

**NEW YORK STATE SUPREME COURT  
APPELLATE DIVISION - THIRD JUDICIAL DEPARTMENT**

		)	
5	Gerard Aprea,	)	New York Supreme Court, Albany County
	John Vidurek,	)	INDEX No. 7215-11
	Plaintiffs, Appellant;	)	DOCKET No. _____
		)	
	- vs -	)	
10		)	<b>PLAINTIFFS/APPELLANT BRIEF</b>
	NEW YORK STATE BOARD OF ELECTIONS,	)	
	Defendants.	)	
		)	

15 **PLAINTIFFS WHO ARE NOT ATTORNEYS APPEAL**, each and every part thereof, the decision of the  
 Supreme Court to dismiss for not stating a cause of action thereby denying plaintiffs motion for  
 default is arbitrary and capricious. Plaintiffs agree with the court that the defendant, as the  
 defaulting party is deemed to have admitted all factual allegations contained in the complaint  
 and all reasonable inferences that flow from them. Due to the aforementioned reasons and  
 20 others, *infra*, the court's decision to dismiss was in error.

**THIS IS AN ELECTION ISSUE/TIME SENSITIVE**

Plaintiffs move the Court to expedite this appeal because it is an election issue and the plaintiffs  
 are again in the midst of another election cycle. Whereas the plaintiffs having been  
 25 disenfranchised in both the 2010 and 2011 primary elections, and are rightfully convinced, by  
 the past actions of the state in these elections, and their disregard for the law as demonstrated  
 in this case, to conclude that the plaintiffs will no doubtfully be disenfranchised by the state  
 again in 2012, and every year until justice is served. For the court to leave the plaintiffs without  
 remedy is a travesty of justice to both the plaintiffs and all the good people of New York  
 30 thereby, eroding confidence in our election process.

### FIVE (5) VALID CAUSES OF ACTIONS

Plaintiffs have alleged all necessary elements for five causes of action with sworn statements and documents sufficient to support a summary judgment. Additionally plaintiffs need only successfully allege one cause of action. All of the points that the Supreme Court has raised are contentious and the plaintiffs have, at lease, the right to make its argument before a Jury as guaranteed in common law see US Constitution 14th Amendment. The Supreme Court's ruling denies plaintiffs right of due process. see United States Constitution 5th Amendment. "By the law of the land is more clearly intended the general law, a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial". [Dartmouth College Case, 4 Wheat, U.S. 518, 4 ED 629].

Plaintiffs clearly stated and restate that they have been directly damaged in that our designating petitions for the "elected" office of committeeman has been fraudulently altered to be acknowledge by the state as nominated "member of the county committee" aka "town committeeman", or have been simply ignored and thrown out. [see plaintiffs exhibit 118, pgs 76-80]

### COUNT 1 - BREACH OF CONTRACT

Plaintiffs deny the Supreme Court's conclusion that they did not effectively plead a "Breach of Contract". In the case Sun Gold Corp. v. Stillman, 2010 NY Slip Op 31896 (N.Y. Sup. Ct., 2010) ... plaintiff must establish each of the following four elements: (1) existence of a valid contract; (2) plaintiff's performance of the contract; (3) defendant's material breach of the contract; and (4) damages (Noise In The Attic Productions, Inc. vLondon Records, 10 AD3d 303 [1st Dept 2004] [referencing NY PJI 4:1-elements of breach of contract]; and Furia v Furia, 116 AD2d 694 [2d Dept 1986]).

