SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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In the Matter of the Application of

Index No.: EF005663-2023

DAVID C. MCFADDEN

Petitioner,

NOTICE OF APPEAL

-against-

THE ORANGE COUNTY BOARD OF ELECTIONS, THE NEW YORK STATE BOARD OF ELECTIONS, THE VILLAGE OF TUXEDO PARK, MARK D. CITRIN as Candidate for Mayor, JOSHUA S. SCHERER as Candidate for Village Trustee, PAUL A. BROOK as candidate for Village Trustee, ELIZBAETH DOHERTY, Village Clerk, JEAN HAUG as a member of the Board of Canvassers, KURT HAUG, as a member of the Board of Canvassers, and CHRISTOPHER MOOG, as a member of the Board of Canvassers,

Respondents.

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PLEASE TAKE NOTICE that Petitioner, David C. McFadden, hereby appeals to the Supreme Court of the State of New York Appellate Division, Second Judicial Department from each and every part of the Decision and Order of the Honorable Maria S. Vazquez-Doles, Justice of the Supreme Court, County of Orange, dated September 15, 2023 and entered in the office of the Clerk of said Court on September 18, 2023. A true and correct copy of the decision and order with Notice of Entry is annexed as Exhibit 1.

Dated: Bronx, New York
September 18, 2023

Respectfully Submitted,

s/ Stanley K. Schlein

Stanley K. Schlein, Esq.
Attorney for Respondent-Candidate
481 King Avenue
Bronx, New York 10464
(917) 359-3186

To: All parties *via NYSCEF*

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

----------X

In the Matter of the Application of

Index No.: EF005663-2023

DAVID C. MCFADDEN

NOTICE OF ENTRY

Petitioner,

-against-

THE ORANGE COUNTY BOARD OF ELECTIONS, THE NEW YORK STATE BOARD OF ELECTIONS, THE VILLAGE OF TUXEDO PARK, MARK D. CITRIN as Candidate for Mayor, JOSHUA S. SCHERER as Candidate for Village Trustee, PAUL A. BROOK as candidate for Village Trustee, ELIZBAETH DOHERTY, Village Clerk, JEAN HAUG as a member of the Board of Canvassers, KURT HAUG, as a member of the Board of Canvassers, and CHRISTOPHER MOOG, as a member of the Board of Canvassers,

Respondents.

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PLEASE TAKE NOTICE that the within is a true copy of a DECISION & ORDER entered in the Office of the Clerk of the within named Court on September 18, 2023.

Dated: September 18, 2023

s/ Stanley K. Schlein

By: Stanley K. Schlein, Esq.
Attorneys for Petitioner
481 King Avenue
Bronx, New York 10464
917-359-3186

To: All parties *via NYSCEF*

At a term of the IAS Part of the Supreme Court of the State of New York, held in and for the County of Orange, at 285 Main Street, Goshen, New York 10924 on the 15th day of September 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

In the Matter of Application of
DAVID C. MCFADDEN,

Petitioner,

DECISION & ORDER

-AGAINST-

Index No. EF005663-2023
Motion date: 9/18/23
Motion Seq. #1-5

THE ORANGE COUNTY BOARD OF ELECTIONS, THE NEW YORK STATE BOARD OF ELECTIONS, THE VILLAGE OF TUXEDO PARK, MARK D. CITRIN as candidate for Mayor, JOSHUA S. SCHERER as candidate for Village Trustee, PAUL A. BROOK, as candidate for Village Trustee, ELIZABETH DOHERTY, Village Clerk, JEAN HAUG, as a member of the Board Of Canvassers, KURT HAUG, as a member of the Board Of Canvassers CHRISTOPHER MOOG, as a member of the Board Of Canvassers,

Respondents.

VAZQUEZ-DOLES, J.S.C.

