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Access to the Ballot in Primary Elections: The Need for Fundamental Reform

New York State Commission on Government Integrity

ACCESS TO THE BALLOT IN PRIMARY ELECTIONS:

THE NEED FOR FUNDAMENTAL REFORM

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Introduction

In order to appear on the ballot in a primary election, a candidate for public office in New York State must comply with procedural requirements which are far more intricate than those of most other states.[1] The Commission on Government Integrity has examined those requirements pursuant to its authority to determine "the adequacy of laws, regulations and procedures relating to maintaining ethical practices and standards in government" and to "make recommendations for action to strengthen and improve" them.[2] Like courts,[3] civic groups,[4] bar organizations,[5] the press,[6] and others[7] who have examined the election laws, we find these requirements for access to the primary ballot to be inordinately complex and restrictive.

A candidate seeking a place on the primary ballot must file a petition containing the signatures of a substantial number of eligible voters. The petition must be filed in accordance with a variety of complicated procedural requirements which, in accordance with law, have been strictly enforced by the state and local boards of elections and by the state courts. As a result, candidates who have gathered more than enough signatures are often forced to participate in expensive, time-consuming litigation in order to defend their right to run for office. Many viable candidates are eventually denied a place on the

ballot because of their failure to comply fully with all the technical requirements of the ballot access laws, and many other potential candidates are discouraged altogether from running for office because of the daunting obstacles imposed by the petition process. The ultimate loss is directly to eligible voters, who are denied a meaningful opportunity to choose their parties' nominees, and indirectly to the maintenance of "ethical practices and standards in government" and the public's perception of government.

Because New York's requirements are thus completely at odds with the democratic principle of open elections, in which voters are free to choose among candidates representing various points of view, we conclude that a complete overhaul of the ballot access laws is needed. At the same time, however, we are aware that the laws governing access to the primary ballot are intricately intertwined both with the workings of the political parties and with the interests of incumbent elected officials, many of whom have resisted the overwhelming consensus on the part of disinterested observers that reform of these laws is greatly needed. We recognize that the process by which the current laws are to be improved must be duly sensitive to the concerns of the political parties and the elected officials whose interests are most clearly at stake, and that without bipartisan support, reform cannot realistically be expected.

Accordingly, we urge the Governor, in consultation with the legislature, promptly to appoint a multipartisan panel to study

New York's ballot access laws and to recommend an alternative approach.

In addition, we believe that, as an interim measure while a multipartisan panel carries out its work, legislation should be enacted immediately to eliminate the danger that additional candidates who have obtained the support of a sufficient number of voters will nevertheless be denied a place on the ballot because of technical defects in their petitions. We therefore urge the legislature to provide that a candidate who has gathered a sufficient number of genuine signatures not be denied a place on the primary ballot if the candidate has substantially complied with the procedural requirements of the ballot access laws.[8]

The Current Law

In most states, candidates can qualify to run in a primary election merely by paying a filing fee.[9] New York, however, does not provide for qualification in this manner. Rather, a candidate seeking to run in a party's primary election is required to file petitions containing the signatures of a substantial number of voters enrolled in the party.[10] The petition process has been justly criticized by one appellate court as "a maze, whose corridors are compounded by hurdles, to be negotiated by only the wariest of candidates."[11] The procedural vagaries of the law are indeed overwhelming both in their complexity and their rigidity.

The genuine signature of an eligible voter may be invalidated for any one of a number of technical reasons. For example, as in only a handful of other states,[12] a voter's signature must be accompanied by the voter's assembly and election districts as well as the voter's address;[13] if that information is not correctly provided, the voter's signature will not be counted.[14] Likewise, a voter's signature will not be counted if it is not dated or if the voter makes an alteration which the subscribing witness neglects to initial.[15]

Other technical defects may result in the invalidation of entire petitions. For example, the law requires a subscribing witness to reside within the political district in which the witness gathers signatures. A petition may be invalidated simply because the subscribing witness is registered to vote in a district in New York State other than the one in which the signatures must be obtained.[16] Similarly, if the subscribing witness fails to date a petition, or misstates or omits various information, such as the witness's address or assembly and election districts, the entire petition will be invalidated.[17]

