

New York Supreme Court, Albany County

Gerard Aprea,)	
John Vidurek,)	CASE NO. 7215-11
)	
Plaintiffs;)	HON Judge <i>Joseph C. Teresi</i>
)	
- vs -)	
)	
NEW YORK STATE BOARD OF ELECTIONS,)	
Defendant.)	

**PLAINTIFF'S SUPPORT FOR
DEFAULT JUDGMENT**

On January 19, 2012 a conference/hearing was held at the Albany County Courthouse whereas the Honorable Judge Teresi ruled in favor of the plaintiffs for a Default Judgment. The NYSBOE was given a few days to file a show cause. Council for the defense, Kimberly Galvin said that she would fax a copy to plaintiffs within two days. Today, January 25, 2012, six (6) days since, the plaintiffs have yet to receive any response from the defendant. Therefore the plaintiffs unsure of the defendants intention to respond and in support of the default judgment would like to recap and state the following for clarity:

DEFAULT

1. Pursuant to **Rule NY CVP Law Section 3215**, and **NYCRR Tit. 6 Sec. 622.15** an Order for a default judgment against the defendant (NEW YORK STATE BOARD OF ELECTIONS) for failing to respond to the Summons dated 11-16-11 and thereby failed to answer the complaint within twenty (20) days a judgment for the relief demanded in the complaint is appropriate and just.

NO REASON

2. Defaults are usually set aside by a showing (1) the failure or delay was a result of excusable neglect and (2) there is a reasonable likelihood that the defaulted party can prevail in the case. The defaulted defendant is unable to prevail or be excused.

3. On January 19, 2012 Council for the defense, Kimberly Galvin, when asked by Judge Teresi why the defense did not respond to the complaint Ms. Galvin made an open court statement "no reason", additionally she offered no reasonable likelihood of prevailing in the case.

STATE TO BE TREATED SAME AS AN INDIVIDUAL

4. The defendant is also unable to claim that an entry of a default cannot be adjudged against the state. **Driscoll v New York State Attorney General's Office Litigation Unit, supra**, this Court was strongly guided by two appellate decisions in concluding that **§12 (1) [Court of Claims Act]** does not preclude the entry of a default judgment against the State, and that the State is to be treated, with respect to a default judgment application, just the same as an individual or corporate defendant. **247-59 W., LLC v. State, 2010 NY Slip Op 20069 (N.Y. Ct. Cl. 2/3/2010), 2010 NY Slip Op 20069 (N.Y.Ct.Cl., 2010) February 3, 2010**

PLAINTIFFS ONLY REQUEST - "OBEY THE LAW"

5. Plaintiffs ask the court for no more than enforcement upon the State to "Obey the Law", that the present custodians of the NYSBOE blatantly refuse to acknowledge and enforce in all

counties throughout the state but instead have provided policies and procedures that hide the law and require that "elected committeemen" not be acknowledged, contrary to law.

THE NEED FOR DECLARATORY JUDGMENT

6. Plaintiffs are entitled declaratory judgment under NY CVP Law 3001.
7. The need for a declaratory judgment is both urgent and necessary because this present controversy was initiated by corrupt men, "**empowered by the defendant**", who have succeeded in subverting the power of the people by "**expunging the elected free committeeman**" and thereby shutting out the plaintiffs and the People from the election process.
8. The need for a declaratory judgment is both urgent and necessary because the present state of affairs stated in the plaintiffs complaint, and not denied by the defendant, proves voter confidence is rapidly deteriorating because of past and present actions by the defendant.
9. The need for a declaratory judgment is both urgent and necessary because there are no elected committeemen representing the people of New York State and therefore the plaintiffs and all the People of New York have been, and continue to be disfranchised by these actions as per Article 1 Section 1 of the New York State Constitution.

THE DUTY OF THIS COURT IS JUDICIAL REMEDY

10. Plaintiffs ask for no more than enforcement of "The Law".
11. The authority for this court to act is a NY Constitutional one Article 1; Section 1:

Article 1; Section 1 - [Rights, privileges and franchise secured; power of legislature to dispense with primary elections in certain cases] - **No member 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 nominated or elected **whenever there is no contest or contests** for such nominations or election as may be prescribed by general law. (Amended by vote of the people November 3, 1959; November 6, 2001.) [Emphases added]

12. The law is clear that "**No member** of this state shall be disfranchised", that "**No member** of this state shall be deprived of any of the rights or privileges"

13. The legislature empowered by the New York Constitution has already provided for the remedy that this court can enforce in stating:

§6-160.2. All persons designated for uncontested offices or positions at a primary election shall be deemed nominated or elected thereto, as the case may be, without balloting.

14. Provisions for the election of a Committeeman are found in Election Law §6-118.

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

15. Therefore Committeeman are "**nominated by designating petition**" and "**elected at the Primary Election**" and if not contested shall be deemed elected without balloting.