The following papers were read on the pending applications for relief in this special proceeding:

Notice of Motion #2/Affirmation with Ex. A-E/Memo of Law.....11-13
Affirmation (McFadden) Opposition/Ex. A.....14-15
Reply Affirmation/Ex. A-B.....16-18

Notice of Motion #3/Affirmation/Ex. A-B/Withdrawal letter.....19-23

Order to Show Cause #4/Affirmation/Ex. A-G 24-31
Village Opposition to #4 within Answer (noted above as document 6)
Brooke and Scherer Opposition#4 (noted above as document 7)
Affirmation (McFadden) in Opposition #4.....32
Reply Affirmations(four)/Ex A, A..... 33-38

Notice of Motion #5/Affirmation 39-40
Affirmation (McFadden) Opposition.....41
Affirmation (proposed Intervenor) Opposition/Ex. a-c.....42-45

SUMMARY OF THE DECISION AND ORDER

In this election law special proceeding, Petitioner was the incumbent candidate for elective office as Mayor of the Respondent Village of Tuxedo Park (hereafter "the Village"). The Petition #1 seeks an order requiring a review of certain absentee ballots that were submitted for the mayoral election but that were not cast, or counted, as part of the canvass and recanvass of total votes. Respondent Citrin was a candidate for Mayor who was declared the winner over Petitioner by the canvass of the Village and the recanvass by the Orange County Board of Elections ("hereafter "the BOE"). Citrin's Motion to Dismiss #2, on the basis that the Petition is not timely, is GRANTED because the special proceeding papers were not served on Respondents on or before the last day to institute this action. Therefore, the Petition #1 is DISMISSED. Motion #3 was WITHDRAWN by the movant because he was not a party to this case. Motion #4 for proposed intervenor to intervene and Motion #5 of the Village to file cross-claims are DENIED as moot.

FACTS UNDERLYING THE SPECIAL PROCEEDING

The parties' submissions on applications #1-5 generally find agreement on the facts

relevant to this special proceeding. The Village held an election for various offices, including mayor, in June 2023. Election day was June 20, 2023. Prior to election day, Respondent the Village Clerk, Elizabeth Doherty (hereafter "the Clerk") distributed absentee ballots to certain persons. After the polls closed on June 20, the Village began the canvass, i.e. the review and counting of the ballots.

The canvass included the review and determination of whether to count each of the absentee ballots. Certain absentee ballots were not counted for various reasons. The Clerk maintains custody at this time of all such absentee ballots and related envelopes that were not counted, pursuant to an Order issued by this Court in a related matter. See Order dated June 20, 2023, *Guazzoni v. Village of Tuxedo Park, et al.*, EF004013-2023 (Supr. Ct. Orange County) (hereafter "*Guazzoni I*"), *modified in other respects, Village of Tuxedo Park v. Guazzoni, et al*, 2023-06463 (2d Dept 2023) Slip Opinions dated Aug. 9 and Sept. 11, 2023.[1]

The result of the canvass as it concerns the office of mayor was that Respondent Citrin received 201 votes and Petitioner McFadden received 195 votes (Ex. A to Citrin Affirmation in Support of Motion #2). A recanvass was conducted by the BOE and the ballot count was unchanged (Ex. B to Citrin Affirmation in Support of Motion #2). The BOE released its results on August 15, 2023. Id. The Clerk administered the oath of office to Respondent Citrin that day (Ex. G to Sarcone Aff. in support of Motion #4 at p.7). Citrin attempted to file the oath the following day, August 16, but the Clerk did not accept the filing on the advice of counsel for the Village (Ex. C to Citrin Affirmation in Support of Motion #2).

[1] A third lawsuit related to the June 2023 election in the Village was filed by Guazzoni as Index No. EF004211-2023 ("Guazzoni II").

