

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

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In the Matter of the Application of

DAVID C. MCFADDEN

Index No.:

Petitioner,

VERIFIED PETITION

-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,  
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 MOOG, as a member  
of the Board of Canvassers,

Respondents.

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The Petitioner herein respectfully alleges as follows:

1. Petitioner David C. McFadden was and is a candidate for the office of Mayor of Tuxedo Park, New York in the election held on June 20, 2023, and resides in Orange County, New York.
2. The Orange County Board of Elections is the governmental agency responsible for holding elections, canvassing and recanvassing the results, issuing cure notices for curable defects in absentee ballots, publishing the results, and certifying the election results in Orange County, New York.
3. The New York State Board of Elections is the governmental agency responsible for holding elections, canvassing and recanvassing the results, promulgating applicable regulations pursuant to the provisions of the New York State Election Law and generally supervising local County Boards of Elections.
4. The Village of Tuxedo Park is an incorporated village in Orange County, New York.

5. Respondent Mark D. Citrin was and is a candidate for the office of Mayor of Tuxedo Park, New York in the election held on June 20, 2023, and resides in Orange County, New York.
6. Joshua S. Scherer was and is a candidate for the office of Trustee of Tuxedo Park, New York in the election held on June 20, 2023, and resides in Orange County, New York.
7. Paul A. Brook was and is candidate for the office of Trustee of Tuxedo Park in the election held on June 20, 2023, and resides in Orange County, New York.
8. Elizabeth Doherty is the Village Clerk of the Village of Tuxedo Park and resides in Orange County, New York.
9. Jean Haug was appointed to the Board of Canvassers for Mayor and Trustees of Tuxedo Park in the election held on June 20, 2023, and resides in Orange County, New York.
10. Kurt Haug was appointed to the Board of Canvassers for Mayor and Trustees of Tuxedo Park in the election held on June 20, 2023, and resides in Orange County, New York.
11. Christopher Moog was appointed to the Board of Canvassers for Mayor and Trustees of Tuxedo Park in the election held on June 20, 2023, and resides in Orange County, New York.
12. The Village of Tuxedo Park, Orange County, New York, held an election for the public offices of Mayor of Tuxedo Park (“Mayor”) and Trustees of Tuxedo Park (“Trustee”) on June 20, 2023 (the “Election”).
13. There were two vacancies for the offices of Village Trustee of Tuxedo Park in the Election.
14. Months before the Election, Jean Haug, Kurt Haug, and Christopher Moog were appointed to serve as the members of the Board of Canvassers for the Election (the “Board of Canvassers”).
15. Village Clerk Elizabeth Doherty received absentee ballots up to and including June 20, 2023 for the Election and accepted them without review.

16. After the polls closed for the Election, the absentee ballots cast were not canvassed by the Board of Canvassers due to a temporary restraining order issued by Orange County Supreme Court Justice Maria Vazquez-Doles under Index Number EF004013-2023.

17. Thereafter, upon the expiration of the restraining order, on August 10, 2023, the Board of Canvassers reviewed the absentee ballots and made sua sponte determinations on their compliance with the Election Law on the basis of date, signature compliance, and registration status. During the canvass of the absentee ballots, the Board of Canvassers received objections to the validity of absentee ballots, lodged by candidates in the Election, and made rulings on them.

18. The process of allowing candidates to object, and making rulings on their objections, is a process the Board of Canvassers had authority to undertake pursuant to Election Law § 9-209. “. . . the provisions of Election Law article 15 governing village elections, [] does not contain any provision authorizing or outlining a process or grounds for challenges or objections to absentee ballots.” See Hughes v. Del. Cty. Bd. of Elec., 2023 NY Slip Op 03431 at 10.

19. By way of example, the Board of Canvassers determined that the absentee ballots of Chrissy Crawford and Juan Corredor would not be canvassed and cast in the Election because there were no signatures on their absentee ballot envelopes.

20. An unsigned ballot is a curable defect pursuant to Election Law § 9-209(3)(b)(i). However, these voters were never sent cure notices by the Orange County Board of Elections. Had the Orange County Board of Elections fulfilled its duties under the Election Law, these voters would have been able to cure their ballots, and they would have been cast and canvassed in the Election. True and accurate copies of sample cure affirmations collected by Petitioner are attached hereto as **EXHIBIT A**.