Moreover, New York is the only state which requires cover sheets to be filed along with petitions. Cover sheets must state the total number of pages in the petition as well as the total number of signatures.[18] If the petition designates more than one candidate for public office, the cover sheet must also include additional information, such as the total number of signatures in support of each individual candidate and the page numbers of the

sheets on which those signatures are located.[19] A petition containing the required number of valid signatures may be totally discounted if the cover sheet contains an innocent misstatement[20] or omission.[21]

There are additional requirements when the petitions contain more than one volume. The pages in each volume must be numbered consecutively, and each volume must include a cover sheet listing such information as the number of the volume, the total number of pages in the volume, and the total number of signatures in the volume.[22] When some of the volumes of a petition fail to comply with these procedural requirements, the entire petition may be ruled invalid, even if the other volumes are free of error and contain more than enough genuine signatures.[23]

Finally, the law strictly regulates how and when petitions are filed. For example, a petition may be invalidated if its pages are not correctly bound together and consecutively numbered.[24] Likewise, if a petition is not filed during the precise period of time specified by the law,[25] the candidate may be denied a place on the ballot.[26]

Application of the Current Law by the New York Courts

In recent years, the technical requirements of New York's ballot access law have been enforced rigidly by the New York courts, which have taken the view that it is the responsibility of the legislature, not the courts, to streamline ballot access procedures.

An illustration of the judiciary's strict approach to the ballot access requirements is the case of Higby v. Mahoney.[27] In that case, a candidate seeking his party's nomination for the office of town councilman filed petitions containing almost twice as many signatures as the law required. Although the subscribing witnesses had accurately listed their own names, addresses, political affiliations, and town election districts in the petitions, they omitted to include their assembly districts. It was not clear from the election law statute whether it required inclusion of the assembly district, and the candidate relied on the advice of a deputy election commissioner, who advised him that this information need not be included on petitions for town elections. That advice might have appeared to be eminently sensible, in view of the fact that the election was held in a town located entirely within a single assembly district. It was therefore a foregone conclusion that the subscribing witnesses, all of whom lived in that town, also lived within the same assembly district. There was certainly no need for the witnesses to list their assembly district to enable the appropriate board of elections to determine the validity of their signatures. Nevertheless, the Court of Appeals agreed with the Erie County Board of Elections that the petitions were invalid because the subscribing witnesses had omitted to state their assembly district.

In its opinion in Higby, the State's highest court rejected the view of two dissenting judges who argued that substantial

compliance with the ballot-access rules should suffice, especially in a case such as this one, where the errors in the petition were not "substantial, prejudicial to other candidates, or reasonably detrimental to the ability to promptly ascertain the validity of signatures."[28] Instead, however, the majority demanded "strict compliance with the precise requirements" of "the rigid framework of regulation" erected by the election law,[29] and held that any change in the law, so as to excuse "the careless or inadvertent failure to follow the mandate of the statute," would have to come from the legislature.[30] The Court explained:

> [T]he Legislature has far greater capabilities to gather relevant data and to elicit expressions of pertinent opinion on the issues at hand and its members are properly politically responsive to the electorate.
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> . . . .
>
> The Legislature has peculiar responsibility under our polity for prescribing the regulation which should guide political affairs and the activities of political parties. . . . Moreover, whatever reality there may be to assertions of the Legislature's indifference or unconcern in other narrow areas, there can be no substance to any suggestion that our legislators are disinterested in election matters.[31]

Braxton v. Mahoney[32] and Bouldin v. Scaringe[33] further illustrate the judiciary's endorsement of draconian sanctions for seemingly insignificant errors. In Braxton, a candidate for county committeeman filed a two-page designating petition. Although both sheets of the petition were filed at the same time, they were not bound together and consecutively numbered as the law requires.[34] For that reason alone, the Erie County Board of Elections decided that the candidate must be denied a place on

the primary ballot, and the Court of Appeals agreed.[35] Similarly, in Bouldin, a candidate for the office of county legislator was denied a place on the primary ballot, in part because the sheets of his designating petition were held together with a spring clip. A panel of the Third Department agreed with the Albany County Board of Elections that the candidate had not strictly complied with the requirement that "[s]heets of a designating petion shall be bound together,"[36] and that strict compliance was necessary because the requirement was one "of content rather than form."[37]

Rutherford v. Jones[38] provides yet another illustration. In that case, candidates for local office filed their designating petition at 8:30 a.m., shortly after the Village Clerk arrived at work, rather than between the hours of 9:00 a.m. and 5:00 p.m., as the law instructs.[39] A panel of the Third Department found that, because their petition was filed a half hour too early, the candidates were not entitled to be placed on the primary ballot.[40] The court explained that the timing provisions contained in the Election Law "are mandatory and the judiciary is foreclosed from fashioning exceptions, however reasonable they might be made to appear."[41]

These are not isolated examples. On the contrary, only rarely are technical defects excused because they are deemed to be "minor" or mere errors of "form" as opposed to content. In the majority of recent cases, the courts have demanded absolute adherence to the complex procedural requirements of the election

law, even where there is no dispute that a sufficient number of legitimate signatures has been gathered in support of the candidate.

