

<b>McNearney v Barravecchio</b>
2026 NY Slip Op 31805(U)
April 30, 2026
Supreme Court, Suffolk County
Docket Number: Index No. 610981/2026
Judge: James F. Matthews
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SUPREME COURT OF THE STATE OF NEW YORK  
PART 24 - COUNTY OF SUFFOLK

**PRESENT:**

*Hon. James F. Matthews*  
*Justice of the Supreme Court*

**INDEX NO.: 610981/2026**  
**Short Form Order**

**HON. PHILIP RAMOS, as Candidate Aggrieved and**  
**JOSEPH McNEARNEY, as a Citizen Objector,**

x Mot. Seq. No. 001, 002  
Orig. Return Date:4/28  
Mot. Submit Date: 4/30

**Petitioners,**

**Petitioners' Attorney:**  
Lawrence H. Silverman  
350 Veterans Memorial  
Highway  
Commack, NY 11725

**-against-**

**DENNIS J. BARRAVECCHIO, purported candidate of the**  
**Republican Party for the public office of**  
**MEMBER OF ASSEMBLY, 6<sup>th</sup> Assembly District,**  
**JOHN ALBERTS and ERIN McTIERNAN,**  
**Commissioners of the Suffolk County Board**  
**of Elections, together constituting the**  
**SUFFOLK COUNTY BOARD OF ELECTIONS,**

**Respondents' Attorney:**  
Steven E. Losquadro, Esq.  
649 NY-25A #3  
Rocky Point, NY 11778  
By: Richard B. Stafford

**Respondents.**

x

Upon the following papers read on the petition (Motion Seq. 001), and on respondents' motion to dismiss (Motion Seq. 002), NYSCEF e-filed documents numbered 1 through 17 and after evidentiary hearings on April 27 and 28, 2026 at the Suffolk County Board of Elections, and upon due deliberation and consideration of the foregoing, the Court makes the following determinations:

Petitioners commenced this proceeding under Article 16 of the New York State Election Law seeking an order (1) declaring invalid and insufficient the designating petition which designates Party Ryan S. Kelly as a candidate of the Republican Party for the public office of Member of the New York State Assembly for the 6<sup>th</sup> Assembly District in the primary election to be held on June 23, 2026; (2) declaring invalid the Certificate of Substitution by the Committee to Fill Vacancies and the Certificate of Authorization and Certificate of Acceptance by Substituted Candidate Dennis J. Barravecchio; and (3) enjoining the Suffolk County Board of Elections (the "Board") from certifying respondent Barravecchio as a candidate of the Republican Party for the public office of Member of the New York State Assembly for the 6<sup>th</sup> Assembly District in the primary election to be held on June 23, 2026 and (4) declaring that there remains no committee on vacancies to designate a candidate of the Republican Party for the public office of Member of

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New York State Assembly, 6<sup>th</sup> Assembly District. The petition is verified by Joseph McNearney, who alleges standing as a citizen objector entitled to vote in said primary election and who filed general and specific objections as required by Election Law § 16-102(1). Petitioner Philip Ramos alleges standing to bring this proceeding as a Candidate Aggrieved as authorized by Election Law § 16-102(1).

This proceeding was commenced by filing an Order to Show Cause on April 20, 2026. The order to show cause was granted by the court (Matthews, J.) on April 20, 2026, which directed the method and time for service and was made returnable before the court on April 22, 2026 (*see* NYSCEF No. 1-7). A conference was held before this Court on April 22, 2026, at which time this matter was adjourned to April 27, 2026, to conduct evidentiary hearing on the issues raised in the petition. The hearing on this matter was held jointly with the allegations of the petition filed under Index No. 610975/2026, which alleged essentially the same claims with respect to the candidacy of the Conservative Party for the same office by the same petitioners and respondents. Evidentiary hearings were conducted on April 27 and 28, 2026 at the Suffolk County Board of Elections. Motions to dismiss were filed by respondents on April 28, 2026, which the court made returnable April 30, 2026, for submission of all opposition papers. Counsel for all parties were afforded the opportunity to orally argue the motions on April 30, 2026, which they declined. Respondents move to dismiss on the grounds that petitioner McNearney failed to timely file specific objections with the Suffolk County Board of Elections, that petitioner Ramos failed to verify the petition and for failure to join the members of the Committee to Fill Vacancies, which they alleged were necessary parties.

