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New York Supreme Court, Albany County INDEX NO. 7215-11

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

Gerard Aprea & John Vidurek,

Plaintiffs/Appellant

- VS -

NEW YORK STATE BOARD OF ELECTIONS,

Defendants/Respondent

PLAINTIFFS/APPELLANT RESPONSE TO DEFENDANTS/RESPONDENTS BRIEF

On and for the Record, we the petitioners, two of the people¹ of New York, Gerard Aprea and, John Vidurek [hereinafter the people] accept the oaths of all the offices of this court. The people declared on line 7 of our complaint; "*each of the plaintiffs have an inalienable right to be heard and complaint measured under*

¹ PEOPLE. People are supreme, not the state. [Waring vs. the Mayor of Savannah, 60 Georgiaat 93]; The state cannot diminish rights of the people. [Hertado v. California, 100 US 516]; Preamble to the US and NY Constitutions - We the people ... do ordain and establish this Constitution...; ...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves... [CHISHOLM v. GEORGIA (US) 2 Dall 419, 454, 1 L Ed 440, 455, 2 DALL (1793) pp471-472]: The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative. [Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am. Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.]

common law", and also demanded a "Trial by Jury²" found above our signatures in the complaint. Therefore these proceedings are to be according to common law, and its people sovereign³.

In an effort to remove the clouded deceptive statements raised by counsel⁴ for the "double defaulted" defendant/respondent [hereinafter the state] we the people will bring this case back on point by summarizing our case as follows.

REPUGNANT⁵ RULE BY PRIVATE ASSOCIATION

- 1) The NYS Appellate Court says that Members of the County Committee, from a town (aka town committeemen) are created, not elected, and are subservient to the county committee⁶, not the people.
- 2) The NYS Appellate Court says the executive committee (state committee made up of 62 county chairmen) as is with all committees are "not" constitutional or statutory⁷, therefore they are not elected

² **Amendment VII** In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

³ "Sovereignty itself is, of course, not subject to law, for it is the author and source of law;" [Yick Wo v. Hopkins, 118 US 356, 370 (Undersigned is Sovereign and no court has challenged that status/standing)]

⁴ Plaintiffs Memorandum - answer to Judges letter, dated January 6, 2012 attached as Exhibit A and Plaintiffs Memorandum - objection, dated December 20, 2011, attached as Exhibit B.

⁵ "All laws which are repugnant to the Constitution, are null and void." [**Chief Justice Marshall, Marbury v. Madison, 5, U.S. (Cranch) 137, 174,176**]

⁶ "The creation of a town party committee, its powers, authority and procedures are solely the province of a county committee"... [**Francisco v. Borden, 545 N.Y.S.2d 401, 153 A.D.2d 786 (N.Y.A.D. 3 Dept., 1989)**]

- 3) Counsel for the state agrees that members of the county committee are not elected where he correctly states in his brief for the state on page 3A. Statutory Background "...*candidates for nomination at the primary election or convention or ballot proposals ...*"
- 4) Election statutes state that town committeemen are "made", not elected⁸.
- 5) Members of the county committee (aka town committeemen), including the executive committee, take no oath⁹ and therefore hold no elected office.

THE CONSENT OF THE PEOPLE

- 6) We have government by the consent¹⁰ of the people as ordained by the people in both the NY Constitution¹¹ and the US Constitution¹², not by rules not by private associations;

⁷ "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." [**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.**]

⁸ §6-108.1 candidates for town offices shall be made [*not elected*] by caucus or primary election as the rules of the county committee shall provide.

⁹ N.Y. TWN. LAW § 25 : NY Code - Section 25: Oaths of office and undertaking: Before he or she enters on the duties of the office, and within thirty days after the commencement of the term of office for which he or she is chosen, every town officer shall take and subscribe before an officer authorized by law to administer oaths in his or her county, the constitutional oath of office

7) In 1796 George Washington, in his farewell address spoke of a process called the "REINS OF GOVERNMENT"¹³, which are the elected committeeman, the peoples consentors, ordained by our founders who warned us that “through the course of time cunning, ambitious, and unprincipled men would subvert the power of the people and seized for themselves the reins of government through private Associations”.

8) It is the elected Committeeman on behalf of the people, not a private association on behalf of party bosses, who is to control the political process to choose and control elected officials, thereby consenting, or not, the actions of government;

¹⁰ Declaration of Independence We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed

¹¹ NY Constitution, Preamble WE THE PEOPLE of the State of New York, grateful to Almighty God for our Freedom, in order to secure its blessings, DO ESTABLISH THIS CONSTITUTION.

¹² US Constitution, Preamble We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

¹³ [George Washington's Farewell Address] However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines by which cunning, ambitious, and unprincipled men [party bosses] will be enabled to subvert the power of the people and to usurp for themselves the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion.

All obstructions to the execution of the laws, all combinations and associations under whatever plausible character with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle and of fatal tendency.

9) In 1911 Section 21 of the New York election statutes, which had helped protect our Republic from the ruination George Washington forewarned us about, was cleverly removed. In effect a “gate keeper” clause, Section 21 stated: “... *No organization or association of citizens for the election of city [town] officers shall be deemed a political party...*”. This clause stood to deter the creation of private political associations, which is what the parties are in fact today.

10) After eradication of the gate keeper clause was accomplished, and then by inserting election law Article 2 in its place, the “sub-committee” was crafted to provide for the replacement entity - the town committeeman, which the usurpers entitled “Member of the County Committee”.

EXPUNGED BY THE STATE

11) **Election statute §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*".

12) Statutes are as law¹⁴ to elected, appointed, and employed people of the state, therefore they are obligated to obey.