16. Presently there are scores of "**elected Committeemen**" being acknowledged as "**statutory town committeemen**" and therefore subjected to enslavement by "statutory town committeemen" and until this court frees them by ordering the NYSBOE to obey the law to recognize "Committeeman's" elected status and communicate to them as such the plaintiffs and the People will continue to be disenfranchised and deprived of their rights indefinitely.

17. Therefore an order demanding all candidates that (1) duly filed prima-fascia designating petitions titled "Committeeman", as prescribed by Election Law §6-118, §6-130-136 and §6-144, and that (2) went un-contested at the 2010 and 2011 annual primary election as lawfully elected committeemen as per New York State Constitution Article 1, Section 1; and Election law §6-118 be acknowledged as elected by the NYSBOE and therefore to all county BOE's that are under the authority of the NYSBOE for law enforcement pursuant to Election Law §3-102, §3-104, and §3-105.

18. Additionally a second order acknowledging that the town position entitled "Member of the County Committee", which were created by the county committee through and under color of election law Article 2 serves at the pleasure of the freely elected committeeman, as is already well established case law: **Francisco v. Borden, 545 N.Y.S.2d 401, 153 A.D.2d 786 (N.Y.A.D. 3 Dept., 1989)** that ruled:

"County Committee had duly authorized the creation of such a town party committee or had conferred rule-making powers upon it. The creation of a town party committee, its powers, authority and procedures are solely the province of a county committee"...

19. And, **357 N.Y.S.2d 560, 44 A.D.2d 906, Application of Robert E. BELL et al., Respondents,v. Laurence J. KIRWAN, Chairman, and Monroe County Democratic Committee, Appellants. Supreme Court, Appellate Division, Fourth Department. May 30, 1974**, that stated:

The Executive Committeemen have no vested constitutional or statutory right to office. Their claim to serve as members of the Executive Committee must rest upon the Rules of the party since the Executive Committee in common with all standing committees was created by and exists pursuant to the Rules of the Democratic Party of the County of Monroe (July 13, 1970). ... The creation, selection and grouping of committeemen from the town or city legislative districts, whether they are county committeemen or city or town committeemen is a matter solely within the power and province of the county committee

20. Therefore the fact that the Town Committee is "solely" created by statute and party rule, if, and only if, implemented by the will of the County Committee, is well established in case law.

WHEREFORE, the plaintiffs for themselves and on behalf of the good People of New York move the court 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 election law Article 2 serves at the pleasure of the freely elected committeeman, as is already well established case law: and,

(B) Judgment order demanding all candidates that (1) duly filed prima-fascia designating petitions titled "Committeeman" and that (2) went un-contested at the 2010 and 2011 annual primary election as lawfully elected committeemen as per New York State Constitution Article 1, Section 1; and Election law §6-118 be acknowledged as elected by the NYSBOE and therefore to all county BOE's that are under the authority of the NYSBOE for law enforcement pursuant to **Election Law §3-102, §3-104, and §3-105.**

(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 Elections, and

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

All rights reserved,

DATE: The Twenty Sixth Day of the First month of the Year of Our Lord two thousand Twelve and the two hundred thirty-sixth Year of Our Independence.

John Vidurek, Sui Juris, unrepresented
Lead Plaintiff
Fax (888) 891-8977
600 Violet Ave, Suite 107
Hyde Park, New York

New York Supreme Court, Albany

Gerard Aprea,)	
John Vidurek,)	
)	CASE No. 7215-11
Plaintiffs;)	JUDGE <i>Joseph C. Teresi</i>
)	
- vs -)	
)	
NEW YORK STATE BOARD OF ELECTIONS,)	ORDERED
Defendants.)	

THIS CAUSE having come before the Court upon the motion of plaintiffs Gerard Aprea and John Vidurek for an Order commanding the Sheriffs to Serve upon the State and all County Boards of Elections of the following counties;

Albany, Allegany, Bronx, Brooklyn, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Manhattan, Monroe, Montgomery, Nassau, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Queens, Rensselaer, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Staten Island, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, Yates,

For an Order requiring the defendant (State and all County Boards of Elections) to acknowledge and obey;

and, the Court having heard argument of the parties and being otherwise fully advised in the premises, it is **ORDERED AND ADJUDGED that:**

- 1) The plaintiffs motion is granted and,
- 2) The Board of Elections (county and state) shall acknowledge the town position entitled "**Member of the County Committee**", nominated at the primary election, serves at the pleasure of the elected committeeman and,
- 3) The Board of Elections (county and state) shall acknowledge all candidates that filed prima-fascia designating petitions during 2010 and 2011 titled "**Committeeman**" and that went un-contested against other petition titled "**Committeeman**" at the 2010 and 2011 annual primary election as lawfully elected committeemen as per New York State Constitution Article 1, Section 1; and Election law §6-118 and,
- 4) Reimbursement for all expenses incurred to bring this action, including court costs, together with such other and further relief as the Court may deem reasonable and just under the circumstances, in the amount of \$_____.

DONE AND ORDERED this _____ day of _____ 2012.

Hon. *Joseph C. Teresi*, Supreme Court Judge