PROCEDURAL HISTORY

This special proceeding is related to another special proceeding, *Guazzoni I, supra.* In *Guazzoni I,* the Petition seeks to exclude from the canvass certain absentee ballots. Petitioner McFadden herein is a respondent in *Guazzoni I.*

Petitioner McFadden herein appeared before this Court on August 16, 2023 for a status conference in *Guazzoni I,* where he has since inception appeared pro se. (Transcript of Aug. 16, 2023 at Exhibit G to Motion #4). During an on the record discussion, the parties and the Court addressed the timing in which McFadden would need to institute a proceeding in this Court to challenge the decision of the BOE not to count certain absentee ballots, namely within three days of the recanvass results being published by the BOE. Id. The discussion revolved around Election Law 15-126(3) for a challenge to a determination after a recanvass by the BOE of a village election.

Nearing the end of the discussion, McFadden acknowledged -- by saying "We do" -- in response to the Court noting that McFadden had only three days to contest the BOE recanvass. Id. at pp. 21-22. The Court noted that pursuant to the IAS system in the Supreme Court, any challenge by McFadden would be assigned to the same Justice. Id. at p. 9.

Petitioner filed the instant Petition with a proposed order to show cause on August 18, 2023 as a plenary action.[2] The proposed show cause order did not propose a date for service of the Petition and left the date blank. The Petition itself does not propose a date for service of the initiating papers.

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[2] When McFadden filed the instant plenary action, he did *not* indicate in the RJI that a related proceeding existed. See RJI dated Aug 18., 2023 at p.2. Due to McFadden's error, the case was randomly assigned to a different justice. Once the existence of the prior related action (*Guazzoni I*) became known to the assigned justice, an order of transfer was entered. See Order dated Aug. 28, 2023.

The Court per Justice Squirrell signed the show cause order, with revisions, on August 21, 2023, which was uploaded to NYSCEF on August 22. The Order required service by August 23, 2023 through various options. Id. Petitioner served the papers on all respondents on August 22, 2023 by FedEx.

Thereafter, Respondent Citrin filed Motion to Dismiss #2 on the basis that the instant special proceeding was not timely instituted as required by the NY Election Law and case precedent. Only Petitioner opposed the Citrin motion. Respondent Citrin filed a reply.

MOTION TO DISMISS

In a special proceeding, the Court shall make a summary determination based upon the pleadings and other papers where no triable issue of fact exists. CPLR 409(b). Here, the defense that Respondent Citrin presents to the entire special proceeding is a matter of law for which no facts relevant to the determination are in dispute. For that reason, the Court first considers Citrin's Motion #2 before addressing other ancillary issues raised in motions by other parties and one non-party.

Special proceedings generally are commenced by the filing of a petition. CPLR 402. A notice of petition or proposed show cause order must also be filed to set the matter for a hearing. CPLR 403. The NY Election Law provides further requirements on the timing for the filing of a special proceeding apart from any CPLR requirements.

The Priority of Article 15 for Village Elections.

Election Law - Chapter 17 encompasses various requirements for the conduct of elections and the process for contesting election procedures and results. Article 15 addresses Village Elections in particular. Article 16 addresses judicial proceedings as they relate to election issues.

Importantly, Article 15-100 provides that provisions of Chapter 17 "not inconsistent with

Article 15" also apply to Village Elections. For example, since Article 15 contains no guidance on the method of objecting to the casting of absentee ballots, the provisions of Article 9 do not conflict with Article 15 and Article 9 as it concerns objections therefore applies to village elections. However, where any other article is not consistent with Article 15, then Article 15 is controlling. *E.g., Lynch v. Huested*, 118 AD2d 674 (2d Dept 1986).

Timing for the Institution of Judicial Proceedings: Article 15 vs. Article 16

Article 15 of the Election Law at Section 15-126 addresses the process for the canvass of ballots in a village election. After the village counts the votes pursuant to Section 1, the clerk of the village posts the results in a certificate in her office. Here, the Clerk posted the aforementioned results, dated August 10, 2023, that Respondent Citrin had the most votes for mayor of the Village and was therefore elected. See Ex. A to Citrin Affirmation in Support of Motion #2.

Within two days of that posting, a candidate may seek a recanvass of the votes. Election Law 15-126(3). That recanvass is conducted by the board of elections for the county in which the village is located. Id. Here, Petitioner McFadden made the request for a recanvass and the BOE performed that recanvass. According to Petitioner's Opposition to the instant Motion#2 at Par. 3, the BOE certified and issued the results of the recanvass on August 15, 2023. See Recanvass Results at Ex. B to Citrin Affirmation in Support of Motion #2. The result was the aforementioned identical vote count.

Article 15 at Section 126(3) provides that "Judicial review as provided by this chapter must be commenced no later than three days after the completion of the recanvass." Based upon that wording, counsel for the Village advised the Clerk not to proceed with the filing of the oath of office of Respondent Citrin because three days had not yet passed since completion of the

recanvass. "If no judicial proceedings have been instituted" in the three days, 15-126 provides for the clerk to notify the person elected, Respondent Citrin herein.

Section 15-126(3) is clear as to the three days within which a candidate can challenge the results of the recanvass. Petitioner confirms that the recanvass results were posted on August 15. Posting on August 15 was the "completion" of the recanvass, as discussed *infra*. Therefore a challenge to same would have needed to be "instituted" by Petitioner no later than August 18.

Petitioner asserts in Opposition to Motion#2 that a provision of Article 16 also addresses the timing for his challenge of the recanvass. Election Law 16-106 concerns judicial proceedings that relate to the casting of ballots, including a post-election refusal to "cast", or count, absentee ballots. Election Law 16-106(1). Section 6 of Election Law 16-106 requires that a proceeding "under subdivisions one and three" as it concerns a village election must be instituted within *ten* days "after such election, statement, determination or action". Here, the challenged determination is the recanvass results that did not count certain absentee ballots, on August 15. If 16-106 were controlling, Petitioner would have until August 25 to "institute" judicial proceedings.

The Court is aware of only one reported decision that addresses the apparent conflict between these very statutes. *Garufi v. Bennett*, 150 Misc2d 799 (Putnam County 1991). In *Garufi*, the court reviewed the legislative history that led to the revisions of 16-106 to apply also to village elections. The court in *Garufi* noted that in the same legislative session, Election Law 9-204 was amended to provide that the county board of elections serves as the canvasser in a village election that the county board conducts. As a result, the court in *Garufi* held that the only way to harmonize these two statutes is by concluding that the ten day limitation of 16-106 applies only in instances where the original village election – not a recanvass – is conducted by

the county board of elections.

This Court reaches the same result as the *Garufi* decision. Further support for the rationale of *Garufi* is found within Section 15-100. The Legislature decided that in instances where a village directs the board of elections of the county to conduct its election, pursuant to 15-104(c), then Article 15 does not control over other articles within Chapter 17 of the Election Law. Election Law 15-100. In this instance, the Village did not issue such a direction and conducted its own election. Thus, the exception in 15-100 that would open the door to applying the time limit of 16-104 is not applicable.

Apart from this legislative history, even if 16-106 does pertain to an election that a village itself conducts, the application of Election Law 15-100 (as required by the Second Department in *Lynch, supra*), mandates that the three day time limitation within Article 15 controls over 16-106. For these reasons, the Court holds that the three days limitation imposed by 15-126 is controlling here with regard to the time in which Petitioner McFadden was required to institute the instant special proceeding. The last day to do so was August 18, 2023.

In his attempt to apply the ten day period of Section 16-106, Petitioner's Opposition correctly notes that Article 9 of the Election Law provides the mechanism for objecting to absentee ballots. But Petitioner provides no case, or other law, or even a rationale, for why a process for objecting to absentee ballots defined in part by Article 9, an Election Law provision outside Article 15, thereby renders 15-126 inapplicable. Moreover, that argument is undercut by the very wording of 15-126, which provides explicit and highly detailed instructions for the process of a village candidate challenging the results of an election, through a recanvass and then a judicial proceeding.

Petitioner's reference to *Hughes v. Delaware County Board of Elections* is unavailing.

217 AD3d 1250 (3d Dept 2023). *Hughes* held only that applying Article 9 as to the objection process for absentee ballots was permissible because nothing in Article 15 conflicts with Article 9. *Hughes* never addressed the time to file a judicial challenge. The application of Article 9 with regard to the objection process on absentee ballots provides no support for Petitioner herein because 1) Article 9 has no time limitations on when a candidate must institute a judicial proceeding in regard to an absentee ballot challenge and, 2) even if Article 9 did include such a time limit, Article 15-100 would require the application of the three day limit in Article 15-126(3).

Timing for the Institution of Judicial Proceedings: "Completion" of Recanvass

As noted *supra*, the trigger in Section 15-126 to seek judicial intervention is three days after the BOE "completes" the recanvass. The conclusion of the BOE role occurred here once the BOE reviewed the ballots, created a tally, and posted the recanvass results on August 15. Once it posted the recanvass results, there was no further action that the BOE could take pursuant to the Election Law. Its work was "complete".

Nonetheless, Petitioner asserts in his Opposition that the recanvass was never completed because the BOE did not take all the actions (curing of ballots, etc.) that Petitioner asserts the BOE should have undertaken. First, neither case he relies upon provides support. Both *Garufi, supra*, and *In Re Davis*, 103 Misc2d 786 (Orange Cnty 1980) held only that in the absence of a communication of the recanvass results by the BOE to the candidates, the time to institute judicial proceedings did not begin to run, because the candidates did not have notice that they lost the election. Second, the judicial proceeding permitted by 15-126(3) is the precise remedy that the Legislature enacted for this circumstance, where a candidate disputes the process and/or results of the BOE recanvass.

The "Institution" of Judicial Proceedings Requires Timely Delivery to Respondents

The Election Law requirement for "instituting" an action to challenge a determination or result has been repeatedly defined as including service of the special proceeding papers on all respondents no later than the last day allowed by the Election Law, here August 18. *Angletti v. Morreale*, 25 NY3d 794 (2015); *Thompson v. NY State Board of Elections*, 40 NY2d 814 (1976); *King v. Cohen*, 293 NY 435 (1944); *Yellico v. Ringer*, 185 AD2d 965 (2d Dept 1992); *Moore v. Milhim*, 109 AD2d 810 (2d Dept 1985). Petitioner concedes this point in his opposition at Par. 9. Thus, the last day for Petitioner to both file ***and serve*** was August 18, 2023.

Petitioner filed at 3:18 p.m. on August 18, 2023. Petitioner did not request an accelerated review of the proposed show cause order, such as by appearing in person before the assigned justice for an immediate signature on the order. Nor did Petitioner request in the proposed order a service date of August 18. Petitioner knew, as stated in his Opposition to the instant motion, that service was also required by the last day. Petitioner knew from the August 16, 2023 court appearance in *Guazzoni I* that the Court was at a minimum considering, if not inclined to hold, that the three day limitation of 15-126 is controlling. Since service was required by August 18 and did not occur until August 23[3], the instant proceeding was not instituted in a timely manner.

While Petitioner *filed* his papers in a timely manner on the last possible day, and the assigned justice had not acted on the proposed show cause order before the expiration of the three days limit, that lack of action by the court does not serve to toll the limitation imposed by the Election Law. In circumstances more compelling than the facts presented herein, the

[3] Petitioner sent his papers by FedEx on August 22 but service in the context of the Election Law occurs only upon actual receipt by the respondents. *E.g., Thompson v. NY State BOE*, 40 NY2d 814 (1976). Since Petitioner was required to complete delivery by August 18, that difference of one day between August 22 and 23 has no effect on the outcome of the instant motion.

Appellate Division has affirmed the dismissal of proceedings for failure to timely serve where a petitioner filed on time. In *Stern v. Putnam County Board of Elections*, 2023 Westlaw 5921574, 2023 NY Slip Opinion 04497 (2d Dept - Sept. 12, 2023), a show cause order and petition was filed on June 12, the day *prior to* the last day for filing and service. The three justices of the court where appellant filed all recused themselves on June 12 and 13. A transfer order to another county was issued on June 14. A show cause order was then signed by a justice and served by the candidate on June 14. The Appellate Division affirmed a dismissal of the petition on the basis that respondents had not been served by June 13, i.e. a day prior to the transfer and the signing of the show cause order.