¹⁴ The common law is the real law, the Supreme Law of the land, the code, rules, regulations, policy and statutes are “not the law”, [**Self v. Rhay, 61 Wn (2d) 261**]

* "Laws are made for us; we are not made for the laws." [**William Milonoff**]

13) Clearly, as per the afore quoted §6-118 "Committeemen" are nominated by designating petition and ELECTED, by the people within their election district (not by a private association) at the Primary Election, and thereby become the consentors.

14) Clearly, the "Committeemen" of the afore quoted §6-118 that have been elected in 2010, 2011, and now 2012 by the people, are being disfranchised¹⁵ by the state, and therefore the people robbed of their ability to consent, or not, to the actions of government.

15) The People, misguidedly, had rested their trust¹⁶ in defendant custodian as they exercised their right to participate in the choosing of their representatives, but the state betrayed that trust when they unlawfully expunged by hiding from the view of the people, until now, the free elected committeeman;

¹⁵ New York Constitution, Bill of Rights, Article 1, Section 1. "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 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 ... elected whenever there is no contest or contests for such nominations or election as may be prescribed by general law".

¹⁶ **Henry Clay** "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"

JUSTICE¹⁷ DEMANDS

- 16) Common Law demands, for every injury there must be a remedy¹⁸.
- 17) Common Law demands, content trumps form.
- 18) *"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 ... the end justifies the means -- to declare that the Government may commit crimes ...*

¹⁷ JUSTICE. [Bouvier's Law, 1856 Edition] The constant and perpetual disposition to render every man his due. Just. Inst. B. 1, tit. 1. Toulli er defines it to be the conformity of our actions and our will to the law. Dr. Civ. Fr. tit. prel. n. (5) In the most extensive sense of the word, it differs little from virtue, for it includes within itself the whole circle of virtues. Yet the common distinction between them is that that which considered positively and in itself, is called virtue, when considered relatively and with respect to others, has the name of justice. But justice being in itself a part of virtue, is confined to things simply good or evil, and consists in a man's taking such a proportion of them as he ought.

* Luke 6:19 And the whole multitude sought to touch him: for there went virtue out of him, and healed them all.

¹⁸ [5 U.S. 137, **Marbury v. Madison**] "... In the third volume of his Commentaries, page 23, Blackstone states two cases in which a remedy is afforded by mere operation of law. "In all other cases," he says, it is a general and indisputable rule that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded. And afterwards, page 109 of the same volume, he says, I am next to consider such injuries as are cognizable by the Courts of common law. And herein I shall for the present only remark that all possible injuries whatsoever that did not fall within the exclusive cognizance of either the ecclesiastical, military, or maritime tribunals are, for that very reason, within the cognizance of the common law courts of justice, for it is a settled and invariable principle in the laws of England that every right, when withheld, must have a remedy, and every injury its proper redress"...

would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face". [Olmstead v. United States, 277 U.S. 438 (1928)]

19) The people had five causes of action, and an injury, in itself also being a cause of action, that directly assaulted the Liberty of the people, and all the people of New York, by blocking people from taking office to exercise their consent.

FRAUD

20) The state through policies and procedures control all sixty-two (62) county BOE's and thereby have removed §6-118 from memory, local boards simply do not know that the committeeman is an elected position, and some think that the town committeeman is the elected committeeman.

VIOLATION OF RIGHTS MET BY SILENCE

21) The state remains silent¹⁹ to the truth, that a law that cannot be annulled by legislators, but as an alternative buried it, thereby expunging from memory.

22) Judge Connolly remained silent¹⁹ when he exceeded his jurisdiction, shut out the plaintiffs from an ex parte hearing, with no notice of motion, without due

¹⁹ “Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . .” [U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932]

process, dismissing the case, unlawfully²⁰, and thereby did not do the just thing²¹, that being commanding the state to obey the law.

23) Judge Teresi remained silent¹⁹, dismissing the case unlawfully²⁰, when he did not do the just thing, that being commanding the state to obey the law.

WHEREFORE, the people move this court to overturn Judge Teresi's decision and enter an order as follows: **REVISED** "

(A) Judgment ordering the NYSBOE to deem, as prescribed by law all candidates (1) duly filed prima-fascia designating petitions titled "Committeeman" and that (2) are un-contested at any annual primary election as lawfully elected committeemen as per *New York State Constitution Article 1 Section 1, *Election

²⁰ "... the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument." ... "In declaring what shall be the supreme law of the land, the Constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank". ... "All law (rules and practices) which are repugnant to the Constitution are VOID". ... Since the 14th Amendment to the Constitution states "NO State (Jurisdiction) shall make or enforce any law which shall abridge the rights, privileges, or immunities of citizens of the United States nor deprive any citizens of life, liberty, or property, without due process of law, ... or equal protection under the law", this renders judicial immunity unconstitutional. [**Marbury v. Madison, 5 U.S. (2 Cranch) 137, 180 (1803)**] Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason. [**Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958)**]

²¹ **Zep 3:5** The just LORD is in the midst thereof; he will not do iniquity: every morning doth he bring his judgment to light, he faileth not; but the unjust knoweth no shame.

law §6-118, and *Election law §1 page 632²², and to communicate to the same all Committeeman business and,

(B) Order the NYSBOE to immediately (within 24 hrs) update their policies and procedures and clearly communicate to all the boards (A) above.

(C) Order for immediate enforcement of the aforementioned A and B above by warrants delivered to sheriff in Albany County; and for service upon State, and

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

If the court does not rule in favor of the people this case must be returned for a common law trial by a jury of our peerage, as originally demanded, and the people¹ will decide.

October 29, 2012

John Vidurek, in pro per

²² Election statutes §1. [page 632] Rights and privileges secured; uncontested primary elections - ... there shall be no primary election held to ... elect persons to party positions ... whenever there is no contest or contests for such ... election as may be prescribed by general law, so in law.