The Court will reach and determine all issues herein in accordance with the directive of the Appellate Division of the Second Department set forth in its March 17, 2026, Administrative Order.

#### *Dismissal of Petition of Joseph McNearney*

Respondents' motion to dismiss the petition as to Joseph McNearney brought as citizen objector is granted without opposition, on the ground that he failed to timely file specifications of objections to the petition. The Suffolk County Board of Elections ("the Board") determined that the specifications of objections of petitioner Joseph McNearney were not properly served on the candidate and Board in violation of Election Law § 6-154(3)(b) (*see* BOE Exhibit A).

#### *Verification*

Respondents move to dismiss based upon the allegation that petitioner Ramos did not verify the petition. The petition was verified by petitioner Joseph McNearney in compliance with Election Law §§ 16-116. The first time any notice of intent to object to the failure of Ramos to verify the petition was by email on April 26, 2026. Counsel for respondents presented an affirmation in support of a motion to dismiss at the hearing held on April 27, 2026, and was informed by the court that it was necessary that the motion be in proper form and electronically filed as required

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for all motions. The motion was filed on April 28, 2026. The return date was set by the Court for April 30, 2026, at 12:00 noon for final submission of all papers. There is no indication that the petition was formally rejected by respondents. Prior to the notice of motion to dismiss being e-filed by respondents on NYSCEF on April 28, 2026, a verification was filed for petitioner Philip Ramos.

CPLR § 3022 provides that “where the adverse party is entitled to a verified pleading, he may treat it as a nullity, provided he gives notice with due diligence to the attorney of the adverse party that he elects so to do.” “Due diligence has been held to mean ‘within twenty-four hours’” (see *O’Neil v Kasler*, 53 AD2d 310 [4th Dept 1976]). Here, the “objection to the allegedly defective verification of the petition was waived by [respondents’] failure to raise the objection with due diligence... Election Law proceedings are subject to severe time constraints, and they require immediate action... Moreover, we note that there is no allegation that a substantial right of the appellants would be prejudiced by the allegedly defective verification ” (see *Matter of Master v Pohanka*, 44 AD3d 1050, 1052 [2d Dept 2007]; *Jacobi v Murray*, 58 Misc.3d 319 [Sup. Ct. Albany County, 2017]). Additionally, “verification by a single candidate united in interest with others named as petitioners in the election proceedings is sufficient to satisfy the requirements of section 16-116 of the Election Law (see *Matter of Seda v Richards*, 89 AD2d 952 [2d Dept 1982]; see also *Rodriguez v. Westchester County Board of Elections*, 47 Misc.3d 956, 958-962 [Sup.Ct. Westchester County, 2015]). On this authority, the Court finds that respondents’ objection to petitioner Ramos’s having not verified the petition prior to commencement of the proceeding is untimely. In any event, the petition was verified by Mr. McNearney with whom he is clearly united in interest. Furthermore, Ramos filed verifications once notice was received that respondents were moving to dismiss the McNearney’s petition. Accordingly, respondents’ motion to dismiss on the verification issue is denied.

#### Challenge to Certificate of Substitution

Petitioners challenged the Certificate of Substitution by the Committee to Fill Vacancies on the ground that the Acceptance of the designation by substitution references acceptance of nomination for Member of Assembly, 6<sup>th</sup> Assembly district by the “Republican, Democrat, Conservative and Working Families Parties”. (see BOE Exhibit F). In fact, respondent Barravecchio separately received only the designation by substitution of the Republican and Conservative Parties for this office. At the hearing on the record, petitioners withdrew this objection. Accordingly, the claim in the petition on this ground is dismissed. In any event, had the Court ruled on the merits of this claim, the Court would find that the certificate of acceptance was valid. The fact that it purported to accept the nomination from multiple parties not germane to the specific acceptance is mere surplusage that has no effect on the validity of the acceptance, so long as the Party that is actually making the substitution is named.