Problems Under the Current Law

The State's petition process is intended to limit places on the primary ballot to those candidates who have at least a minimum level of public support.[42] Most of the procedural requirements of the law are therefore designed either to prevent the filing of fraudulent petitions or to facilitate counting eligible voters' signatures. No single procedural requirement contained in New York's election law is itself so complicated that it cannot be complied with through reasonable diligence. Collectively, however, those requirements unreasonably restrict access to the ballot and thereby undermine the legitimacy of the primary process as a means of selecting nominees who command the support of a party's members, not just the party's leaders.

Because of the intricacy of the election law, candidates routinely challenge each others' petitions on technical grounds. Indeed, critics have blamed the law for generating approximately half of all the election litigation in the entire country.[43] In anticipation of these technical challenges, candidates are forced to obtain many more signatures than would otherwise be needed to demonstrate the legitimacy of their candidacies. Only in that way can candidates ensure that, after otherwise genuine signatures are discounted on technical grounds, enough will be found

valid to satisfy the statute. As a result, the strict procedural requirements of the election law have the effect of significantly increasing both the amount of effort needed to gather signatures and the amount of public support needed to win a place on the ballot.

A candidate is also required to expend enormous amounts of time, money, and energy in the litigation over petitions. In order to defend successfully against a petition challenge, a candidate must draw on substantial resources which could otherwise be used to address issues of public importance.[44] Determinations of the validity of petitions are often delayed until shortly before the primary election, leaving the viability of a candidacy shrouded in uncertainty throughout the campaign.[45]

Moreover, candidates are sometimes denied a place on the ballot even though they have significant public support. A successful petition challenge may cause the removal of a candidate from the primary ballot, not because of a failure to obtain a sufficient number of signatures from eligible voters, but because of a technical failure to comply with all the exacting requirements for gathering signatures and filing petitions.

Finally, the law favors the candidacies of individuals, including most incumbents, who are supported by party organizations. Party organizations have experience in gathering signatures and filing petitions in accordance with the complex legal procedures. They have the ability to gather many more

signatures than the law requires, as a measure of protection against petition challenges. And they are able routinely to commit resources in litigation both to defend against challenges to their own candidates' petitions and to challenge the petitions of other candidates. In contrast, few individuals unaffiliated with party organizations have the experience, sophistication, and resources necessary to gather and file petitions in a manner fully consistent with every one of the technical requirements of the election laws, and then to defend successfully against administrative and judicial challenges to their candidacies.

In the end, the damage is not just to candidates and potential candidates for public office. The greatest loss is to voters, whose right to determine their parties' candidates, and, ultimately, office-holders, is often rendered meaningless. Although the petition process was established in 1911 in order to remove the power to nominate candidates for public office from the exclusive control of party committees and place it in the hands of the voters, in actual practice the petition process does not even come close to achieving that salutary result. On the contrary, as one court recognized, New York's ballot access laws result in "the disenfranchisement of tens of thousands of citizens who would support candidates not possessed of the resources to engage the assistance required to negotiate" the complexities of the petition process.[46] This undermines "public confidence in the integrity of government" and compels our

Commission to recommend action to "strengthen and improve" New York's ballot access laws.[47]

Recommendation

New York's ballot access laws must be reconsidered in their entirety and substantially revised. The election law has been amended repeatedly since the petition process was first established in 1911, and difficulties in negotiating through the process have become more and more intractable. Our examination of the law convinces us that those problems will not go away simply by enacting additional amendments. What is needed is a complete overhaul.

The interest in denying a place on the ballot to frivolous candidates is an inadequate justification for the labyrinthine procedures currently in place. Candidates with significant public support should not be denied a place on the primary ballot because of a failure to master hypertechnical procedural rules; candidates should not routinely become embroiled in litigation concerning their compliance with the procedures; and enormous resources should not be needed to prepare for litigation in order to determine access to the ballot. The voters should be guaranteed a meaningful opportunity to choose their parties' candidates.

