



*SUPREME COURT OF THE STATE OF NEW YORK*  
*APPELLATE DIVISION: FOURTH JUDICIAL DEPARTMENT*

DECISIONS FILED  
SEPTEMBER 6, 2017

HON. GERALD J. WHALEN, PRESIDING JUSTICE

HON. NANCY E. SMITH

HON. JOHN V. CENTRA

HON. ERIN M. PERADOTTO

HON. EDWARD D. CARNI

HON. STEPHEN K. LINDLEY

HON. BRIAN F. DEJOSEPH

HON. PATRICK H. NEMOYER

HON. JOHN M. CURRAN

HON. SHIRLEY TROUTMAN

HON. JOANNE M. WINSLOW, ASSOCIATE JUSTICES

FRANCES E. CAFARELL, CLERK

## **ELECTION LAW CASES**

Counsel for any party interested in pursuing an appeal to the Court of Appeals should contact the Court of Appeals immediately upon receipt of this Court's decision.

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

**964.1**

**CAE 17-01479**

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

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IN THE MATTER OF WENDY A. VAN DER WATER AND  
DEREK T. SHEPARD, JR., PETITIONERS-RESPONDENTS,

V

MEMORANDUM AND ORDER

DUSTIN M. CZARNY AND MICHELE SARDO,  
COMMISSIONERS, ONONDAGA COUNTY BOARD OF  
ELECTIONS, RESPONDENTS-RESPONDENTS,  
AND KENNETH L. BUSH, JR., RESPONDENT-APPELLANT.

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SCOTT F. CHATFIELD, MARIETTA, FOR RESPONDENT-APPELLANT.

THE WLADIS LAW FIRM, P.C., EAST SYRACUSE (TIMOTHY J. LAMBRECHT OF  
COUNSEL), AND JOSEPH T. BURNS, WILLIAMSVILLE, FOR  
PETITIONERS-RESPONDENTS.

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

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Appeal from an order of the Supreme Court, Onondaga County (Deborah H. Karalunas, J.), entered August 17, 2017 in a proceeding pursuant to Election Law article 16. The order granted the petition, invalidated the designating petition of respondent Kenneth L. Bush, Jr., for the Office of Onondaga County Legislator District 13 in the Republican primary election on September 12, 2017, and precluded the Board of Elections from placing Kenneth L. Bush, Jr.'s name on the ballot.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the petition is dismissed.

Memorandum: Petitioners commenced this proceeding pursuant to Election Law article 16 seeking to invalidate the designating petition of Kenneth L. Bush, Jr. (respondent) and to enjoin respondent Commissioners of the Onondaga County Board of Elections from designating respondent as a candidate for Onondaga County Legislator District 13 for the Republican primary to be held on September 12, 2017. Petitioners challenged, among other things, a certain signature on sheet 18 of respondent's designating petition on the ground that the wife of the purported signatory had improperly signed the petition on his behalf.

Preliminarily, we reject respondent's contention that the

petition should have been dismissed as untimely, inasmuch as there is sufficient evidence in the record to support the determination of Supreme Court that the proceeding was properly commenced in accordance with CPLR 308 (4) within the requisite statutory period (see *Matter of Angletti v Morreale*, 25 NY3d 794, 797-798).

We agree with respondent, however, that the court erred in striking all of the signatures on sheet 18, and we therefore conclude that the court erred in granting the petition. The attesting witness for the signatures testified that she was present in the room with the purported signatory and his wife when the signature was obtained, that the purported signatory's hands were "shaking and weak," and that he responded in the affirmative when his wife asked him if he would like her to sign it for him. The attesting witness further testified that the purported signatory's wife said that she had the authority to sign for him pursuant to a power of attorney, and that the purported signatory's wife marked the signature with her own initials. Thus, the use of a proxy to sign the purported signatory's name was apparent from the face of the petition sheet. Even assuming, arguendo, that the signature was invalid, we conclude that, in the absence of any hidden infirmity in the petition sheet or in the subscribing witness statement that would potentially "confuse, hinder, or delay any attempt to ascertain or to determine the identity, status, and address" of any signatory or witness (*Matter of Pisani v Kane*, 87 AD3d 650, 652, *lv denied* 17 NY3d 706), the court improperly struck the entire page on which the signature appeared (see *Matter of Previdi v Matthews*, 186 AD2d 101, 102). Only the invalid signature should have been stricken under the circumstances of this case, leaving respondent with 347 signatures, one more than the required 346 (see *Previdi*, 186 AD2d at 102). We therefore reverse the order and dismiss the petition.

Entered: September 6, 2017

Frances E. Cafarell  
Clerk of the Court

**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.

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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.

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HEIDI TESKA, RESPONDENT.

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

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

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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