

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of

MICHAEL PARIETTI and ROBERT ROMANOWSKI,

Petitioners,

-against-

TOWN OF RAMAPO and CHRISTIAN G. SAMPSON as
RAMAPO TOWN CLERK,

Respondents,

**For an Order pursuant to Article 16 of the New York
State Election Law and New York State Town Law to
impound the ballots upon suspicion of possible fraud
and the potential disenfranchisement of voters.**
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DECISION AND ORDER

Index No. 1712/14

(Motion # 1)

Margaret Garvey, J.S.C.

The following papers, numbered 1 to 3, were considered in connection with Order to Show Cause filed by Petitioners MICHAEL PARIETTI and ROBERT ROMANOWSKI on September 30, 2014 seeking an Order preserving for inspection by the Court and the Petitioners all ballots of the September 30, 2014 special town election on the two referendum propositions dealing with the ward system and the number of councilmen/women:

<u>PAPERS</u>	<u>NUMBERED</u>
SEPTEMBER 30, 2014 ORDER TO SHOW CAUSE/VERIFIED PETITION/EXHIBITS (A-E)/VERIFICATIONS DATED SEPTEMBER 30, 2014	1
AFFIRMATION OF JANICE GITTELMAN, ESQ. DATED OCTOBER 6, 2014 IN OPPOSITION TO ORDER TO SHOW CAUSE/EXHIBIT (A)	2
OCTOBER 1, 2014 LETTER FROM ATTORNEY THOMAS SIMETI ON BEHALF OF THE ROCKLAND COUNTY BOARD OF ELECTIONS	3

Upon the foregoing papers, and after hearing oral argument on the issues on September 30, 2014, the Court now rules as follows:

The history of the various cases surrounding the underlying referendum petitions and the special town election have been repeated at length in prior Decisions and Orders rendered by the undersigned on related actions and will not be repeated here except to the extent necessary.

Petitioners MICHAEL PARIETTI and ROBERT ROMANOWSKI presented the instant Order to Show Cause to the undersigned on September 30, 2014, seeking an Order preserving the ballots of the September 30, 2014 special town election for inspection by the Court and the Petitioners. Petitioners included a request for temporary relief in the September 30, 2014 Order to Show Cause, which was filed with, and entered by the Rockland County Clerk's office at approximately 2:00 p.m. on the date of the special town election. The temporary relief requested was as follows:

ORDERED that the Respondents shall preserve and produce any absentee ballots cast pursuant to New York State Town Law Section 84 A before this Court for inspection and counting, and it is further

ORDERED that the Respondents shall preserve and produce any affidavit ballots cast pursuant to New York State Election Law 8-302(e)(ii) before this Court for inspection and counting...

In light of the nature of the relief requested, as well as the request for temporary Orders, and the litigious history surrounding this action and the prior related actions, the Court directed that Petitioners immediately notify Respondents' counsel to appear for oral argument on the Order to Show Cause as soon as practicable. The Court heard oral argument on the issues presented in the Order to Show Cause at approximately 4:30 p.m. on September 30, 2014. At said oral argument, Petitioners both appeared pro se and Respondents appeared through counsel. After hearing oral argument, the Court signed the Order to Show Cause, with modified temporary relief, and directed that Respondents' counsel submit opposition papers on or before October 6, 2014.

The Court marked the Order to Show Cause returnable on October 10, 2014. However, in response to a letter filed by the Rockland County Attorney's office on behalf of the Rockland County Board of Elections, the Court advanced the return date of the motion to October 7, 2014.

