advised the Court that is not a correct address for the NY County Democratic Party and introduced an affidavit from Kyle H. Ishmael, executive director of the NY County Democratic Party, attesting

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<sup>1</sup> Respondent BOE is represented by separate counsel. For the reasons discussed *infra*, the Court did not reach the matter of whether the BOE was properly served.

<sup>2</sup> As noted by Democratic Party Respondents’ counsel, the Affidavit is defective on its face as it was notarized out of state in Florida. While the Court has discretion to allow Petitioners to amend the Affidavit with a certificate of compliance in accordance with the CPLR, it declines to do so given the other issues of improper service discussed herein.

that the NY County Democratic Party's business addresses are 190 West 135<sup>th</sup> St, First Floor, New York, New York 10030 and 108 West 39<sup>th</sup> Street, Suite 1201, New York, New York 10018 (NYSCEF doc No. 12). While Petitioners' counsel argued that an online Google search listed the 461 Park Avenue address, Petitioners introduced no competent authority evidencing that 461 Park Avenue is a proper address for the NY County Democratic Party.

Accordingly, the Court found that Petitioners failed to properly serve the NY County Democratic Party.

*Democratic District Committee*

The Affidavit contains no statement indicating that the Democratic District Committee was served. Petitioners' counsel argued that separate service on the Democratic District Committee was not required as the business address for the Democratic District Committee is the same as the address for the NY County Democratic Party but introduced no competent authority supporting that proposition. The argument is further moot given that Petitioners failed to serve the NY County Democratic Party at its proper address.

Petitioners' counsel also argued that service on Ms. Garcia and Mr. Weinberg constituted proper service on the Democratic District Committee as both were served in their official capacity. However, Ms. Garcia and Mr. Weinberg are named in the Petition as "Chairperson and Secretary of the NY County Democratic Party Authorization Meeting," not as representatives of the Democratic District Committee. This argument is similarly further moot given that, as discussed *supra*, Ms. Garcia and Mr. Weinberg were not properly served.

Accordingly, the Court found that Petitioners failed to properly serve the Democratic District Committee.

*Joanne Garcia and Barry Weinberg, Chairperson and Secretary of the NY County Democratic Party Authorization Meeting*

The Affidavit reflects that Ms. Garcia and Mr. Weinberg were served at 1827 Lexington Avenue, New York New York 10029. Petitioner's counsel stated that Ms. Garcia and Mr. Weinberg were served at said address as they were served in their official capacity and the December 18, 2021 meeting that is the subject of this proceeding was held at this address.

Although Petitioners were not required to serve Ms. Garcia and Mr. Weinberg at their home residences given that they are named in their official capacity, Petitioners' counsel introduced no competent authority evidencing that 1827 Lexington Avenue is a proper address for either party. While Petitioner's counsel argued that 1827 Lexington Avenue was proper as it is the address where the December 18, 2021 meeting occurred, political party meetings are routinely held at a variety of unaffiliated locations. Petitioner thus introduced no credible evidence demonstrating that 1827 Lexington Avenue was an address where Ms. Garcia and Mr. Weinberg could be expected to receive mail in their capacity as representatives for the NY County Democratic Party.

Accordingly, the Court found that Petitioners failed to properly serve Ms. Garcia and Mr. Weinberg.

In summary, the Court is disinclined to exercise and acknowledge proper jurisdiction over the instant matter in light of the rulings made with respect to improper service on

Democratic Party Respondents as detailed herein. The Court finds the service made on Ms. Garcia and Mr. Weinberg to be particularly disconcerting, given that it was made at the address where the December 18, 2021 meeting was held with no other indicia that it was an address where Ms. Garcia and Mr. Weinberg could be reasonably expected to receive mail.

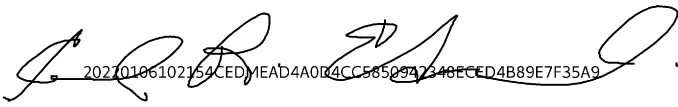
In conclusion, it would be improvident for the Court to exercise jurisdiction where service is so patently defective. In light of Court’s declination to acknowledge and exercise jurisdiction, the petition is denied.

In accordance with the “So-Ordered” Transcript January 5, 2022 (Diane Kavanaugh, Court Reporter), it is hereby

ORDERED that Petitioners’ application by Order to Show Cause (Motion Seq. 001) is denied, and the instant proceeding is dismissed; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Democratic Party Respondents shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.



1/6/2022  
DATE

CAROL EDMED, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

CHECK IF APPROPRIATE: