

Matter of Maio v Willis

2025 NY Slip Op 32407(U)

June 30, 2025

Supreme Court, Kings County

Docket Number: Index No. 520532/25

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 30th day of June, 2025.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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In the Matter of the Application of

DANNIEL MAIO,

Petitioner-Candidate, Aggrieved,

Index No. 520532/25

-against-

THOMAS WILLIS,

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 Petitioner as Candidates for the Public Office of Comptroller, City of New York, on the "Freedom", "Asians United", "United Alliance" 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 Candidate upon the official ballots of such General Election.

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The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Order to Show Cause/Petition _____

1, 2-8

Other papers _____

Upon the foregoing papers, and after oral argument held on the record in this proceeding commenced pursuant to Election Law § 16-102 to validate the independent

nominating petitions filed by Danniell Maio (petitioner), as a candidate for the public office of Comptroller of the City of New York in the General Election to be held on November 4, 2025, the petition is denied and the proceeding is dismissed.

On May 20, 2025, petitioner filed with respondent the Board of Elections of the City of New York (the Board) three volumes of petitions in support of his candidacy for Comptroller on the “Asians United” independent party line, and on May 27, 2025, he filed ten additional petition volumes for this line.

On May 23, 2025, petitioner filed two independent nominating petition volumes followed by the filing of seven more volumes on May 27, 2025, naming petitioner as a candidate for Comptroller under the “United Alliance” independent party line.

Also on May 23, 2025, petitioner filed two independent nominating petition volumes followed by the filing of two additional volumes on May 27, 2025, naming petitioner as a candidate for Comptroller under the “Common Good” independent party line.

Finally, on May 27, 2025, petitioner filed an independent nominating petition comprised of fifteen volumes naming him as a candidate for Comptroller under the party name of “Freedom.”

On or about May 30, 2025, general objections to invalidate the four separate independent nominating petitions (Asians United, United Alliance, Common Good and Freedom) were filed by respondent-objector Thomas Willis, and on June 5, 2025, respondent-objector filed specifications of objections with the Board against the petitioner

on all four party lines. The specifications of objections filed, related to each of the four independent nominating petitions, consisted of a single sheet that stated as follows:

The petition contains less than the minimum number of signatures required by the Election Law and/or the New York City Charter for the qualification of an Independent Nominating Petition for the Public Office of Comptroller of the City of New York and is therefore prima facie defective. Section 1057-b of the New York City Charter states that 3,750 signatures are required for a candidate to qualify an Independent Nominating petition for the Public Office of Comptroller of the City of New York (NYSCEF Doc No. 5).

The Board prepared a Clerk's Report for each of the independent nominating petitions filed by petitioner which stated that petitioner: submitted 2,183 signatures for the "Asians United" petition; 2,144 signatures for the "United Alliance" petition; 1,740 signatures for the "Common Good" petition, and 2,007 signatures for the "Freedom" petition. The respective Clerk's Reports each indicated that 3,750 valid signatures are required for placement on the ballot for this office.

On June 17, 2025, the Board's Commissioners upheld the Clerk's Reports and determined that petitioner had not submitted the requisite number of signatures required for placement on the ballot for the public office of Comptroller on the Asians United, United Alliance, Common Good or Freedom party lines and that his name would not appear on the ballot at the General Election.

On June 20, 2025, the court signed an order to show cause brought by petitioner seeking to validate the independent nominating petitions. On June 26, 2025, the court heard oral argument on the issues raised in the petition and reserved decision.

As an initial matter, the court notes that during oral argument petitioner admitted that none of the four independent nominating petitions he submitted to the Board contained the required 3,750 valid signatures.

In the petition in support of his order to show cause, petitioner contends that at the Board's hearing he:

requested that the Commissioners consider all four objections as a group to invalidate them all due to inability to determine which Specifications applies to which Objection including the fact that the Specifications for "Asians United" and "United Alliance" were stuffed in the wrong overnight FedEx envelope. The Objector could have attached the Specification Form to the wrong Specifications of Objection. The Commissioners instead ruled on the Specifications separately" (NYSCEF Doc No. 1 at ¶ 10).