There are two issues presented in the September 30, 2014 Order to Show Cause and oral argument:

- (1) The information regarding the submission of, receipt of, and counting of, absentee ballots contained in the application prepared by the Ramapo Town Clerk was incorrect and inconsistent with Town Law § 84-A
- (2) Resolution 2014-357 (August 21, 2014) of the Ramapo Town Board included a statement that "potentially eligible voters may register to vote at the Rockland County Board of Elections on or before September 23, 2014" despite the fact that there is no requirement in the Town Law that a voter in a special town election on a referendum petition be registered to vote

ABSENTEE BALLOTS AND THE ABSENTEE BALLOT APPLICATION

The Order to Show Cause filed by Petitioners alleged impropriety on the part of the Ramapo Town Clerk CHRISTIAN SAMPSON in rejecting absentee ballot applications on the grounds that the signatures did not match. Petitioners argue that such a rejection is an abuse of discretion by the Ramapo Town Clerk pursuant to Election Law § 8-506, which states that the absentee ballot (not the application) must be challenged by an objector at the time of opening of the absentee ballot, not by the Town Clerk's office at the time that the absentee

ballot application is submitted. The alleged impropriety included in Petitioners' Verified Petition comes in the form of Petitioners relaying an incident where a third-party submitted ten absentee ballot applications on behalf of potential voters. There is no affidavit/affirmation from the third-party attached to the Petitioners' application. Petitioners' argument on this point is therefore, supported only by inadmissible hearsay. Further, while Petitioners are pro se litigants, they are more than familiar with the evidentiary requirements and have submitted affidavits/affirmations of voters in the prior related actions when necessary.

In Respondents' opposition papers, Respondents' counsel addressed the allegations that the Ramapo Town Clerk exceeded his authority by reviewing the applications and rejecting three of the ten. On this point, Respondents' counsel cites Town Law § 84-a(3), which allows for an examination of the application to ensure that the applicant is a qualified voter of the town, and entitled to vote by absentee ballot.

The Court will note that a review of Town Law § 84-a(3) reveals an allowance for an examination by the "board of inspectors." As noted previously, Petitioners' allegations on this issue are hearsay statements and are not supported by admissible evidence. Therefore, the Court is not ruling on this issue.

Additionally, Petitioners allege that some impropriety may have occurred in the early morning hours (2:00 a.m.) on the date of the election: September 30, 2014. Specifically, Petitioners relay another incident where a third-party observed the Ramapo Town Clerk CHRISTIAN SAMPSON's vehicle parked outside the Ramapo Town Clerk's office, and saw lights on inside the Ramapo Town Clerk's office. The Petitioners relay that the third-party further observed that Mona Montel was inside the Ramapo Town Clerk's office at that time, and Petitioners identify Mona Montel as the purchasing agent for the Town of Ramapo, not an employee or member of the Ramapo Town Clerk's office. Petitioners, therefore, allege that they suspect tampering with the Time Stamp Clock in the Ramapo Town Clerk's office to bring in and accept absentee ballot applications that were received after the September 29th 5:00 p.m.

deadline. Once again, Petitioners' argument on this point is supported only by inadmissible hearsay because no affidavit/affirmation from the third-party is attached to Petitioners' application.

In Respondents' opposition papers, on this issue, Respondents' counsel argues that the unsupported statements in Petitioners' Order to Show Cause about people in the Ramapo Town Clerk's office on the early morning hours of the election fail to provide evidence of any tampering or fraud. As noted previously, Petitioners' allegations on this issue are hearsay statements and are not supported by admissible evidence. Therefore, the Court is not ruling on this issue.

Further, the Court notes that neither of these two issues were raised by Petitioners during the oral argument on September 30, 2014.

However, on the issue of the absentee ballot application, Respondents did concede during the oral argument that the instructions contained on the absentee ballot application were incorrect, and further that those instructions contradicted the requirements of Town Law § 84-a(8). Specifically, the absentee ballot application, admittedly prepared by the Ramapo Town Clerk CHRISTIAN SAMPSON, stated to potential voters that absentee ballots would be counted so long as they were postmarked by September 29, 2014 and received no later than the 7th day after the election. Pursuant to Town Law § 84-a(8), absentee ballots must be received by 5:00 p.m. on the date of the election to be canvassed.