Similarly, in *McCrory v. Westchester County Board of Elections*, 216 AD3d 857 (2d Dept 2023), petitioner's last day to institute a proceeding was April 24. She filed a show cause order and petition in Supreme Court three days earlier, on April 21. The court denied the show cause order on April 24. Petitioner immediately appealed and the Appellate Division reversed the trial judge in an order dated April 25, requiring a hearing on April 27 and service of the Appellate Court's reversal order on April 25. After petitioner completed service as required by the Appellate Court order, the trial court dismissed the petition on the basis that service on respondents did not occur by April 24. The Appellate Division affirmed the dismissal. *See also Kurth v. Orange County BOE*, 65 AD3d 642 (2d Dept 2009), *leave to appeal denied*, 13 NY3d 701 (2009) (although petitioner filed show cause order by last day required by Election Law and complied with the court's order as to service four days later, dismissal affirmed for failure to serve by last day); *Marino v. Orange County Board of Elections*, 307 AD2d 1011 (2d Dept 2003) (where Election Law required instituting the proceeding by July 30 and show cause order required service by July 31, dismissal for failure to serve by July 30 affirmed).

For these reasons, service on respondents after August 18 renders the institution of this special proceeding untimely per Election Law 15-126(3). A court is not empowered to extend that time. The motion to dismiss is GRANTED and the Petition is DISMISSED.

In light of the dismissal of the Petition, the Court does not reach any substantive aspects of the Petition with regard to whether any absentee ballots that were not counted should have been "cured" and/or counted. The stay set forth in the order to show cause dated August 21, 2023, which temporarily restrained Respondents from certifying the results of the election, is hereby VACATED. The Clerk of the Village is therefore authorized to proceed to notify candidate Citrin accordingly, administer the oath of office (if necessary again) and to file the certification of the oath of office.

The other applications for relief are academic in light of the Court's ruling dismissing the Petition. Motion #3 was WITHDRAWN by the movant, not a party to this case, in a letter uploaded to NYSCEF on August 29, 2023. Motion #4 for intervention is DENIED as moot. Motion #5 to assert a cross-claim is DENIED as moot.

Upon the foregoing, it is hereby

ORDERED that the motion to dismiss of Respondent Citrin is **GRANTED** as to all claims in the Petition against all Respondents, and it is further

ORDERED that the Petition is **DISMISSED**, and it is further

ORDERED that the motion of proposed intervenor Claudio Guazzoni is **DENIED** as moot, and it is further

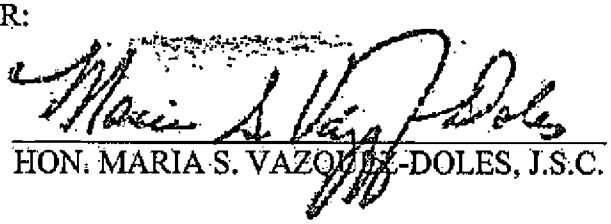
ORDERED that proposed intervenor's motion to dismiss is **WITHDRAWN**, and it is further

ORDERED that the Village's motion to serve a cross-claim is **DENIED** as moot.

This Decision constitutes the Order of this Court.

Dated: September 15, 2023
Goshen, New York

ENTER:



HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

David C. McFadden

- against -

THE ORANGE COUNTY BOARD OF ELECTIONS, THE NEW YORK STATE BOARD OF ELECTIONS, THE VILLAGE OF TUXEDO PARK, MARK D. CITRIN as Candidate for Mayor, JOSHUA B. SCHERER as Candidate for Village Trustee, PAUL A. BRODIE as candidate for Village Trustee, ELIZABETH DOHERTY, Village Clerk, JEAN HAUG as a member of the Board of Canvassers, KURT HAUG, as a member of the Board of Canvassers, and CHRISTOPHER MODG, as a member of the Board of Canvassers,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type		Filing Type	
☐ Civil Action	☐ CPLR article 78 Proceeding	☒ Appeal	☐ Transferred Proceeding
☐ CPLR article 75 Arbitration	☐ Special Proceeding Other	☐ Original Proceedings	☐ CPLR Article 78
	☐ Habeas Corpus Proceeding	☐ CPLR Article 78	☐ Executive Law § 298
		☐ Eminent Domain	☐ CPLR 5704 Review
		☐ Labor Law 220 or 220-b	
		☐ Public Officers Law § 36	
		☐ Real Property Tax Law § 1278	

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☐ Business Relationships	☐ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☒ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☐ Statutory	☐ Taxation	☐ Torts

Appeal	
Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: Orange
Dated: 09/15/2023	Entered: 09/18/2023
Judge (name in full): Maria S. Vazquez-Doles, J.S.C.	Index No.: EF005663-2023
Stage: ☐ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ☐ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ☐ Yes ■ No
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Decision and Order of the Supreme Court, Orange County (Vazquez-Doles, J.), dated September 15, 2023 and entered September 18, 2023 that granted Respondents motion to dismiss based on statute of limitations (3 days versus 10 days).

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

The Court, inter alia, erred in applying a 3 day statute of limitations under Election Law Article 15 instead of the 10 day statute of limitations under Election Law Article 16.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	DAVID C. MCFADDEN	Petitioner	Appellant
2	THE ORANGE COUNTY BOARD OF ELECTIONS	Respondent	Respondent
3	THE NEW YORK STATE BOARD OF ELECTIONS	Respondent	Respondent
4	THE VILLAGE OF TUXEDO PARK	Respondent	Respondent
5	MARK D. CITRIN as Candidate for Mayor	Respondent	Respondent
6	JOSHUA S. SCHERER as Candidate for Village Trustee	Respondent	Respondent
7	PAUL A. BROOK as candidate for Village Trustee	Respondent	Respondent
8	ELIZBAETH DOHERTY, Village Clerk	Respondent	Respondent
9	Claudio Guazzoni de zanett As Intervenor	Respondent	Respondent
10			
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Informational Statement - Civil

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Stanley K. Schlein, Esq.
Address: 481 King Avenue
City: Bronx | State: NY | Zip: 10464 | Telephone No: 917-359-3186
E-mail Address: skschlein@gmail.com
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above): 1

Attorney/Firm Name: Orange County Attorney's Office
Address: 255-275 Main Street
City: Goshen | State: NY | Zip: 10924 | Telephone No: 845-291-3150
E-mail Address: ccpierce@orangecountygov.com
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above): 2

Attorney/Firm Name: NYS BOARD OF ELECTIONS
Address: 40 N Pearl St Ste 5
City: Albany | State: NY | Zip: 12207 | Telephone No: 518-474-6220
E-mail Address: kevin.murphy@elections.ny.gov
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above): 3

Attorney/Firm Name: SANTIAGO BURGER LLP
Address: 2280 East Avenue
City: Rochester | State: NY | Zip: 14610 | Telephone No: 585-563-2400
E-mail Address: mike@litigation-group.com
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above): 4 & 8

Attorney/Firm Name: Brown & Weinraub
Address: 76 N. Pearl St., Suite 3
City: Albany | State: NY | Zip: 12207 | Telephone No: 518-427-7350
E-mail Address: jcurran@brownweinraub.com
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above): 5

Attorney/Firm Name: THE GILBERT FIRM, P.C
Address: 325 E 57th St
City: New YOrk | State: NY | Zip: 10022 | Telephone No: 212-286-8503
E-mail Address: egilbert@gilbert-firm.com
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above): 6 & 7

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: John A. Sarcone			
Address: 19 Fox Run Rd			
City: Croton On Hudson	State: NY	Zip: 10520	Telephone No: (914) 260-7582
E-mail Address: jsarcone@sarconelaw.com			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 9			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			