Petitioner appears to argue that all four of the independent nominating petitions should be declared valid since two of the four specifications of objections served upon him were placed in the wrong Fed Ex envelope. The court notes that the specification of objections filed against each of these four separate independent nominating petitions was identical and merely stated that the petition failed to contain the statutorily required number of signatures. This is not a situation involving specifications of objections to the validity of individual signatures in the petitions. As such, under the facts herein, there is no prejudice to petitioner even if, as he asserts, the one page specification of objections sheet was placed in the wrong Fed Ex envelope for two of the independent nominating petitions. Moreover, the court notes that there is nothing in the record to support this assertion inasmuch as

petitioner merely submits a copy of the four separate Fed Ex receipts filed with the Board, each of which is accompanied by the one page identical specification of objections.

In any event, even if service of the specifications of objections was defective, the instant validating petition would fail. It is well settled that “[b]oards of election are vested only with the authority to perform a "ministerial examination" of a designating [or nominating] petition” (*Matter of Scaturro v Maloney*, 76 AD3d 688, 690 [2d Dept 2010], quoting *Schwartz v Heffernan*, 304 NY 474, 480 [1952]; see *Matter of Yacubich v Suffolk County Bd. of Elections*, 164 AD3d 867, 868 [2d Dept 2018]; *Matter of Feustel v Garfinkle*, 29 AD3d 831, 831-832 [2d Dept 2006]; *Matter of Sullivan v New York City Bd. of Elections*, 224 AD2d 565 [2d Dept 1996]). Election Law § 6-154 (1) provides that a petition “shall be presumptively valid if it is in proper form and appears to bear the requisite number of signatures.” “[A]scertaining whether a petition "appears" to satisfy the relevant signature requirement necessarily authorizes the Board to assess the signature totals and, if necessary, to count the signatures. This is essentially a statutorily authorized ministerial function” (*Matter of O'Connor v Sharpe*, 208 AD3d 1458, 1461 [3d Dept 2022]; see also *Furlong v Haight*, __ AD3d __ [2d Dept 2025], 2025 NY Slip Op 02816).

Here, the Board properly exercised its ministerial duty to determine if each of the four independent nominating petitions (Asians United, United Alliance, Common Good and Freedom) contained the 3,750 signatures required for placement on the ballot for this office (see *Matter of O'Connor*, 208 AD3d at 1461; *Matter of Yacubich*, 164 AD3d at 868; *Matter of Feustel*, 29 AD3d at 831-832; *Matter of Sullivan*, 224 AD2d at 565). Moreover,

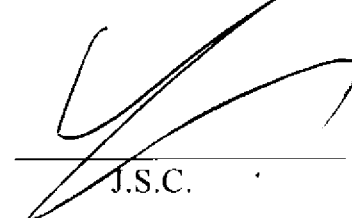
the Board's exercise of its ministerial duty was proper in this instance even if no specifications of objections had been filed against these four independent nominating petitions since said petitions each contained less than the statutorily required number of signatures (*see Furlong v Haight*, __ AD3d__ [2d Dept 2025], 2025 NY Slip Op 02816 [holding that the Board can invalidate petitions even in the absence of third-party objections where it involves a ministerial act related to a matter that is evident on the face of the petition, and does not involve the exercise of judgment or discretion]; *Matter of O'Connor*, 208 AD3d at 1461-1462). Further, in view of his concession that his petitions do not contain the statutory minimum number of signatures, petitioner fails to demonstrate the validity of his petitions (*see Matter of O'Connor*, 208 AD3d at 1461 [noting that the burden of proof is on a petitioner seeking to establish the validity of a petition which cannot be met where the petitioner fails to "allege, much less demonstrate, that their independent nominating petition contained the requisite number of signatures"]).

Accordingly, it is hereby

ORDERED that petitioners' validating petition is denied and the proceeding is dismissed.

This constitutes the decision and final order of the court.

ENTER FORTH WITH



J.S.C.

⁶ HON. LAWRENCE KNIPEL
SUPREME COURT JUSTICE