The Absentee Ballot Application prepared by the Ramapo Town Clerk and disseminated to potential voters stated, in relevant part:

The ballot itself must either be personally delivered to the Town Clerk no later than the close of polls on election day, or postmarked by a governmental postal service not later than the day before the election and received no later than the 7th day after the election. (Emphasis in original).

Town Law § 84-a(8) states: "No absentee voter's ballot shall be canvassed, unless it shall have been received in the office of the town clerk not later than five P.M. on the

day of the election.”

On this issue, during the oral argument, Respondents offered to resolve the issue by offering to canvas and count absentee ballots that were postmarked on or before September 29, 2014 and received within seven days of the election, or in other words, consistent with the absentee ballot instructions. Respondents offered up the same solution in their opposition papers.

At oral argument, on this issue, Petitioners stated that absentee ballots received after 5:00 p.m. on the date of the election should not be counted, or in other words, consistent with Town Law § 84-a(8).

Even if Petitioners had agreed during oral argument to the Respondents’ offer to follow the absentee ballot application’s information regarding which absentee ballots would be counted depending on when they were received, such an agreement would be in direct violation of Town Law § 84-a(8). This Court cannot and will not condone a special town election procedure that would directly violate the Town Law.

On this issue, if the Court adopts Petitioners’ suggestion and counts only those absentee ballots received by 5:00 p.m. on September 30, 2014, then any potential voter who followed the instructions admittedly prepared by the Ramapo Town Clerk CHRISTIAN SAMPSON and postmarked the absentee ballot on or before September 29, 2014, but the ballot was received by Respondents in the seven days following the election, would be disenfranchised. Those votes, which would have been submitted in accordance with the absentee ballot application instructions prepared by Ramapo Town Clerk CHRISTIAN SAMPSON, would not be counted.

Alternatively, if the Court adopts Respondents’ suggestion and counts all absentee ballots postmarked by September 29, 2014 and received in the seven days following the election, then the Court would be condoning a procedure that violates the Town Law. Further, that position leaves open the possibility that a potential voter, who knew the

requirements of the Town Law and knew that the absentee ballot application instructions were incorrect, but also knew that their absentee ballot would not be received by 5:00 p.m. on September 30, 2014 (for whatever reason), and, therefore, did not send in their absentee ballot for counting. Under the Respondents' position, had that voter (knowledgeable of Town Law § 84-a(8)) sent in that absentee ballot despite the fact that it would have been received after 5:00 p.m. on September 30, 2014, the vote would have been counted even though it was counted in contravention of Town Law § 84-a(8). Such a framework leaves open the possibility of the disenfranchisement of that voter knowledgeable of Town Law § 84-a(8).

Regardless of which parties' position the Court were to adopt, there is a real possibility that voters would be disenfranchised, and the Court cannot allow that.

Further, the Court must note that it was the Ramapo Town Clerk, Respondent CHRISTIAN SAMPSON, who drafted and prepared the incorrect absentee ballot application. The prior Decisions and Orders of this Court directing that the propositions be placed on a ballot at a special town election were dated July 21, 2014. This gave Respondents, and their counsel, ample opportunity to draft the absentee ballot application in accordance with the requirements of the Town Law, and there is no excuse for Respondent TOWN OF RAMAPO's failure to do that. In fact, Respondents' opposition papers do not even attempt to excuse the mistake, rather the Respondents offer to go along with the incorrect procedure included in the absentee ballot application despite the fact that to do so would mean violating Town Law § 84-a(8).

It is this Court's opinion that the mistake that was admittedly made by Respondent TOWN OF RAMAPO, more specifically Respondent CHRISTIAN SAMPSON as Ramapo Town Clerk, in the preparation and dissemination of the absentee ballot application that included a procedure for canvassing absentee ballots that directly contravenes Town Law § 84-a(8), is so egregious and fundamental to the special town election process that it cannot be rectified with any Order of this Court directing procedures for the counting of the absentee ballots, i.e. those received prior to 5:00 p.m. on September 30, 2014, or those postmarked by

September 29, 2014 and received within seven days of the election.

REGISTERED V. UNREGISTERED - RESOLUTION 2014-357

Town of Ramapo Town Board Resolution No. 2014-357, which was passed during the August 21, 2014 meeting of the Ramapo Town Board, states, in relevant part:

BE IT FURTHER RESOLVED that potentially eligible voters may register to vote at the Rockland County Board of Elections on or before September 23, 2014, (Emphasis in original)

All parties agree that potential voters on the referendums at the special town election did not have to be registered to vote with the Rockland County Board of Elections on or before September 23, 2014. In fact, all parties agree that potential voters on the referendums at the special town election did not have to be registered to vote with the Rockland County Board of Elections at all, even on the date of the election, in order to vote in the September 30, 2014 election.

Petitioners argue that they relied on the wording of the August 21, 2014 resolution and assumed that potential voters must register to vote on or before September 23, 2014. Petitioners state that they disseminated this incorrect information to their supporters, based upon the wording of the resolution, and they did not hear otherwise until September 29, 2014. Petitioners state that upon learning on September 29, 2014 that Respondent TOWN OF RAMAPO would allow unregistered voters to vote in the September 30, 2014 election (over 18 and residents of Ramapo), inquiries were made to Respondent TOWN OF RAMAPO and Respondent CHRISTIAN SAMPSON to clarify the issue, and the response was not given until the very morning of the election.

Respondents' opposition papers do not deny the confusion or the inquiries made. The opposition papers state that the resolution did not contain any inaccurate information, and complied with Town Law § 82. However, Respondents' do not address the fact that widespread confusion resulted from the language included in the resolution, or the fact that Respondents did not respond to inquiries regarding the confusion until the morning of the election.

Nothing in Town Law § 82 states that a Town should include language in the resolution to encourage people to register to vote with the Board of Elections by a certain date to make the process easier for the Town. Certainly nothing in Town Law § 82 states that a Town should mislead voters to think they have to be registered to vote with the Board of Elections by a certain date, or even be registered to vote with the Board of Elections at all, to be able to vote on the propositions. The unnecessary language included by Respondent TOWN OF RAMAPO was misleading on the face of the resolution, and Respondents TOWN OF RAMAPO and CHRISTIAN SAMPSON as the Ramapo Town Clerk did nothing to clarify the confusion they created until it was too late.

Respondents' opposition papers further state that Petitioners concede that they were aware of the fact that unregistered voters could vote as early as September 29, 2014. The Court finds that the evening before the election is not sufficient time to rectify and clarify the confusion that was created by the Respondents' unnecessary inclusion in the resolution a statement that "potentially eligible voters may register to vote at the Rockland County Board of Elections on or before September 23, 2014."

It is this Court's opinion that the decision by Respondent TOWN OF RAMAPO to include language in the resolution regarding registration of potentially eligible voters resulted in confusion regarding who could vote in the special town election, and was misleading to the general public as to who could vote in the special town election. While the Court is not making any finding that the inclusion of the misleading language was done with any malicious intent by Respondent TOWN OF RAMAPO to mislead certain potential voters, the Court will note that

it was unnecessary language that did not have to be included in the resolution. The Court finds that the conduct of Respondent TOWN OF RAMAPO of including language that was so misleading to the general public made up of laypersons undoubtedly resulted in the disenfranchisement of voters and chaos and confusion at the polling locations on the date of the special town election.

There is no Order that this Court can issue that can rectify the confusion caused by the conduct of the Respondent TOWN OF RAMAPO. In fact, Respondents' counsel even conceded the Court's point during oral argument, although not intentionally, when he stated that the Town preferred if voters registered before the election, because otherwise they could be faced with "thousands" of voters appearing at the polls requesting affidavit ballots. It is just as likely that as a direct result of the TOWN OF RAMAPO's inclusion of language regarding registration on or before September 23, 2014, potential eligible voters did not appear at polling locations because they were under the misapprehension that they had to be registered to vote with the Board of Elections. While the Court does not have the exact number of potential eligible voters who may not have appeared because they thought they had to be registered to vote, the pool of unregistered voters who were qualified to vote on the referendum petition consists of "thousands" as stated by Respondents' counsel during oral argument.

In light of the two issues discussed above, specifically the incorrect absentee ballot application and the inclusion of language regarding registration in the resolution, the Court finds that the entire special town election must be invalidated as a result of the conduct of Respondents TOWN OF RAMAPO and CHRISTIAN SAMPSON as Ramapo Town Clerk, regardless of whether that conduct was intentional or simply by mistake. While the Court is aware that neither party has formally requested invalidation of the special town election, the Court is granting that relief in its discretion, and pursuant to Civil Practice Law and Rules § 3017(a).

The Court will note that the September 30, 2014 Order of the undersigned

suspended any count of the results from the September 30, 2014 special town election, so even the Court is unaware of the results. The irregularities presented by these two specific issues permeate the entire special town election, from the applications to receive absentee ballots, to the information disseminated to the general public regarding who could vote on the propositions, and no Order of this Court regarding procedures for counting, or even Court supervision of counting, can rectify the issues. As a result, the only way to preserve the integrity of the special town election on the propositions, and the fairness of same, is to direct that the TOWN OF RAMAPO conduct a new special town election.

The Court will note that the bulk of Respondents' opposition papers are dedicated to their argument that the Court either lacks jurisdiction to "count" the votes before the official count, or that the Court lacks jurisdiction to "count" the votes in a special town election entirely. In light of the Court's ruling, and the fact that the Court is not canvassing or counting any of the votes cast in the September 30, 2014 special town election, the Court is not ruling on this issue.

Further, Petitioners' Verified Petition states in the very last paragraph that a temporary restraining order will give Petitioners time to obtain counsel to represent them in Court. This matter (and the related actions) have been before this Court since September of 2012. If Petitioners wanted to retain counsel, they have had more than enough time to do so, and the Court will not entertain any requests for additional time on any future applications related to this action for that reason.

As an aside, while the TOWN OF RAMAPO may not be mandated by law to take certain precautions or perform certain procedures, in light of the incredibly contentious nature of the underlying propositions and the heated nature of the debate on the underlying propositions in the Town of Ramapo, the Court would suggest that Respondent TOWN OF RAMAPO request assistance from, and involve, the Rockland County Board of Elections in the process to the greatest extent permitted by law in the new special town election. It is this

Court's humble opinion that any oversight or direction that Respondent TOWN OF RAMAPO (and Respondent CHRISTIAN SAMPSON as Ramapo Town Clerk) receives from the independent and impartial body that is the Rockland County Board of Elections can only serve to preserve the integrity of this important special town election, especially in the face of repeated allegations of fraud, improprieties, and irregularities on the part of Respondent TOWN OF RAMAPO and Respondent CHRISTIAN SAMPSON as Ramapo Town Clerk. In order to avoid further costly litigation, and further attacks on the integrity of the election, it is imperative that the process leading up to the new special town election, including the information disseminated to the general public and the procedures surrounding the actual election (training of election inspectors, availability and procedure for obtaining absentee ballots, availability and procedure for obtaining affidavit ballots, canvassing of absentee ballots and affidavit ballots) be as open and public as possible. For example, it would certainly behoove the Town of Ramapo to publish and/or disseminate, in sufficient time prior to the next election, a correct application with detailed instructions regarding absentee ballots, requirements regarding unregistered voters and affidavit ballots, and any other information to ensure that the election process is as transparent as possible and to avoid any appearance of impropriety. To that end, the Court will note that the opposition papers (§ 9) submitted by Respondents detail a procedure for the canvassing of the votes that involves election inspectors certified by the Rockland County Board of Elections and the Rockland County Board of Elections as well.