We view this as a matter of pressing urgency. The courts have rightly deferred to the legislature to correct the obvious inequities in the law, but the legislature has not yet responded,

despite compelling evidence that drastic revision of the rules governing access to the ballot, particularly in primary elections, is long overdue. We therefore urge, first, that the Governor and the legislature promptly establish a blue-ribbon, multipartisan panel to recommend fundamental reformation of that law. The panel should consider simpler procedures by which serious candidates may qualify to run in a primary election without being put to unnecessary expense and without becoming embroiled in unnecessary litigation. Among other things, the panel should consider proposing legislation which would (a) eliminate the technical requirements of the petition process; (b) decrease the number of signatures required to obtain a place on the ballot; and (c) allow a candidate to obtain a place on the ballot by paying a fee instead of gathering signatures.

Second, in the interim, we urge the immediate enactment of legislation to provide that candidates will not be penalized for insubstantial deviations from the requirements of the current ballot access law. Insubstantial errors in complying with the requirements for designating petitions should not result in the invalidation of a signature on a petition or in the disqualification of the petition itself. Rather, a "substantial

compliance" standard should govern the determination whether candidates have presented sufficient valid signatures entitling them to a place on the ballot.

Dated: New York, New York
June 27, 1988

STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY

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ENDNOTES

1. See N.Y. Elec. Law Sections 6-118-120, 6-130-138 (McKinney 1978 & Supp. 1988). Compare, e.g., Cal. Elec. Code Section 6555 (West 1977 & Supp. 1988); N.J. Stat. Ann. Sections 19:23-5-19:23-20 (West 1964 & Supp. 1987).

2. N.Y. Exec. Order No. 88.1, at I (April 21, 1987).

3. See, e.g., Erazo v. Lipper, 112 A.D.2d 880, 880, 493 N.Y.S.2d 553, 553 (1st Dep't), aff'd without opinion, 65 N.Y.2d 943, 484 N.E.2d 134, 494 N.Y.S.2d 105 (1985) (procedural requirements of the Election Law unreasonably restrict access to the ballot); Farrell v. Board of Elections, No. 85 Civ. 6099, slip op. (S.D.N.Y. Aug. 20, 1985) (Keenan, J.) (sanctions prescribed for failure to comply with some of the procedural requirements of the Election Law are irrational) (WESTLAW, DCT Database).

4. See, e.g., Statement by Vance Benguiat, Executive Director of Citizens Union of the City of New York, to the Joint Public Hearing of the State Senate and Assembly Election Law Committees on Ballot Access, Oct. 15, 1985 ("[T]he problem of ballot access has eliminated or completely crippled many candidacies, for many years. They have been almost exclusively insurgent candidacies in less well-publicized races, and many had legitimate popular support for a place on the ballot. . . . The ballot access problem has--for too many years--impeded or eliminated valid candidacies, deprived the voters of a choice, and damaged our political system.").

5. See, e.g., Special Committee on Election Law of the Association of the Bar of the City of New York, The Petition Process, 41 The Record of the Association of the Bar of the City of New York 710 (Oct. 1986); Special Committee on Election Law of the Association of the Bar of the City of New York, The Objection Process, 43 The Record of the Association of the Bar of the City of New York 7 (Jan.-Feb. 1988); New York State Bar Association, Report of the Special Committee on Election Law (Apr. 23, 1988) (New York's election law "has evolved into a patchwork of irrational obstacles to the orderly electoral process. The law and its implementation are, to put it charitably, in disarray."); Freedman, The President's Message, New York State Bar Journal 3 (May 1988) ("[C]andidates should not be at the mercy of capricious, overly-technical requirements which serve no useful purpose and which vary from county to county.").

6. See, e.g., N.Y. Times, Jan. 20, 1988, at A22, col. 1.

7. See, e.g., Davis, Election Law Reform in the State of New York, 51 Alb. L. Rev. 1, 13 (1986) ("The question remains whether reforms aimed at streamlining the petition process and reducing

the required number of signatures go far enough. I think a good case can be made for going further and establishing an alternative method of obtaining ballot access that would not depend on the collection of petition signatures."); Note, New York State's Designating Petition Process, 14 Fordham Urb. L.J. 1011 (1985-86).