Plaintiffs alleged and swore to with documents in the complaint that there existed: (1) a constructive contract, (2) plaintiffs properly filed prima facie designating petitions with

sufficient signatures thereby performing, **(3)** defendants breached that contract by defrauding plaintiffs and that the **(4)** plaintiffs were damaged by the defendants breach in that they were disenfranchised. [**see Complaint dated 11-15-11, count 1 breach of contract line 75-83** pgs 37-39  
 60 **and general allegations, line 29-54;** pgs 32-34 **two (2) affidavits** pgs 48-57 **with exhibits 105-118;** pgs 58-  
 80 **New York Constitution Article 1 Section 1**]

Plaintiffs are taken aback in the stunning conclusion by the court in that plaintiffs have wholly failed to state any viable cause of action resting in an assumption that the defendants oath of office does not constitute a duty of contract between the people and its servant government,  
 65 all state political vacancies elected or appointed take an oath of office. The agreement between the state and the central government is the United States Constitution whereas we find in the 10th amendment "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people". It is "HERE" where the contract, **at least a constructive one**, was made between plaintiffs and the  
 70 defendant through the purported constitutional oath's taken by defendant acting as custodians of the contract. No doubt the oath was an act of consideration. To think that government would be permitted to govern by the consent of the people (two considering parties and an agreement) without restrictions and permissions (contract) would be absurd. And it is by their ostensible oaths defendant owed a legal duty to plaintiffs to obey the Rule of Law to the  
 75 highest standard of care. The oaths created a legal duty to faithfully uphold, serve and honor the constitutions between government actors such as defendant and the plaintiffs. [**See Complaint dated 11-15-11, line 25-28;** pgs 31 **defendants obligations, line 8-16;** pgs 28-29 **contract and legal duty line 25-28;** pgs 31 **reasonable expectations line 55-62** pgs 33-35]

Whenever a government officer infringes upon the Peoples common law right (constitutional) it  
 80 is commonly assumed that an agreement exists, it's called a "social contract", it's the foundation of society, without which there would be anarchy.

*Members of the legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will*

85 *support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of..., according to the best of my ability;"*  
**(NYS Constitution Article XIII Public Officers Section 1.)**

Eligibility of commissioners and officers - each [NYSBOE] commissioner and each person appointed to office by the chairman shall, before entering upon the duties of his office, take  
 90 and subscribe the constitutional oath of office... **(N.Y. PBS. LAW §9 : NY Code - Section 9: Oath of office;)**

Every public officer is to take and file an oath or affirmation prior to the discharge of any of their official duties. The form of the oath or affirmation is set forth in Article XIII, Section 1 of the New York State Constitution. **(New York State Public Officers Law Section 10)**

95 **Implied-in-fact contract** - A contract based on the tacit understanding or an assumption of the parties and evidenced by the parties' conduct.

**Implied-in-law contract** - A contractual obligation imposed by the law because of the parties' conduct or a special relationship between them, an obligation created by law for the sake of justice.

100 "*The purpose of government is to secure and protect the God-given inalienable natural rights of the people. For their part, the people must obey the laws of their rulers. Thus, a sort of contract exists between the rulers and the ruled"... But if a government persecutes its people with "a long train of *abuses*" over an extended period, the people have the right to resist that government, alter or abolish it, and create a new political system. , **Locke***

105 "*...it is natural and rational for people to give up some liberty in order to gain security of self-preservation" ... "The condition in which people give up some individual liberty in exchange for some common security is the Social Contract" ...The purpose of a government is enforce law and serve the common protection..." - **Hobbes***

110 "The **Social Contract**, or Principles of Political Right ... the government is based on the idea of popular sovereignty. Thus the will of the people as a whole gives power and direction to the state". **Rousseau**

The idea of the social contract is one of the foundations of the American political system. This is the belief that the state only exists to serve the will of the people, and they are the source of all political power [*the People*] enjoyed by the state. They can choose [*the People*] to give or  
 115 withhold this power. Obviously these ideas had a huge impact on the Founding Fathers, especially Thomas Jefferson and James Madison.

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"Elements" of [Common Law] Contract - Agreement -	
(A) Offer	(1) Offeror's serious intent to be bound
	(2) Reasonably certain and definite terms
	(3) Communication to Offeree(s)
(B) Acceptance	(4) Offeree's serious intent to be bound
	(5) Communication to Offeror

A Contract is a binding agreement between two or more persons that is enforceable by law and clearly there is an agreement, a consideration and an enforceable law. For the court to conclude that there is no constructive contract is illogical, a denial of our Declaration of Independence, a denial of The Constitution for the United States, a denial of our New York  
 125 State Bill of Rights, a total denial of common law, the core and foundation of Americas freedom.

