

New York Supreme Court, Albany County

Gerard Aprea,)	CASE NO. 7215-11
John Vidurek,)	
)	HON Judge <i>Joseph C. Teresi</i>
Plaintiffs;)	
)	
- VS -)	PLAINTIFF'S RENEWED
)	OBJECTION, REITERATION
NEW YORK STATE BOARD OF ELECTIONS,)	OF STRONG POINTS
Defendant.)	& NEW FINDINGS

Plaintiffs who are not attorneys renew their objection, in that defendant is in double default and have absolutely no right to speak in support of any defense nor are there any court rules, laws, or case-law that permit the defendant a voice that should be able to reach the court to move it in any direction. Plaintiffs along with the restating of their strong points have concluded that, an attempt has been made by Ms Galvin to deceive and confuse the court as stated below.

Plaintiffs would like to remind the court that "time is of the essence" in the moving of this case and that any delay will result in irreversible damage to plaintiffs, whereas election law provides for all cases involving elections be placed on a fast track, and thus far this court has already further injured the plaintiffs in that this court has not already moved this case into a fast tract, therefore plaintiffs strongly object to any more delays that are within the authority of this court.

Plaintiffs hereby amend the papers heretofore filed on purported show cause order.

1. For the record, any papers with Index 1196-11 are renegade documents having nothing to do with this case (7215-11).

2. For the record, case with Index No. 4710-11 was essentially a non-action in that the fatal flaw was that a summons was not served on the parties. Therefore everything after that was merely theatre, including the purported Order by Judge Connolly, which was logically never recorded by Ms. Galvin.

3. Plaintiff's, who are not attorneys, realize the theatre of this now, but the lawyers and judicial staff knew, or should have known it, right from the beginning.

4. Thus, Galvin's overwhelming use of what was NOT a valid case (4710-11) as a "good reason" for not answering the complaint in this present matter (7215-11) cannot be a reason that has merit.

5. In sum, plaintiffs deny the first requirement to reverse the default judgment: that NYSBOE had a "good reason" for not answering the complaint in the time set forth in the rules of the court.

6. Addressing the second requirement: that the NYSBOE can show it would prevail on the merits as the winning party if this matter proceeded.

7. Plaintiff's submit that NYSBOE cannot prevail against plaintiff's complaint and sworn to affidavits. In fact NYSBOE does not even attempt to prevail in that all NYSBOE paperwork that appears in the file fails to be valid "sworn to" paperwork, which amounts to evidence of NOTHING.

8. However, NYSBOE oversight manner brought up in this matter, is exemplified by the way Ms. Galvin put incorrect index numbers on the paperwork, and mix in two other piles of

case papers, perhaps to drive her paperwork in the wrong file, and thereby disappear for all practical purposes.

9. Plaintiff's papers clearly shows on face that they do not waive any of their rights, which they have duly claimed as part of the public records of the New York at all times, including the receipt of valid "sworn to" paperwork in this action.

10. Wherefore, plaintiffs hereby amend their previous courteous statement regarding the purported order to show cause that the default judgment in this case 7215-11 not under any circumstances be vacated, and furthermore restate the following.

DEFAULT

11. The defendant has "no standing" and is forever barred 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 GOOD REASON"

12. 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 good reason", witnessed by scores of people, additionally Ms. Galvin offered no reasonable likelihood of prevailing in the case.

STATE TO BE TREATED SAME AS AN INDIVIDUAL

13. 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**

THE NEED FOR DECLARATORY JUDGMENT

14. 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.

THE DUTY OF THIS COURT IS JUDICIAL REMEDY

15. Plaintiffs ask for no more than enforcement of "The Law".

16. 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]

17. 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.*

18. 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.*

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

20. 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.

21. 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**.

22. 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"...

23. 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

24. 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

All rights reserved,

DATE: The Ninth Day of the Second 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
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