21. The Board of Canvassers determined that the absentee ballots of Nicholas Hansen, Siobahn Hansen, Gina Martin, Edward Hargroves, Robert Lopez, Diana Wiebicki, Caio Rudolfo, Cole Tavani, Paolla Tocci, Jadwiga Gorzynski, Ireneusz Gorzynski would not be canvassed and cast in the Election because the Board of Canvassers determined, in their opinion, the signatures on the absentee ballot envelopes were illegible or did not match the records they had previously obtained from the Orange County Board of Elections.

22. A signature on an absentee ballot envelope that does not correspond with the registration signature on file with the Orange County Board of Elections is a curable defect pursuant to Election Law § 9-209(3)(b)(ii). However, these voters were never sent cure notices by the Orange County Board of Elections. Had the Orange County Board of Elections fulfilled its duties under the Election Law, these voters would have been able to cure their ballots, and they would have been cast and canvassed in the Election. True and accurate copies of sample cure affirmations collected by Petitioner are attached hereto as **EXHIBIT B**.

23. Pursuant to Election Law § 9-209(3)(c) the related Board of Elections has the obligation to issue cure notices to voters who attempted to cast votes which contained curable defects:

“The board shall indicate the issue that must be cured on the ballot envelope and, within one day of such determination, send to the voter’s address indicated in the registration records and, if different, the mailing address indicated on the ballot application, a notice explaining the reason for such rejection and the procedure to cure the rejection. The board shall also contact the voter by either electronic mail or telephone, if such information is available to the board in the voter’s registration information, in order to notify the voter of the deficiency and the opportunity and the process to cure the deficiency.”

See Election Law § 9-209(3)(c) (Emphasis added).

24. After alerting the voter who cast a ballot containing a curable defect, the requisite Board of Elections has the obligation to mail the voter a cure affirmation.

“The voter may cure the aforesaid defects by filing a duly signed affirmation attesting to the same information required by the ballot affirmation envelope and attesting that the

signer of the affirmation is the same person who submitted such ballot envelope. The board shall include a form of such affirmation with the notice to the voter. The affirmation shall be in a form prescribed by the state board of elections.”

See Election Law § 9-209(3)(d) (Emphasis added).

25. Once the Board of Elections has received a cure affirmation, it must prepare the ballot to be canvassed if the board determines that the cure affirmation addresses the defect, or if the board is split.

“Such cure affirmation shall be filed with the board no later than seven business days after the board’s mailing of such curable rejection notice or the day before the election, whichever is later. Provided the board determines that such affirmation addresses the curable defect, the rejected ballot shall be reinstated and prepared for canvassing pursuant to subdivision two of this section. If the board of elections is split as to the sufficiency of the cure affirmation, such envelope shall be prepared for canvassing pursuant to paragraph (d) of subdivision two of this section.”

See Election Law § 9-209(3)(e).

26. For the Election, the Orange County Board of Elections did not undertake any of the aforementioned responsibilities. Therefore, Petitioner seeks intervention from the Court to compel the Orange County Board of Elections to execute its responsibilities and seek cure affirmations from the voters who cast ballots that contained curable defects. Without the Court’s intervention, if the Election is allowed to stand without the Orange County Board of Elections fulfilling its responsibilities, it would lead to the disenfranchisement of the voters of the Village of Tuxedo Park.

27. Chapter 17 of the Consolidated Laws of the State of New York, colloquially referred to as the “Election Law” was always and unequivocally applied to elections in New York’s villages. “This chapter shall govern the conduct of all elections at which voters may cast a ballot for the purpose of electing an individual to any federal, state, county, city, town or village office . . .” See Election Law § 1-102 (Emphasis added).

28. However, it has become indisputable that the Election Law, and Election Law § 9-209 specifically, applies to village elections due to the Third Department's analysis in In the Matter of Elizabeth M. Hughes et al. v. Delaware County Board of Elections and Stewart Cohen et al., 2023 Slip Op 03431 \*\*5 (3d Dep't 2023). In Hughes, the petitioner argued that Election Law § 9-209 did not apply to village elections. See Id.