#### COUNT 2 - BREACH OF FIDUCIARY DUTY

Plaintiffs deny the Supreme Court's conclusion that they did not effectively plead "Breach of  
 130 Fiduciary Duty". In the case of **Shaw Creations Inc v. Galleria Enters Inc, 2010 NY Slip Op 32938 (N.Y. Sup. Ct., 2010)** "...breach of fiduciary duty has three elements: (1) a breach of fiduciary duty, (2) defendant knowingly induced or participated in the breach, and (3) damage resulting from the breach". **Kaufman v Cohen, 307 AD2d 113, 125 (1st Dept 2003)**.

Plaintiffs alleged and swore to with documents in the complaint that there existed: **(1)**  
 135 reasonable faith to believe that the NYSBOE owed a duty obligating them to act in good faith in  
 the receiving of their designating petition for elective office without bias; **(2)** The defendant  
 abused that trust and breached its duty by throwing out or changing plaintiffs designating  
 petitions; **(3)** Plaintiffs have been disenfranchised in that they are not in possession of their  
 elective duty, guaranteed by our New York State Bill of Rights Article 1 Section 1, to fill  
 140 vacancies. [see Complaint dated 11-15-11, count 2 breach of fiduciary duty, line 84-88 pgs 39-40  
and general allegations, line 29-54, pgs 32-34 two (2) affidavits pgs 48-57 with exhibits 105-118]; pgs  
 58-80

### COUNT 3 - NEGLIGENCE

145 Plaintiffs needed not to allege facts that a municipality violated a statutory duty because the  
 state is not a municipality and plaintiffs alleged facts with documented proof and sworn  
 statements that the state (NYSBOE) had a constitutional duty to the plaintiffs and the said state  
 violated that duty and thereby violated the plaintiffs constitutional rights.

Plaintiffs deny the Supreme Court's conclusion that they did not effectively plead "Negligence".  
 150 In the case of Nowak v. County of Wayne, 2007 NY Slip Op 30881(U) (N.Y. Sup. Ct. 4/9/2007),  
2007 NY Slip Op 30881 (N.Y. Sup. Ct., 2007) ...*"the elements of negligence are (1) a duty the*  
*defendant owes to the plaintiff, (2) a breach of that duty by the defendant, (3) a causal*  
*connection between the breach and the plaintiff's injury, and actual injury. In the absence of any*  
*one of these elements, no cause for negligence will lie"* (57A Am Jur2d Negligence §71).

155 Plaintiffs alleged and swore to with documents in the complaint that there existed: **(1)** a  
 reasonable faith to believe that the BOE owed a duty obligating them to act in good faith with a  
 higher standard of care because of their constitutional oaths thereby protecting the receiving of  
 the plaintiffs designating petition for elective office without bias; **(2)** The defendant abused that  
 trust and breached that duty of care by denying, throwing out and/or changing our designating  
 160 petitions. **(3)** Plaintiffs have been disenfranchised and thus injured, in that they are not in

possession of their elective duty, guaranteed by our New York State Bill of Rights Article 1 Section 1, to fill vacancies. [see Complaint dated 11-15-11, count 3 negligence, line 89-93 <sup>pgs 41-42</sup> and general allegations, line 29-54, two (2) affidavits <sup>pgs 48-57</sup> with exhibits 105-118]; <sup>pgs 58-80</sup>

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#### COUNT 4 - CONSTRUCTIVE FRAUD