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Necessary Party

Respondents move pursuant to CPLR § 3211(a)(10) to dismiss the petition for failure to include as necessary parties, the members of the Committee to Fill Vacancies (the “Committee”) named on the Republican designating petition. Respondents argue that the actions and authority of the Committee are challenged by the petitions’ allegations regarding the validity of the Certificate of Acceptance of the substituted candidate, and that the Committee may be inequitably affected by the outcome of these proceedings. Since this claim was withdrawn by petitioners resulting in dismissal by the court, the Committee is not a necessary party. The remaining allegations stem only from challenges to the validity of the signatures on the designating petition on various grounds, none of which involve a challenge in any way related to or affecting the Committee. The Committee is therefore not a necessary party. (*see Berman v Board of Elections of Nassau County*, 68 NY2d 761, 497 NE2d 962 [1986] *Matter of Manz v Granger*, 17 AD2d 719 [2d Dept 1962]; *Master v Pohanka*, 43 AD3d 478 [2d Dept 2007]). Accordingly, respondents’ motion under CPLR § 3211(a)(10) is denied.

Remaining Objections to Republican Designating Petition

The Court reviewed the specific objections to challenged signatures on the republican petitions on a “line-by-line” basis during the hearing at the Board on April 27 and 28, 2026. Each signature was examined and reviewed alongside Board records of signature cards, and all parties were given an opportunity to make arguments as to the validity of the signatures on the petition.

After initial review and striking of signatures from the petitions by the Court based upon various defects, all parties were given the opportunity to present further evidence regarding the Court’s rulings for reconsideration by the Court and declined to do so. The Court memorialized its line-by-line determinations and struck 239 signatures as invalid on the petitions (*see* Hearing Exhibit 2).

During the proceeding, counsel for the Board of Elections certified that the petitions filed by the Republican Party contained 757 signatures and further certified that 500 signatures are required for the Republican petitions to be valid. After deducting the 239 signatures which the court found invalid, there remains 518 valid signatures. Accordingly, the Court hereby finds that the Republican designating petition for the public office of Member of the New York State Assembly for the 6<sup>th</sup> Assembly district to be valid in all respects.

Petitioner Ramos asks this Court to make a finding that respondent Barravecchio committed fraud based on his testimony and based on the court having found 16 signatures invalid out of a total of 23 witnessed by Barravecchio on three sheets on the designating petition of the Conservative Party for the same office. On the basis of the alleged fraud of Barravecchio with respect to the procurement of signatures for the Conservative Party petition, petitioner Ramos seeks an order of this court disqualifying him from being a candidate for this office on any party

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line for the primary election to be held June 23, 2026. Petitioner acknowledges that he is aware of no precedent to support his request for disqualification.

As set forth in the order and decision in the petition challenging the Conservative Party designating petition filed under Index No. 610975/2026, fraud requires proof by clear and convincing evidence; “proof of wrongful intent is necessary to sustain a fraud cause of action is clearly enconced in New York law” (*see Felder v Storobin*, 100 AD3d 11, 16 [2d Dept 2012]). “Where a candidate’s own knowledge or activities are at issue, candidates are held to a higher standard under the Election Law than noncandidates. Absent permeation with fraud, a designating petition may be invalidated where the candidate has participated in or is chargeable with knowledge of the fraud... However, a single instance of fraud by a candidate does not necessarily require the invalidation of an entire otherwise-sufficient designating petition as a matter of law (*ibid* at 16; *Matter of Perez v Galarza*, 21 AD3d 508 [2d Dept 2005]).


“A hearing court’s assessment of the credibility of witnesses is entitled to deference, as that court had the advantage of hearing and seeing the witness” (*see Felder, supra* at 17). On the record, and in accordance with the evidence and testimony before it, the Court does not find sufficient proof of fraud as a matter of law. While Mr. Barravecchio acknowledged that he did not witness two signatures on one occasion, he testified that he was unaware that this was not permitted. Based on the demeanor of the witness, the court does not find the requisite wrongful intent on Barravecchio’s part. Having found that Mr. Barravecchio did not commit fraud due to his lack of clear and convincing evidence of wrongful intent, there is no basis to disqualify him as a candidate for public office. Even if fraud were shown by evidence and testimony, the Court would decline to disqualify Mr. Barravecchio as a candidate for public office.

**ORDERED** that the petition is denied in all respects.

The foregoing constitutes the decision and Order of the Court.

Dated: April 30, 2026  
Riverhead, New York

ENTER:



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