29. The Third Department dispensed with petitioner's argument by citing to Election Law §1-102 and holding “. . . the general Election Law provisions apply where, as here, there is no inconsistency between Election Law §9-209, which outlines the canvassing process and the grounds for challenging absentee ballots, and the provisions of Election Law 15 governing village elections, which does not contain any provision authorizing or outlining a process or grounds for challenges or objections to absentee ballots.” See Id.

30. The Board of Canvassers determined that the absentee ballots of Michael Martin, Nicole Martin Morris, Anne McCann, Megan Ryan, James McClellan, Jacob Bruner, Jacob Shapiro Claudia R. Turnbull, and Carey Turnbull would not be canvassed and cast in the Election because the Board of Canvassers could not locate their names on the list of active list of voters they had previously obtained from the Orange County Board of Elections.

31. However, the Board of Canvassers had a list of registered voters that was outdated, and did not accurately reflect the names of all voters duly registered to vote.

32. Additionally, the Board of Canvassers should have allowed the ballots of voters who were on the inactive registration list, whether properly or improperly placed there, to cast their ballots, and the ballots should have been canvassed. Then, the Orange County Board of Elections should have been notified, and restored the voters' names to active voter registration status.

“The board of elections shall restore the registration of any such voter to active status if such voter notifies the board of elections that they reside at the address from which they

are registered, or the board finds that such voter has validly signed a designating or nominating petition which states that they reside at such address, or if such voter casts a ballot in an affidavit envelope which states that they reside at such address, or if the board receives notice that such voter has voted in an election conducted with registration lists prepared pursuant to the provisions of section 5-612 of this article. If any such notification or information is received ten days or more before a primary, special or general election, the voter's name must be restored to active status for such election."

See Election Law § 5-213.

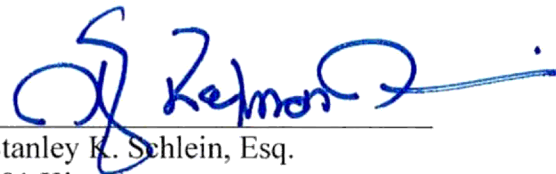
33. Had the Board of Canvassers obtained accurate voter registration rolls from the Orange County Board of Elections, certain voters would have had their ballots canvassed. Examples displaying voters inaccurately absent from the active voter registration rolls are attached hereto as **EXHIBIT C.**

34. In the alternative, Petitioner seeks the Court to substitute its judgment for that of the Board of Canvassers in that they erred when they determined that signatures on absentee ballots did not match Orange County Board of Elections records, certain voters were not registered to vote, and inactive voters were not able to cast their vote.

35. Therefore, Petitioner seeks intervention from the Court to compel the Orange County Board of Elections to provide updated registration records of Michael Martin, Nicole Martin Morris, Anne McCann, Megan Ryan, Claudia R. Turnbull, and Carey Turnbull. Without the Court's intervention, if the Election is allowed to stand without accurate representation of the registered voters residing in Tuxedo Park, it would result in the disenfranchisement of the voters of the Village of Tuxedo Park.

WHEREFORE, your Petitioner respectfully prays for the relief requested in the annexed Order to Show Cause, and for such other and further relief as to this Court may seem just and proper.

Dated: Bronx, New York  
August 18, 2023



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Attorneys for Petitioner



VERIFICATION

State of New York            )  
  ) SS.:  
County of Bronx             )

STANLEY K. SCHLEIN, an attorney duly admitted to practice law in the State of New York, and mindful of the penalties for perjury, hereby affirms:

I am an attorney for the Petitioner in this proceeding; I have read the foregoing PETITION and know the contents thereof; the same is true to my own knowledge, except as to matters therein alleged to be on information and belief, and as to those matters, I believe it to be true.

The reason this Verification is made by me and not by my client is that my client does not reside in the County in which I maintain my office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: records maintained by my office and communications with my client.

Dated: August 18, 2023

  
STANLEY K. SCHLEIN