Plaintiffs deny the Supreme Court's conclusion that they did not effectively plead "Constructive Fraud". In the case of Kopelowitz & Co., Inc. v. Mann, 2009 NY Slip Op 50712(U) (N.Y. Sup. Ct. 4/17/2009), 2009 NY Slip Op 50712 (N.Y. Sup. Ct., 2009) ... *to establish a prima facie case of fraud, the plaintiff must establish (1) that the defendant made material representations that were false, (2) that the defendant knew the representations were false and made them with the intent to deceive the plaintiff, (3) that the plaintiff justifiably relied on the defendant's representations, and (4) that the plaintiff was injured as a result of the defendant's representation. (See Kerusa Co., LLC v W10Z/515 Real Estate Ltd. Partnership, NY3d, 2009 NY Slip Op 02482 [April 2, 2009]; Small v Lorillard Tobacco Co., Inc. 94 NY2d 43 [1999]; Channel Master Corp. v Aluminum Limited Sales, Inc., 4 NY2d 403 [1958]; Smith v Ameriquest Mortg. Corp., AD3d, 2009 NY Slip Op 02586 [2d Dept March 31, 2009]; Cash v Titan Financial Services, Inc. 58 AD3d 785 [2d Dept 2009]; Shovak v Long Island Commercial Bank, 50 AD3d 1118 [2d Dept 2008]; Sellinger Enterprises, Inc. v Cassuto, 50 AD3d 766 [2d Dept 2008]; Williams v Eason, 49 AD3d 866 [2d Dept 2008]; McMorrow v Dime Sav. Bank of Williamsburg, 48 AD3d 646, [2d Dept 2008].*

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(1) The defendants broken oath to obey the law was a material false representation; (2) for the defendant to hide from the people through enforced subversive policies and procedures in sixty two (62) counties by sixty-two (62) BOE's could only have been a covert deceptive act that required intent in order to achieve. (3) There existed no reason to believe that the BOE would NOT act on behalf of the plaintiffs to properly file and properly act upon plaintiffs designating petition. (4) But instead defendants misfiled or threw-out said petitions in order to maintain status quo and therefore their power, thereby plaintiffs have been disenfranchised in that they are not in possession of their elective duty, guaranteed by our New York State Bill of Rights

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Article 1 Section 1, to fill vacancies caused by a direct breach of duty, abuse and trust  
 190 committed by the NYSBOE. **[see Complaint dated 11-15-11, count 4 constructive fraud, line 94-  
 99 and general allegations, line 29-54, two (2) affidavits <sup>pgs 48-57</sup> with exhibits 105-118]; <sup>pgs 58-80</sup>**

#### OFFICERS OF THE GOVERNMENT OWE A TRUST AND A DUTY

195 *“Government is a trust, and the officers of the government are trustees; and both the trust and  
 the trustees are created for the benefit of the people” - **Henry Clay***

Plaintiffs in good faith trusted defendant, who had a fiduciary duty to protect the plaintiff's  
 constitutional rights to run for public office and choose their representatives and to guard  
 elections. Defendant knowingly breached said trust when they conspired with the two private  
 200 party Associations to maintain the control of the committeeman process in the hands of a  
 select few and prevent access by plaintiffs and the People. **See Complaint dated 11-15-11, line  
 85-86 <sup>pgs 40</sup>** Proven by the fact that NY Election law 6-118 is not recognized or acknowledged by  
 any of the 62 County BOE's due to policies and procedures written and orchestrated by the  
 NYSBOE to administer and enforce only select laws that recognize only the executive  
 205 committees as the party authorities, for gain.

**NYSBOE Mission Statement** - *The State Board of Elections was established in the Executive  
 Department June 1, 1974 as a bipartisan agency vested with the responsibility for  
 administration and enforcement of all laws relating to elections in New York State... **See  
 Complaint dated 11-15-11, line 9 <sup>pgs 28</sup>***

210 *“No member [individuals] of this state shall be disfranchised, or deprived of any of the rights or  
 privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his or  
 her peers, except that the legislature may provide that there shall be no primary election held to  
 nominate candidates for public office or to elect persons to party positions for any political party  
 or parties in any unit of representation of the state from which such candidates or persons are*