The Court will further note that while poll watchers are not mandated by law, as detailed in this Court's Decision and Order dated September 24, 2014 on Index No. 1651/14, and the Court is without the authority to force Respondent TOWN OF RAMAPO and Respondent CHRISTIAN SAMPSON as Ramapo Town Clerk to authorize poll watchers, perhaps permitting poll watchers during this highly contentious vote on the propositions would be in the best interest of not only the TOWN OF RAMAPO, but also the opponents and the proponents of the underlying propositions. The presence of poll watchers would allow the proponents and the

opponents the opportunity to observe first-hand the procedures put in place by the Town of Ramapo to ensure the integrity and fairness of the special town election.

Accordingly, it is hereby

ORDERED that the September 30, 2014 Order to Show Cause and attached Verified Petition is granted in part and denied in part consistent with the terms and conditions of this Decision and Order; ; and it is further

ORDERED that the September 30, 2014 special town election conducted by Respondent TOWN OF RAMAPO is hereby invalidated in its entirety; and it is further

ORDERED that Respondent TOWN OF RAMAPO and Respondent CHRISTIAN SAMPSON as Ramapo Town Clerk are directed to turn over to the Rockland County Board of Elections, any and all absentee ballots received after the September 30, 2014 special town election, and said production shall occur immediately, if not already provided; and it is further

ORDERED that in light of the Court's ruling invalidating the September 30, 2014 special town election, the Court directs that any and all ballots cast in the September 30, 2014 special town election, and any and all records, electronic or otherwise, of the votes cast in the September 30, 2014 special town election, shall be preserved for three days from the date of this Decision and Order to allow either party or both parties to appeal this Court's Decision and Order and obtain a stay from the Appellate Division, Second Department of the destruction of all records of votes cast in the September 30, 2014 special town election - in the event that no stay is obtained from the Appellate Division, Second Department, then any and all ballots cast in the September 30, 2014 special town election, and any and all records, electronic or otherwise, of the votes cast in the September 30, 2014 special town election, shall be destroyed at 4:00 p.m. on October 10, 2014 (the third day following the date of this Decision and Order) - in the event that a stay is obtained by either party or both parties, said party or parties shall be responsible to make alternate arrangements regarding the preservation of same, acceptable

to the Appellate Division, Second Department, that does not involve the Rockland County Board of Elections in light of the upcoming general election on November 4, 2014; and it is further

ORDERED that no count of the ballots cast shall occur prior to the destruction of the ballots and records of the votes cast and any announcement of results is prohibited; and it is further

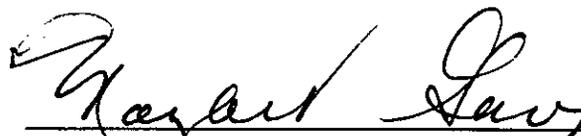
ORDERED that the temporary restraining order dated September 30, 2014 requiring the Rockland County Board of Elections to secure and seal all voting machines used in the September 30, 2014 special town election is hereby lifted, so long as a printed record of the votes cast at each machine can be preserved in the event that the Appellate Division, Second Department issues a stay of the destruction of the ballots cast in the September 30, 2014 special town election; and it is further

ORDERED that Respondent TOWN OF RAMAPO and Respondent CHRISTIAN SAMPSON as Ramapo Town Clerk shall conduct a new special town election on the propositions regarding the ward system and the number of councilmen/women in accordance with the requirements of the Town Law, and applicable sections of the Election Law, if any; and it is further

ORDERED that in light of this Court's Decision and Order on the application by Petitioners, this matter is marked disposed.

The foregoing constitutes the Decision and Order of this Court.

Dated: New City, New York
October 7, 2014


HON. MARGARET GARVEY
Justice of the Supreme Court

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