

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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KATHRYN A. GARCIA,

Petitioner-Candidate-Aggrieved,

Index No.:

v.

AARON S. FOLDENAUER, DIANNE MORALES,
SCOTT M. STRINGER, RAYMOND J. MCGUIRE,
MAYA D. WILEY, PAPERBOY LOVE PRINCE, ART
CHANG, ANDREW YANG, ERIC L. ADAMS, ISAAC
WRIGHT JR., SHAUN DONOVAN, AND JOYCELYN
TAYLOR,

VERIFIED PETITION

Candidates-Respondents,

THE BOARD OF ELECTIONS IN THE CITY OF NEW
YORK,

Board-Respondent.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioner Kathryn A. Garcia, by her attorney, Stanley K. Schlein, Esq., respectfully alleges as follows:

1. Petitioner-Candidate-Aggrieved Kathryn A. Garcia (“Petitioner”), is a duly registered voter in the State and City of New York and an enrolled member of the Democratic Party, residing at 591 Carroll Street, Brooklyn, NY 11215 and, as such, was entitled to vote in the Primary Election for the public office of Mayor of the City of New York, State of New York in the Primary Election held on the 22nd day of June, 2021 (hereinafter referred to as “the Primary Election”), inclusive of Early Voting occurring between June 12 – June 20, 2021, and is a candidate for said position in the Primary Election.

2. Upon information and belief, the Candidates-Respondents more particularly identified on Schedule A attached hereto and made a part hereof (“Candidates-Respondents”) are

also duly registered voters and are enrolled members of the Democratic Party who reside in the City of New York and were entitled to vote in the Primary Election for the public office of Mayor of the City of New York, and are candidates for said Primary Election for such public office.

3. Petitioner has standing to commence this proceeding pursuant to Sections 16-100, 16-102, 16-106, 16-112, and 16-113 of the New York State Election Law. This proceeding is commenced pursuant to and in accordance with Article 16 of said Election Law.

4. Respondent Board of Elections in the City of New York (the "Board-Respondent") is charged by the New York State Election Law with the administration of elections held in the City of New York, including the canvassing of the returns of elections and the certification of the election results for the public position of Mayor of the City of New York.

5. Petitioner has no interest in superseding the provisions of the Election Law that dictate how the Board-Respondent is to conduct a canvass of the Primary Election.

6. This petition is made in order to preserve Petitioner's rights under the Election Law of the State of New York, including, without limitation, to correct any errors in the canvass of returns of the subject election, and to provide for this Court's supervision, as necessary, of the canvass or manual recanvass of the regularly cast scanned ballots on the voting machines, and of all relevant unopened and/or non-scanned ballots, and/or improperly opened ballots (including all emergency ballots, absentee ballots, affidavit ballots, special ballots and military ballots ("Paper Ballots") cast for the candidates in the Primary Election, together with the Court's supervision of any manual recanvass held pursuant to the rules of the Board-Respondent and/or audit of the electronic voting machines, special ballot marking devices, and/or ballot scanners (collectively, the "Voting Machines"), and to allow for the comprehensive review of the matters under the jurisdiction of this Court.

7. This petition is further made to: continue to preserve the ballots; have this Court review all determinations of Board-Respondent as is provided for in the Election Law; allow for this Court to make adjustments in the canvass as may be necessary; enjoin any certification of election results which would prejudice the rights of Petitioner; and to bar or prevent any procedural defect which might be asserted to defeat this Court's determinations.

8. Upon information and belief, there is a significant volume of Paper Ballots issued by the Board-Respondent as a result of the Governor's Executive Orders establishing increased access to absentee ballots initiated by the prevalence and community spread of COVID-19 during

the past year and a half.

9. The total number of the Paper Ballots is not yet known because the final day for mailed absentee ballots to be received by the Board-Respondent for the Primary Election was June 29, 2021 and Petitioner is not yet in possession of the information regarding the total Paper Ballots count received by the Board-Respondent.

10. Upon information and belief, the results of the election for the winner of the Primary Election, as reflected in the votes cast by Voting Machines and on the Paper Ballots in the Primary Election will be exceedingly close, with only a marginal number of votes separating the Petitioner Candidate-Aggrieved and the other Candidates-Respondents. In addition, as a result of the interposition of ranked choice voting (“RCV”) for the first time, further uncertainty of the results of this election are manifest. Indeed, this Court’s intervention is required to correct any RCV software/algorithm errors that may impact or have impacted the accurate counting of votes, particularly in light of the Respondent-Board’s disclosure that it improperly counted test votes in the Primary Election.

11. Upon information and belief, numerous unopened and/or non-scanned ballots and/or mis-scanned ballots will remain uncanvassed or uncounted, and the canvass of or counting of such ballots may determine the outcome of this election.

12. Upon information and belief, it is possible that Board-Respondent, in canvassing the Paper Ballots, may not be able to determine the validity of individual ballots, or may err in determining for which candidate the individual ballots were cast.

13. The canvass of the Paper Ballots should proceed, provided only that their envelopes and ballots be photocopied pursuant to the orders of *King v. Smith*, 308 A.D.2d 556 (2d Dep’t 2003), and this Court with respect thereto, which is required to preserve those ballots.

14. Upon information and belief, the allegations in the above paragraphs suggest that the final result of the Primary Election may be determined by correcting the RCV software/algorithm errors, the canvass of the various types of Paper Ballots mentioned herein and/or any manual recanvass of all the ballots cast on the voting machines or by hand to be held pursuant to the Board-Respondent’s Rules, if any, and it may be required under the law and pursuant to the Board-Respondent’s rules, if any, to conduct a manual recount of all such scanned ballots and Paper Ballots.

15. This proceeding is commenced pursuant to provisions of Sections 16-100, 16-102,

16-106, 16-112, 16-113, and 16-116 as well as Articles 8 and 9 of the Election Law, which confer authority upon this Court to determine and resolve any disputes arising out of or relating to the canvass of ballots and returns in the Primary Election.

16. Petitioner reserves the right to submit further proofs by way of witnesses, affidavits, and evidence upon the date set by this Court for the trial and hearing of this matter and any adjourned dates thereof, and to amend these pleadings to reflect the facts adduced by way of a canvass or recanvass of the ballots in and for the Primary Election.

17. Petitioner believes that, after a complete canvass of the Paper Ballots and a recanvass of all ballots cast by the Voting Machines, it should be determined that Petitioner won the nomination of the Democratic Party for the public office of Mayor of the City of New York.

18. Petitioner has no adequate remedy at law.

19. No previous application has been made for the relief sought herein or for the Order to Show Cause hereto annexed, or for any similar relief.

WHEREFORE, Petitioner respectfully prays that the annexed Order to Show Cause be granted for a final Order and Judgment granting the relief prayed for in the Order to Show Cause, together with such other and further relief that this Court may deem just and proper.

Dated: Bronx, New York
June 30, 2021



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