

Matter of Leonard v Johnston

2025 NY Slip Op 32406(U)

July 1, 2025

Supreme Court, Kings County

Docket Number: Index No. 520443/25

Judge: Lawrence Knipel

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At the Special Election Part 1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 1st day of July, 2025.

P R E S E N T:

HON. LAWRENCE KNIPEL,
Justice.

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IN THE MATTER OF THE APPLICATION OF
JAMES J. LEONARD,

PETITIONER-CANDIDATE AGGRIEVED,

-AND-

GEORGE A. MARSH,

PETITIONER-CANDIDATE AGGRIEVED,

-AGAINST-

INDEX No. 520443/25

JOHN M. JOHNSTON,

RESPONDENT-OBJECTOR

-AND

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK,
RESPONDENT-BOARD

FOR AN ORDER PURSUANT TO SECTIONS 16-100, 16-102 AND 16-116 OF THE ELECTION LAW DECLARING VALID THE INDEPENDENT NOMINATING PETITIONS WHICH NAMED THE PETITIONERS AS CANDIDATES FOR THE PUBLIC OFFICE OF MAYOR, CITY OF NEW YORK ON THE "NO TO CITY OF YES" AND "COMMON GOOD" PARTY LINES AT THE GENERAL ELECTION TO BE HELD ON NOVEMBER 4, 2025, AND TO ORDER SAID BOARD OF ELECTIONS TO PRINT AND PLACE THE NAME OF SAID CANDIDATES UPON THE OFFICIAL BALLOTS OF SUCH GENERAL ELECTION

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The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and

Affidavits (Affirmations) Annexed _____

1-12

Opposing Affidavits/Answer (Affirmations) _____

13-14

Affidavits/ Affirmations in Reply _____

15

Other Papers: Specification of Objections _____

Upon the foregoing papers, and after oral argument and a hearing held on the record before the court on June 26, 2025 in this proceeding commenced pursuant to Election Law § 16-102 to validate the separate independent nominating petitions filed by James J. Leonard (petitioner Leonard) and George A. Marsh (petitioner Marsh) (collectively, petitioners) as candidates for the public office of Mayor of the City of New York under the “Common Good” and “NO to the City of YES” party lines in the General Election to be held on November 4, 2025, the court rules as follows.

Background Facts and Procedural History

On May 23, 2025, petitioner Marsh filed with respondent the Board of Elections in the City of New York (the Board) an independent nominating petition seeking to place his name on the ballot for the public office of Mayor of the City of New York in the November 4, 2025 General Election under the “Common Good” party line. On May 27, 2025, petitioner Leonard filed with the Board an independent nominating petition seeking to place his name on the ballot for the public office of Mayor of the City of New York in the November 4, 2025 General Election under the “NO to the City of YES” party line. On May 30, 2025, respondent-objector John M. Johnson (respondent) filed with the Board separate general objections against petitioners’ respective nominating petitions (NYSCEF

Doc No. 4). On June 3, 2025, respondent filed with the Board separate specifications of objections against the petitioners' respective nominating petitions (NYSCEF Doc No. 5). Neither specification challenged the individual signatures in the petitions. Instead, the specifications against petitioner Leonard's nominating petition consisted of a statement that he did not qualify for placement on the ballot because 3,750 signatures were required and his nominating petition only contained 2,316 signatures in total. Similarly, the specifications of objections filed against petitioner Marsh stated that 3,750 signatures were required and the nominating petition he submitted only contained 1,700 signatures in total.

After respondent's specifications of objections were filed, the Board generated clerk's reports with respect to these specifications (NYSCEF Doc. No. 14). Neither clerk's report contained any rulings regarding individual signatures. Instead, the clerk's report for petitioner Leonard's nominating petition indicated that the petition contained 2,739 signatures and that 3,750 signatures were required for placement on the ballot. The clerk's report for petitioner Marsh indicated his nominating petition contained 1,740 and that 3,750 signatures were required for placement on the ballot.

On June 17, 2025, the Board's Commissioners met to rule on the clerk's reports generated for the specifications of objections filed against independent nominating petitions. When the Commissioners reached the respective clerk's reports involving petitioners, they separately raised the same argument. In particular, both petitioners argued that the Board should reject the specified objections filed against their nominating petition because respondent's signature on the general objections did not match his signature on the specifications of objections. However, the Commissioners found that this amounted to

a fraud allegation and that it was beyond their statutorily authorized ministerial function to rule on this challenge. Accordingly, the Board approved the clerk's reports and removed both petitioners from the ballot as their nominating petitions did not contain the requisite number of signatures.

