

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

570.1

CAE 23-00900

PRESENT: WHALEN, P.J., LINDLEY, BANNISTER, MONTOUR, AND GREENWOOD, JJ.

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IN THE MATTER OF MICHAEL HENNESSY,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ONEIDA COUNTY BOARD OF ELECTIONS AND  
PATRICK O'BRIEN, RESPONDENTS-RESPONDENTS.

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THE SARCONE LAW FIRM, PLLC, CROTON-ON-HUDSON (JOHN A. SARCONE, III, OF  
COUNSEL), FOR PETITIONER-APPELLANT.

FUSCO LAW OFFICE, ALBANY (ADAM FUSCO OF COUNSEL), FOR  
RESPONDENT-RESPONDENT ONEIDA COUNTY BOARD OF ELECTIONS.

LAW OFFICE OF JOSEPH T. BURNS, PLLC, WILLIAMSVILLE (JOSEPH T. BURNS OF  
COUNSEL), FOR RESPONDENT-RESPONDENT PATRICK O'BRIEN.

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Appeal from an order of the Supreme Court, Oneida County  
(Bernadette T. Clark, J.), entered May 18, 2023, in a proceeding  
pursuant to Election Law article 16. The order, inter alia, dismissed  
the petition.

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

Memorandum: Petitioner commenced this proceeding seeking, inter  
alia, to validate his designating petition pursuant to the Election  
Law to place him on the primary election ballot for the Republican  
Party as a candidate for the office of Oneida County Executive. The  
designating petition was invalidated by respondent Oneida County Board  
of Elections (Board), which determined in response to objections filed  
by respondent Patrick O'Brien and after a hearing that the designating  
petition did not contain the 1,000 valid signatures required to  
qualify for the designation sought because 585 of the total 1,571  
signatures therein were invalid. Petitioner appeals from an order  
that, inter alia, dismissed the petition on the ground that it lacked  
the specificity required by CPLR 3013. We affirm.

"A validating petition must specify the individual determinations  
of a board of elections that the candidate claims were erroneous,  
including the signatures that the candidate claims were improperly  
invalidated" (*Matter of Fuchs v Park*, 205 AD3d 849, 850 [2d Dept  
2022], *lv denied* 38 NY3d 906 [2022] [internal quotation marks  
omitted]; see *Matter of Lacorte v Cytryn*, 21 NY3d 1022, 1023 [2013];

*Matter of Rodriguez v Ward*, 43 AD3d 640, 641 [4th Dept 2007]; see generally CPLR 3013). Although a petitioner may satisfy that requirement by referencing exhibits attached to the petition, those exhibits must, under the circumstances, provide the respondents with adequate notice to permit them to prepare a defense to the petition (see *Matter of Wagner v Elasser*, 194 AD3d 891, 893 [2d Dept 2021], lv denied 36 NY3d 913 [2021]; see generally *Matter of Jennings v Board of Elections of City of N.Y.*, 32 AD3d 486, 486-487 [2d Dept 2006], lv denied 7 NY3d 707 [2006]).

Here, the petition to validate and supporting exhibits were not sufficiently particularized (see generally *Rodriguez*, 43 AD3d at 641). At certain points in his validation petition, petitioner generally sought to challenge “[e]ach and every one of the determinations of the Board” adverse to him. At other points, he incorporated by reference an exhibit attached to the petition, exhibit C, which addressed only a subset of the 585 signatures ultimately invalidated by the Board. The petition’s conclusory challenge to any determination adverse to petitioner failed to satisfy the specific pleading standard (see generally *Matter of Ellman v Grace*, 75 Misc 3d 776, 783 [Sup Ct, Albany County 2022]). To the extent that the petition also relied on exhibit C to challenge a limited number of signatures referenced therein, we conclude that exhibit C did not, on its face, “specify which determinations” of the Board petitioner claimed were erroneous (*Lacorte*, 21 NY3d at 1023). Rather than responding to the Board’s determination, exhibit C predated that determination and contained responses to the Board’s preliminary analysis. Indeed, the exhibit addressed numerous signatures that were not ultimately invalidated by the Board. Further, the exhibit conflicted with the body of the petition itself as to how many of the invalidated signatures were at issue. Under the circumstances, we conclude that the petition with exhibits “was not sufficiently particularized to give . . . Supreme Court and the parties notice of which determinations were claimed to be erroneous or which signatures the candidate claimed were improperly invalidated” (*Jennings*, 32 AD3d at 486-487).

We have considered petitioner’s remaining contentions and conclude that none warrants reversal or modification of the order.