

<b>Matter of Paez v Board of Elections in the City of N.Y.</b>
2023 NY Slip Op 31438(U)
May 1, 2023
Supreme Court, New York County
Docket Number: Index No. 153666/2023
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 41

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In the Matter of the Application of

DAISY PAEZ, ELAINE LA PENNA, JEFFREY  
CHEN, SONIA QUINONES, EDWIN QUINONES,  
MICHELLE DIAZ, STEPHANIE FRANCO, RODNEY  
WASHINGTON, IDA COLON, MAGDA NAPOLEON,  
NANCY ORTIZ, RADISSA VILLA FRANCA,  
JASMIN SANCHEZ, ROBERTO CABALLERO,  
ELIZABETH VALDEZ, and RAFAEL ROMAN,

Index No. 153666/2023

Petitioners

- against -

DECISION AND ORDER

BOARD OF ELECTIONS IN THE CITY OF NEW  
YORK,

Respondent,

and

RON THOMAS as a Candidate for Democratic  
District Leader, 65th Assembly District  
Part B,

and

As Candidates for the Democratic Party  
County Committee:

- ED 13 ERICA ALMOVADO, HIPOLITA MARTINEZ;
- ED 15 DAVID VENTURA, SAMANTHA CAMBRELEN;
- ED 18 ZORAIDA ALDAHONDO, SENECA CANCEL;
- ED 19 RON THOMAS, TINA BANKS, LUZ NELLY  
CHILE;
- ED 23 VICTORIA ALDAHONDO, PATRICIA  
MARTINEZ;
- ED 25 JULIA RODRIGUEZ, BILLIE STOKES;
- ED 26 CAROLINA MARTE, CLAUDIO MARTE,  
CLAUDIO MARTEE, ANGEL FERNANDEZ;
- ED 27 JANET GUZMAN, JULIE RODRIGUEZ;
- ED 31 AIXA O. TORRES, JERRY CARTER,  
DIANA ALDAHONDO;
- ED 42 JOHN QUINN, JOSE E. ALDAHONDO;

ED 48 PEDRO CARDI, MAGGIE CASTILLO;  
ED 58 AYO HARRINGTON, PAUL BARTLETT,  
MARIAMA JAMES;  
ED 62 JULIO CORDOVA, JANICE MCLAUREN;  
ED 63 VIVIAN A SORENSON, JENNIFER ROMINE,  
ED 65 LOURDES CASTRILLO, MONIQUE L.  
HARRIS;  
ED 66 SHARRON L. CLEMONS, JANET CARDI,

Candidate-Respondents

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LUCY BILLINGS, J.S.C.:

The purpose of verification requirements in New York Election Law § 16-116 and C.P.L.R. § 3020 is to assure that specified pleadings, such as petitions in election proceedings, are based on personal knowledge to which the witness attests under oath. The absence of a sworn attestation upon personal knowledge is a substantial defect that strikes at the heart of the verification requirement. Goodman v. Hayduk, 45 N.Y.2d 804, 806 (1978).

In this proceeding, the petition's verification, by petitioners' attorney, is unsworn. The verification is not even affirmed or declared under penalties for perjury. C.P.L.R. § 2106(b). Although the attorney might be competent to attest to the petition's contents upon his own personal knowledge, as any petitioner might, whoever verifies the petition must do so under oath. The requirement for an oath impresses on the witness the gravity of his factual account. C.P.L.R. § 2309(b); MacKenzie v. Gharty, 131 A.D.3d 638, 638 (2d Dep't 2015); Liebler v. Friedman,

54 A.D.3d 697, 698 (2d Dep't 2008). The court may not overlook an omission that contravenes that objective. The absence of an oath is thus more than an "irregularity" that the court may permit, C.P.L.R. § 2001, but is instead a substantial defect that disregards the core requirement of verifications: that a person swears under oath, upon that person's own knowledge, that the pleading's contents are true. Nor is the oath an element of the verification that the court may infer.

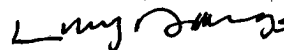
Petitioners concede that their attorney was not verifying the petition because petitioners do not reside in the county where his office is. C.P.L.R. § 3020(d)(3); Page v. Ceresia, 265 A.D.3d 730, 731 (3d Dep't 1999). Nor are the circumstances here akin to a potential defect in the notary's qualifications. Harder v. Kuhn, 153 A.D.3d 1119, 1120 (3d Dep't 2017). No one who is not under oath is qualified to verify the petition. Absent a sworn verification, the petition is unverified. Frisa v. McCarthy, 298 A.D.2d 457, 457-58 (2d Dep't 2002).

Since respondents timely notified petitioners that respondents were treating the defectively verified pleading as a nullity, they are entitled to do so, and the court must do so as well. C.P.L.R. § 3022; DeMarco v. Monroe County Bd. Of Elections, 176 A.D.3d 1645, 1645 (4th Dep't 2019). "To find an unverified petition nonetheless acceptable to institute the special proceeding would not serve practical purposes or advance

the policy behind section 16-116 of the Election Law.” Goodman v. Hayduk, 45 N.Y.2d at 806.

Nor may petitioners cure their defectively verified petition by amendment. The defective verification is fatal to the petition. DeMarco v. Monroe County Bd. Of Elections, 176 A.D.3d at 1645; Niebauer v. Board of Elections in the City of N.Y., 76 A.D.3d 660, 660 (2d Dep’t 2010); Frisa v. McCarthy, 298 A.D.2d at 458; Frisa v. O’Grady, 297 A.D.2d 394, 395 (2d Dep’t 2002). Consequently, for the reasons explained above, the court denies the petition and dismisses this proceeding to invalidate the designating petitions filed with respondent Board of Elections in the City of New York by the remaining respondents to be placed on the ballot in the Democratic Primary Election June 27, 2023, as candidates for public office.

DATED: May 1, 2023



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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C