

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

964.2

CAE 17-01525

PRESENT: WHALEN, P.J., SMITH, CENTRA, AND LINDLEY, JJ.

IN THE MATTER OF ALFONSO DAVIS AND ANNE
WILLIAMS, PETITIONERS-APPELLANTS,

V

MEMORANDUM AND ORDER

DUSTIN CZARNY AND MICHELE SARDO, AS
COMMISSIONERS OF BOARD OF ELECTIONS,
RESPONDENTS-RESPONDENTS.

HEIDI TESKA, RESPONDENT.

I. AURORA FLORES, SYRACUSE, FOR PETITIONERS-APPELLANTS.

ROBERT A. DURR, COUNTY ATTORNEY, SYRACUSE (BENJAMIN M. YAUS OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment of the Supreme Court, Onondaga County
(Norman W. Seiter, Jr., J.), entered August 18, 2017 in a proceeding
pursuant to Election Law article 16. The judgment dismissed the
petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioners appeal from a judgment dismissing their
petition in this proceeding pursuant to Election Law article 16
seeking to nullify respondents' determination invalidating their
designations as candidates in the Democratic primary election for the
offices of Mayor of the City of Syracuse and Commissioner of Education
of the City of Syracuse. Contrary to petitioners' contention, Supreme
Court properly dismissed the petition based on their failure to name
and serve a necessary party, i.e., the objector to petitioners' joint
designating petition. It is undisputed that petitioners received
adequate and timely notice of the objector's identity, and "thus
[their] failure to name the objector as a party renders this
proceeding defective" (*Matter of Plochocki v Onondaga County Bd. of
Elections*, 21 AD3d 710, 710; see *Matter of Gadsen v Board of Elections
of City of N.Y.*, 57 NY2d 751, 752; *Matter of Wein v Molinari*, 51 NY2d
717, 718-719). Although petitioners contend that the court erred in
failing to "weigh[] the statutory factors set forth in CPLR 1001 (b)
to determine whether [they] should be permitted to proceed in the
absence of [the objector]" (see generally *Matter of Red Hook/Gowanus
Chamber of Commerce v New York City Bd. of Stds. & Appeals*, 5 NY3d
452, 457-458), that specific contention is raised for the first time

on appeal, and we therefore do not consider it (see *Matter of Vescera v Stewart*, 120 AD3d 990, 992, lv denied 24 NY3d 901).

In view of our determination, we do not address petitioners' remaining contentions.

Entered: September 6, 2017

Frances E. Cafarell
Clerk of the Court