8. Compare N. Y. Penal Law Section 5.00, directing that the penal law not be strictly construed.

9. Note, supra note 7, at 1024 n.94 (listing relevant state statutory provisions). In Texas, for example, candidates for most offices need only file an application accompanied by a fee ranging from $60 to $4,000. Tex. Elec. Code Ann. Section 172.021 (Vernon 1986 & Supp. 1988). Texas also allows a candidate the alternative of filing petitions containing a specified number of signatures. Id. This alternative is designed to comply with Supreme Court decisions which hold that a state must provide an alternative means of access to the primary ballot for legitimate candidates who cannot afford to pay a filing fee. See, e.g., Lubin v. Panish, 415 U.S. 709 (1974); Bullock v. Carter, 405 U.S. 134 (1972).

10. In general, petitions must be signed by five percent of the members of the candidate's party who are eligible to vote in the particular election. N.Y. Elec. Law Section 6-136 (McKinney 1978 & Supp. 1988). The law, however, places a limit on the number of signatures required. For example, a candidate for mayor of New York City needs 10,000 signatures; a candidate for state senator needs up to 1,000 signatures; and a candidate for state assemblyman needs up to 500 signatures. Id.

In addition, New York law provides an alternative to the petition process for candidates for statewide offices, who may gain access to the primary ballot by obtaining twenty-five percent of the vote of a state party committee, N.Y. Elec. Law Section 6-104(2) (McKinney 1978 & Supp. 1988), and for candidates for Supreme Court Justice, who may be selected for a place on the primary ballot at a judicial district convention of elected delegates. Id. at Section 6-106.

11. Erazo v. Lipper, 112 A.D.2d at 880, 493 N.Y.S.2d at 553. See, e.g., N.Y. Elec. Law Section 6-130 (McKinney 1978 & Supp. 1988) (petition must include signer's correct address, election district, date of signature, and assembly district); id. at Section 6-132 (extensive procedural requirements for verifying signatures in a designating petition); id. at Section 6-134 (sheets of a petition must be bound together, with consecutively numbered pages; cover sheet must specify correctly the total number of pages and signatures; if the petition is filed in more than one volume, the volumes must be consecutively numbered and cover sheets of each volume must refer to the total number of

pages and signatures in such volume; sheets of petition must be separated according to congressional district of largest number of signatories, and then separated by county).

12. See Note, supra note 7, at 1024-25 & n. 96 (citing Hawaii Rev. Stat. Section 12-3(5) (Supp. 1984) and Ohio Rev. Code Ann. Section 3513.07 (Page Supp. 1984)).

13. N.Y. Elec. Law Sections 6-130-132 (McKinney 1978 & Supp. 1988). This information sometimes makes it easier for a state or local board of elections to determine whether a signature is genuine, since registration information and voter signatures are organized according to the voters' assembly and election districts. However, in many local elections, in which all the eligible voters reside in a single assembly and election district, the statutory requirement serves no purpose. Higby v. Mahoney, 48 N.Y.2d 15, 30, 396 N.E.2d 183, 192, 421 N.Y.S.2d 35, 44 (1979) (Meyer, J., dissenting). Moreover, in recent years, the value of this identifying information has diminished substantially even in statewide elections, since a board of elections can use computers to store and retrieve registration information and facsimile signatures. The Petition Process, supra note 5, at 733-34.

14. Harfmann v. Sach, -- A.D.2d --, -- , 526 N.Y.S.2d 41, 42 (2d Dep't 1988) (various signatures invalidated for failure to set forth address, election district or assembly district, because "statutory provisions requiring such information must be strictly construed").

15. See, e.g., White v. McNab, 40 N.Y.2d 912, 913, 357 N.E.2d 1014, 1014-15, 389 N.Y.S.2d 359, 360 (1976); Marcatante v. Lundy, 3 N.Y.2d 913, 914-15, 145 N.E.2d 874, 874, 167 N.Y.S.2d 930, 930 (1957).

16. See, e.g., Ryan v. Board of Elections, 53 N.Y.2d 515, 517, 426 N.E.2d 739, 740, 443 N.Y.S.2d 47, 48 (1981) (redistricting plan placed subscribing witness's residence approximately 125 feet outside of the district).