215 *nominated or elected whenever there is no contest or contests for such nominations or election  
as may be prescribed by general law". (New York Constitution, Bill of Rights, Article 1, Section  
1.)*

220 *Eligibility of commissioners and officers - Each commissioner and each person appointed to  
office by the chairman shall, before entering upon the duties of his office, take and subscribe  
the constitutional oath of office... (N.Y. PBS. LAW §9 : NY Code - Section 9: Oath of office)*

By their ostensible oaths defendant owed a legal duty to plaintiffs to obey the Rule of Law to  
the highest standard of care. The oaths created a legal duty to faithfully uphold, (*that I will  
faithfully discharge the duties of the office*) serve and honor the constitutions between  
government actors such as defendant and the People of New York. [see Complaint dated 11-  
225 15-11, defendants obligations line 8-16; pgs 28-29 legal duty, line 25-28; pgs 31 reasonable  
expectations, line 55-62] pgs 34-35

#### COUNT 5 - CONSPIRACY

Plaintiffs deny the Supreme Court's conclusion that they did not effectively plead "Conspiracy".  
230 In the case of Cresser v. American Tobacco Co., 662 N.Y.S.2d 374, 174 Misc.2d 1 (N.Y.Sup.,  
1997) the required elements for conspiracy stated and met herein are: (1) *an agreement to  
participate in an unlawful act;* (2) *an injury caused by an unlawful overt act performed by one of  
the parties to the agreement;* (3) *which overt act was done pursuant to and in furtherance of  
the common scheme."* Lindsay v. Lockwood, 163 Misc.2d 228, 234, 625 N.Y.S.2d 393  
235 (Sup.Court, Monroe County, 1994) citing Halberstam v. Welch, 705 F.2d 472, 477 (D.C.Cir.,  
1983)

Plaintiffs alleged and swore to with documents in the complaint that there existed an  
acceptance and consideration of a contract, at least a constructive one, and clearly there (1&3)  
had to be an agreement in order that the NYSBOE could covertly orchestrate such a massive,  
240 state wide, complex plan with others at the county boards and the two major parties without

which cooperation and stealthy actions such a scheme would be impossible. (2) Which resulted in the obvious exclusion of the people to the committeeman process. **[see Complaint dated 11-15-11, count 5 conspiracy, line 100-105 pgs 45-46 and general allegations, line 29-54, pgs 32-34 two (2) affidavits pgs 48-57 with exhibits 105-118]; pgs 58-80**

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### [SPECIAL] CONSTITUTIONAL DUTY AND ACTIONABLE TORT

Even though the state is not a municipality there indeed was a special duty owed the plaintiffs clearly apart from any duty to the public in that they were defrauded candidates by the NYSBOE **[never-the-less that does not give license for abuse nor prevent legal remedy of that abuse by one or all]** in violation of a constitutional duty: **[NYS Constitution Article 1, Section 1]**

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When the Plaintiffs filed designating petitions and the NYSBOE ordered them, through policies and procedures, to be ignored, changed or thrown out it disenfranchised the plaintiffs constitutional right to fill the elected political office of "Committeeman" which was no doubt a breach of constitutional duty, an actionable tort.

255 The Committeeman is the interface between the people and the government, it is the political holy of holies, he is the "consentor" delegated on behalf of the people referred to in the "Article of Recall" that created this great nation "...*That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,*" [*delegates, ie committeemen*] **[Declaration of Independence]** To discard or hide this interface politically or

260 judicially is a direct assault upon "The People" and the constitutional rights of the plaintiffs.

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The defendant had/has a duty to protect voter confidence and secure the rights of the plaintiffs to choose political representation and to exercise their right as elected committeemen to fill political office vacancies on behalf of the People of New York but instead, the defendant has violated that obligation of duty. Therefore the plaintiffs have been, and continue to be

265 disfranchised by these actions as per Article 1 Section 1 of the New York State Constitution. And because of this alarming denial of access by anyone outside the party influence, voter

confidence, proven by the growing apathy, is rapidly deteriorating because of past and present actions by the defendant and corrupt men, empowered by the defendant, who have succeeded in subverting the power of the people by expunging the elected committeeman, as it is reserved by the protected few (executive committees), and thereby shutting out the plaintiffs and the People from the election process. For the court to remain silent is equally damaging.

"Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously". [...Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example...] Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that, in the administration of the criminal law, the end justifies the means -- to declare that the Government may commit crimes in order to secure the conviction of a private criminal -- would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face". [**Olmstead v. United States, 277 U.S. 438 (1928)**]

#### **SIMULTANEOUSLY VIABLE CAUSES OF ACTION FOR BREACH OF CONTRACT AND FRAUD**

"A plaintiff may not pursue a fraud cause of action simultaneously with a breach of contract cause of action as the fraud cause of action, when it is premised upon the same facts and circumstances as the breach cause of action, is simply duplicative". [**Clark-Fitzpatrick, Inc. v. Long Island R. Co., 70 N.Y.2d 382, at 389, 521 N.Y.S.2d 653, at 656 (1987)**]. On the contrary in this case plaintiffs allegations, supported by documented facts, were not premised upon the same facts and simply duplicated.

Plaintiffs count one (1) "**Breach of Contract**" was premised upon the breaching of the said oaths when the NYSBOE worked and enabled the mechanisms by which the two private party associations to breach the said contracts thereby disenfranchisement plaintiffs right to run for

public office in violation of plaintiffs NYS Constitution, Bill of Rights, Article 1, Section 1 by shutting plaintiffs out of the 2010 & 2011 election's or process by claiming that positions were  
 295 filled when, in fact, they were not. See **plaintiffs complaint** lines 31, 32, 34, 35, 36, 37, 39, 40, 41, 43, 44, 45; **pgs 32-33** and **exhibit 118. pgs 76-80** The Defendant had a legal duty to obey the law, not to lie and deceive the plaintiffs, disenfranchising plaintiffs, who were candidates for elective office, thereby committing a tortuous act.

Plaintiffs count four (4) "**Constructive Fraud**" was premised upon the NYSBOE "**fraudulently**"  
 300 changing plaintiffs titles on designating petitions from "Committeeman" to "Member of the County Committee", this was not merely alleged but documented and sworn too. See **sworn affidavits pgs 48-57 with exhibits 105-118]; pgs 58-80**

Furthermore the NYSBOE had a duty independent of the contract itself to obey the law, but in its stead violated the law.

305 **FURTHERMORE** it is equally well settled that "a misrepresentation of material fact, which is collateral to the contract and serves as an inducement for the contract, is sufficient to sustain a cause of action alleging fraud". [***Deerfield Communications Corp. v. Chesebrough-Ponds, Inc., 68 N.Y.2d 954, 956 (1986); First Bank of Americas v. Motor Car Funding, 257 A.D.2d 287, 690 N.Y.S.2d 17 (1st Dep't 1999)***]. Thus, a fraud claim may be based on allegations that the  
 310 defendant fraudulently induced the plaintiff to enter into a contract and a party who is fraudulently induced to enter into a contract may join a cause of action for fraud with one for breach of the same contract where the misrepresentations alleged consist of more than mere promissory statements about what is to be done in the future. Where a plaintiff alleges misrepresentations of present facts, rather than merely of future intent, that were collateral to  
 315 the contract and which induced the allegedly defrauded party to enter into the contract, a fraudulent inducement claim is not duplicative of a breach of contract claim [(see ***W.I.T. Holding Corp. v. Klein, 282 A.D.2d 527, 724 N.Y.S.2d 66 (2nd Dep't 2001)***)]. The same set of circumstances giving rise to a breach of contract claim may also form the basis of a cause of action for this type of fraud and, thus, a fraud claim which is not duplicative of a contract claim

320 may be maintained [(see *Fresh Direct v. Blue Martini Software*, 7 A.D.3d 487, 776 N.Y.S.2d 301  
 (2nd Dep't 2004)].