On June 20, 2025, petitioners commenced the instant validating proceeding against respondent and the Board seeking an order directing that the Board place their names on the ballot in the November 4, 2025 General Election.¹ The validating petition alleges that respondent's purported signature on the general objections filed against their respective nominating petitions bears no resemblance to and does not match his purported signature on the specifications of objections filed against their petitions. In support of this contention, petitioners attach copies of the general objection and specifications of objections forms which contain respondent's purported signature. Petitioners further submit an expert affidavit by Grace Warmbier, a Certified Forensic Document Examiner who was retained by petitioner Marsh to determine if there is common authorship between respondent's signature on the general objections and specifications of objections filed against petitioner Marsh's nominating petition, as well as an affidavit oath dated August 23, 2022, a voter registration card dated October 11, 1991, and a DMV-e-Notification form dated July 28, 2016. According to Ms. Warmbier, upon comparing the signatures on the general objections, specifications of objections and affidavit oath, she determined that there were no similarities or consistencies with the signatures on these pages and that the

¹ To the extent that it was improper for the petitioners to seek to validate two entirely different independent nominating petitions in a single Election Law § 16-102 validating proceeding, neither the Board nor respondent has raised any objections to the procedural course charted by petitioners.

signatures on these documents were not written by the same author. Ms. Warmbier also concluded that the voter registration card and DMV record were signed by the same individual. Finally, Ms. Warmbier determined that the voter registration card and DMV record were not signed by the same person who signed the general objections, specifications of objections, and affidavit oath.

On June 26, 2025, the parties appeared in court and oral arguments on the matter were held on the record. Further, respondent testified under oath. During his testimony, respondent was shown the general objections and specifications of objections filed against petitioner Marsh and petitioner Leonard's respective nominating petitions and testified that he signed each of these forms. When asked to account for the obvious differences between the signatures on the general objections and specifications of objections, respondent testified that he was in a rush when he signed the specifications of objections form. Respondent also testified that his signatures were often inconsistent as a result of a gross motor skill disability. After the objector finished testifying, petitioner Marsh moved that Ms. Warmbier's affidavit be entered into evidence. The court granted this motion but noted that in determining how much weight to give the affidavit, it would take into account the fact that Ms. Warmbier was not available to testify at the hearing.

"The proper evidentiary standard for proving fraud in an Election Law proceeding is clear and convincing evidence" (*Matter of King v Ugell*, 216 AD3d 862, 863 [2d Dept 2023] [internal quotation marks omitted]). This includes allegations of forgery (*Matter of Steinert v Daly*, 118 AD3d 808, 809 [2d Dept 2014]). Here, petitioners have failed to demonstrate by clear and convincing evidence that respondent did not sign both the general

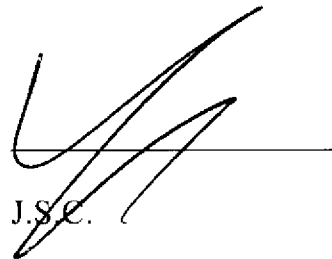
objections and specifications of objections filed against their respective nominating petitions. In particular, while the signatures on these documents appear to be dissimilar, the court found respondent's explanation for this (i.e., that he was rushing when he signed the specifications of objections sheets and that his signature is impacted by a gross motor skill disability) to be credible. In particular, during the course of his testimony, the court observed that respondent's hands were affected by a noticeable tremor. Accordingly, the petitioner's motion for an order dismissing the objections based on fraud and validating their respective nominating petitions is denied.

Moreover, even if petitioners had met their burden of demonstrating that the objections filed against their nominating petitions were fraudulent, their petition to validate would necessarily fail. In particular, even if no specifications of objections are filed against a designating or nominating petition, or specified objections that are filed are somehow defective, it is within the Board's statutorily authorized ministerial function to count the signatures in a petition and to remove from the ballot candidates whose petitions do not contain the requisite number of signatures for the office sought (*Matter of O'Connor v Sharpe*, 208 AD3d 1458, 1460-1462 [3d Dept 2022]). Here, both petitioners admitted on the record, and it is otherwise undisputed that their nominating petitions did not contain the requisite 3,750 signatures. Further, given the fact that neither of the petitioner's nominating petitions contain the requisite number of signatures, they could never meet their prima facie burden in this proceeding of establishing that their petitions are valid (*id.* at 1462).

Accordingly, it is **ORDERED** and **ADJUDGED** that the petition is denied with respect to both petitioners and the validating proceeding is dismissed.

This constitutes the decision, order and judgment of the court.

ENTER FORTHWITH



J.S.C.

**HON. LAWRENCE KNIPEL
SUPREME COURT JUSTICE**