17. See, e.g., Higby v. Mahoney, 48 N.Y.2d 15, 396 N.E.2d 183, 421 N.Y.S.2d 35 (1979) (where subscribing witness's assembly district was not included, signatures could not be counted, even though the entire electorate was in the same assembly district, and even though an election board official had told the candidate that listing the assembly district was not required); Sheldon v. Sperber, 45 N.Y.2d 788, 381 N.E.2d 159, 409 N.Y.S.2d 1 (1978) (subscribing witness's failure to include identifying information before signing the petition rendered the petition invalid, even though the information was later added by someone else before filing the petition); Nobles v. Grant, 41 N.Y.2d 1048, 364 N.E.2d 844, 396 N.Y.S.2d 180 (1977) (thirty-five signatures invalidated

because of alterations in the subscribing witness's statements); Anderson v. Power, 1 N.Y.2d 868, 136 N.E.2d 708, 154 N.Y.S.2d 633 (1956) (subscribing witness's signature was dated in the witness's absence); see also Rutter v. Coveney, 38 N.Y.2d 993, 994, 348 N.E.2d 913, 914, 384 N.Y.S.2d 437, 437 (1976) (Election Law mandates "uniform and strict compliance" with requirement that subscribing witness's assembly and election districts be correctly provided).

18. N.Y. Elec. Law Section 6-134(2) (McKinney 1978 & Supp. 1988).

19. Id.

20. See, e.g., Jacobson v. Schermerhorn, 104 A.D.2d 534, 535, 479 N.Y.S.2d 586, 587 (3d Dep't 1984) (cover sheet incorrectly listed office for which candidate sought the nomination).

In addition, until last year, candidates were frequently denied a place on the ballot simply because their cover sheets inadvertently misstated the number of signatures contained in their petitions. See, e.g., Scoville v. Cicoria, 65 N.Y.2d 972, 974, 484 N.E.2d 120, 121, 494 N.Y.S.2d 91, 92 (1985); Hargett v. Jefferson, 63 N.Y.2d 696, 698, 468 N.E.2d 1114, 1114, 479 N.Y.S.2d 977, 977 (1984). The law was amended in 1986 to provide that when a cover sheet misstates the number of signatures in a petition, the petition will not automatically be invalidated, but that, in accordance with a formula provided in the statute, a certain number of signatures will not be counted. N.Y. Elec. Law Section 6-134(9) (McKinney Supp. 1988).

21. For example, petitions designating more than one candidate have been invalidated when the cover sheets failed to set forth the total number of signatures designating each individual candidate for office, and the pages on which they were found, as required for multi-candidate petitions. See, e.g., Pecoraro v. Mahoney, 65 N.Y.2d 1026, 1027, 484 N.E.2d 652, 652-53, 494 N.Y.S.2d 289, 290-91 (1985); Delle Cese v. Black, 63 N.Y.2d 694, 695, 468 N.E.2d 1112, 1113, 479 N.Y.S.2d 975, 976 (1984).

22. N.Y. Elec. Law Section 6-134(2) (McKinney 1978 & Supp. 1988).

23. See, e.g., Lundine v. Hirschfeld, 122 A.D.2d 977, 977-78, 506 N.Y.S.2d 125, 126-27 (3d Dep't 1986).

24. See, e.g., Braxton v. Mahoney, 63 N.Y.2d 691, 692, 468 N.E.2d 1111, 1112, 479 N.Y.S.2d 974, 975 (1984); Bouldin v. Scaringe, 133 A.D.2d 287, 288, 519 N.Y.S.2d 72, 74 (3d Dep't 1987).

25. N.Y. Elec. Law Section 1-106 (McKinney 1978).

26. See, e.g., Hutson v. Bass, 54 N.Y.2d 772, 426 N.E.2d 749, 443 N.Y.S.2d 57 (1981); Rutherford v. Jones, 128 A.D.2d 978, 978-79, 512 N.Y.S.2d 934, 935 (3d Dep't 1987).

27. 48 N.Y.2d 15, 396 N.E.2d 183, 421 N.Y.S.2d 35 (1979).

28. Higby v. Mahoney, 48 N.Y.2d at 23, 396 N.E.2d at 187, 421 N.Y.S.2d at 39 (Fuchsberg, J., dissenting); accord id. at 24-30, 396 N.E.2d at 188-92, 421 N.Y.S.2d at 40-44 (Meyer, J., dissenting).