**New York County Supreme Court Justice Fried's 2008 decision in *Gotham Boxing v. Finkel*,  
 2008 W.L. 104155 (N.Y. Sup. 2008)** provides great guidance on the issue. In *Gotham Boxing*, the  
 325 Court ruled that a fraud claim can stand, and is not duplicative of a breach of contract action,  
 when the fraud claim is premised upon an additional representation, omission or conduct  
 extraneous to the contract. Justice Fried noted insightful observations: The critical factual  
 distinction between *Graubard*, in which the Court of Appeals upheld a fraud claim that was  
 related to a contract claim, and *Coppola*, in which the First Department dismissed a fraud claim  
 as duplicative, seems to be that in *Graubard*, the fraud claim was based on a particular oral  
 330 assurance offered by the defendant, in addition to the promises recorded in the written  
 agreement, and the fraudulent intent "was not asserted in *conclusory* fashion but was  
 evidenced by defendant's conduct shortly after entering into the agreement." [**Coppola, 288**  
**A.D.2d at 42**]. In contrast, in *Coppola*, the plaintiff did not refer to any particular representation  
 or conduct by the defendant other than that reflected in the terms of the agreement. ...  
 335 Likewise in this case evidenced by defendant's conduct shortly after filing designating petitions  
 the fraud was perpetrated upon the plaintiffs.

#### COMMON LAW COURT

In a common (natural) law court justice is to prevail above all, "evidently" plaintiffs were  
 340 disenfranchised in that they were denied their constitutional right to be "elected" to a party  
 office [**NYS Constitution Article 1 Section1**].

The plaintiffs are "natural" born (common law) citizens and have the right to a common  
 (natural) law court. "*No sanction can be imposed absent proof of jurisdiction*" [**Stanard v.**  
**Olesen, 74 S. Ct.768**] "*Once challenged, jurisdiction cannot be 'assumed', it must be proved to*  
 345 *exist.*" [**Stuck v. Medical Examiners, 94 Ca2d 751.211 P2s 389**]

Plaintiffs, not being attorneys have a common (natural) law right to be heard and judged by a jury of their peers in a common (natural) law court, as demanded in our complaint and have never wavered from **[US Constitution Fourteenth Amendment]**.

350 Plaintiffs, not being attorneys, clearly initiated jurisdiction as common law **[see complaint line 7]** and therefore have a common (natural) law right to express themselves to the court in plain language and plain arguments thereby being the object of common law justice and not subjective to priestly measures. "*Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them*" **[Miranda v. Arizona, 384 U.S. 436, 491]**

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#### COLLECTIVISM -VS- INDIVIDUALISM

Any right, "impossibly requiring the collective" to file a complaint and not the individual in order to be heard is no right at all and would be repugnant to freedom under natural law as demonstrated by God's judgment or mercy upon one individually, never collectively, as we call upon Him individually and not collectively. [Gen:4:6-7, Gen:6:8, Rom:9:15, Rev:20:12-13, Gen:19:19, Gen:33:10, Gen:39:4, Gen:47:29, Heb:9:27]

365 To say that the plaintiffs injuries are no greater than anyone else's, or requires some special circumstance that separates one from a group, and therefore somehow is to be endured is oxymoronic and destructive to the principles of justice, holding no place with natural law. This idea bears no weight upon any maxim, by which all law is judged, but instead is contradictive and its conclusion is founded solely upon communism which is repugnant to our republic and therefore this conclusion is null and void, furthermore this special circumstance and measured injuries are administrative law municipalities perpetrate upon the people and has no credence upon state issues, such as this case.

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We hold these truths to be self-evident, that "all men" are created equal, [*equal rights independent*] that they are endowed by their Creator with certain unalienable Rights...