29. Higby v. Mahoney, 48 N.Y.2d at 20 & n.2, 396 N.E.2d at 185 & n.2, 421 N.Y.S.2d at 37 & n.2.

30. 48 N.Y.2d at 20, 396 N.E.2d at 185, 421 N.E.2d at 37.

31. 48 N.Y.2d at 18-21, 396 N.E.2d at 184, 186, 421 N.Y.S.2d at 36, 38. See also Morris v. Hayduk, 45 N.Y.2d 793, 794, 381 N.E.2d 159, 160, 409 N.Y.S.2d at 1,2 (1978) ("Had the Legislature wished to change the law. . . . it could have done so quite simply"), cert. denied, 439 U.S. 1129 (1979).

32. 63 N.Y.2d 691, 468 N.E.2d 1111, 479 N.Y.S.2d 974 (1984).

33. 133 A.D.2d 287, 519 N.Y.S.2d 72 (3d Dep't 1987).

34. N.Y. Elec. Law Section 6-134 (McKinney 1978 & Supp. 1988).

35. Braxton v. Mahoney, 63 N.Y.2d at 692, 468 N.E.2d at 1112, 479 N.Y.S.2d at 975.

36. N.Y. Elec. Law Section 6-134(2) (McKinney 1978 & Supp. 1988).

37. Bouldin v. Scaringe, 133 A.D.2d at 288, 519 N.Y.S.2d at 74.

38. 128 A.D.2d 978, 512 N.Y.S.2d 934 (3d Dep't 1987).

39. N.Y. Elec. Law Section 1-106 (McKinney 1978).

40. Rutherford v. Jones, 128 A.D.2d at 978-79, 512 N.Y.S.2d at 935.

41. Rutherford v. Jones, 128 A.D.2d at 979, 512 N.Y.S.2d at 945; see also Hutson v. Bass, 54 N.Y.2d 772, 774, 426 N.E.2d 749, 750, 443 N.Y.S.2d 57, 59 (1981) (petitions invalidated, in part, because cover sheets were filed 15 minutes late).

42. See, e.g., Lubin v. Panish, 415 U.S. 709, 712 (1974); Bullock v. Carter, 405 U.S. 134, 144-46 (1972) ("a State has a legitimate interest in regulating the number of candidates on the ballot. . . . [in order] to prevent the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of

those voting, without the expense and burden of runoff elections") (citations omitted).

43. See, e.g., Freedman, supra note 5, at 3; N.Y. Times, May 23, 1987, at 26 col. 1. Most of New York's litigation involves challenges to primary candidates. In 1986 alone, approximately 200 candidates in primary elections reportedly were denied places on the ballot because of technical errors in their petitions.

44. The Petition Process, supra note 5, at 710 ("Even those who survive challenges will have spent substantial resources on their legal defense and will have used valuable time and money in defending the challenges.").

The process also draws upon considerable administrative and judicial resources. An extreme example is Lundine v. Hirschfeld, 122 A.D.2d 977, 506 N.Y.S.2d 125 (3d Dep't 1986). In that case, the candidate's 126-volume petition, containing approximately 70,000 signatures, was challenged first before the board of elections, which reviewed it to determine whether a sufficient number of signatures was valid and whether the petition complied with the technical requirements of the Election Law. Then the petition was reviewed in the New York State Supreme Court during the course of a lengthy trial in which four Referees examined the petition on a line-by-line basis. And finally, the Supreme Court's decision was appealed to a five-member panel of the Appellate Division, which reviewed the written submissions, heard argument, and published an opinion.

45. "Even if a challenge to a candidate's petition is unsuccessful, it can create uncertainty over the viability of a candidate's campaign. If a candidate is not assured a place on the ballot, others, including potential volunteers and contributors, may think the campaign lacks seriousness. In addition, the news media may focus on the candidate's difficulty in securing a place on the ballot instead of upon positive aspects of the campaign. Furthermore, if a candidate acted as a witness on any of the petition sheets, an opponent could summon the candidate to court, just like any other witness, to answer questions about the petition. In short, these difficulties can often cripple a campaign and destroy any chance the candidate had of winning."

Note, supra note 7, at 1026 (footnotes omitted).

46. Erazo v. Lipper, 112 A.D.2d at 880, 493 N.Y.S.2d at 553.

47. N.Y. Exec. Order No. 88.1, supra n. 1.