**Declaration of Independence**

"No member" [*singular, not requiring a collective*] of this state shall be disfranchised, or deprived of any of the rights or privileges secured to "any citizen" [*singular, not requiring a collective*] thereof,... **New York Constitution, Article 1, Section 1**

... and this we will observe, and our will is that it be observed in good faith by our heirs forever. We have also granted to "all" freemen [*singular, not requiring a collective*] of our kingdom, for us and our heirs forever, all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs forever. **Magna Carta.**

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**LEGAL CONCLUSIONS & LAWLESSNESS**

If the Court was compelled under the conviction that it must reach a legal conclusion in order to find against the plaintiffs, how much more should the court have been compelled by the same zeal for justice to correct the state in its obvious lawlessness? All honorable courts should recognize that a broken law, especially by the state, as a cause of action for any court of justice to act upon. "*It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon*" [**Boyd v. United States, 116 U.S. 616, 635**]

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The legal term for a cause of action is "*The fact or combination of facts that gives a person the right to seek judicial redress or relief against another*", in this case the state. When an individual violates the law, the state, in the name of the people, prosecutes by stating as its cause of action the law that has been breached. How much more when the state breaches the law, an individual has the right, as the people, to equally state its cause of action upon the state the law that has been broken. Any rule or practice preventing such a judicial remedy would be null and void. [*"All laws, rules and practices which are repugnant to the Constitution are null and void"*] [**Marbury v. Madison, 5th US (2 Cranch) 137, 180**]. Therefore an additional (sixth) cause of action is evidently on the face of the plaintiffs complaint.

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**SIMPLY ASKING THAT THE STATE OBEY "THE LAW"**

The perplexed plaintiffs simply seek the court to command the state to acknowledge and obey "**THE LAW**", which is the primary duty for any court of justice to enforce when it is clear that a law is being violated. The NYS Constitution Article 1 Section 1 is clear that when a candidate to be elected at a primary election where there is no contest is "deemed elected" as prescribed by general law. The "Committeeman" being the "only elected office" at the "state primary election".

**New York State Constitution; Article 1; Section 1.** *No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof ... except that the legislature may provide that there shall be no primary election held to ... elect persons ... whenever there is no contest or contests for such ... election as may be prescribed by general law.*

**Election Law - §6-118.** *"Designation and nomination by petition. Except as otherwise provided by this article, ... the nomination of a candidate for election to a party position to be elected at a primary election shall be by designating petition".*

**Election Law - §6-160.2.** *"All persons designated for uncontested offices ... at a primary election "shall" be deemed ... elected thereto, as the case may be, without balloting".*

Therefore whether the state recognizes or not that the plaintiffs are elected committeemen it does not alter the fact that "they are", and this court has within its authority to "**simply command obedience**" to the law of the land New York Constitution; Article 1; Section 1, election law §6-160.2 and §6-118 by the NYSBOE and in doing so plaintiffs would be acknowledged as "**deemed elected**" as prescribed by statute empowered by our New York Constitution.

**WHEREFORE**, the plaintiffs move the court to overturn Judge Teresi's decision and order and find for the plaintiff for:

**(A)** Judgment order that the town position entitled "Member of the County Committee", which were created by the county committee through and under color of

420 election law Article 2 serves at the pleasure of the freely elected committeeman, as is  
 already well established case law going back to at least 1949 when it appears to have  
 first surfaced: and,

(B) Judgment order deeming all candidates (1) duly filed prima-fascia designating  
 petitions titled "Committeeman" and that (2) went un-contested at the 2010 and 2011  
 425 annual primary election as lawfully elected committeemen as per New York State  
 Constitution Article 1, Section 1; and Election law §6-118 and acknowledged as such by  
 the BOE's and,

(C) Order for immediate enforcement of the aforementioned (A) and (B) by warrants  
 delivered to sheriffs in each county; and for service upon State and all County Boards of  
 430 Elections, and

(D) Reimbursement for all expenses incurred to bring this action, including court costs,  
 together with such other and further relief as might be just under the circumstances.

All rights reserved,

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**DATE:** The Thirtieth Day of the  
 Forth month of the Year of Our Lord  
 two thousand twelfth and the two  
 hundred thirty-sixth Year of Our  
 Independence.

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