

2001 WL 1142047
 2001 N.Y. Slip Op. 07254
 (Cite as: 2001 WL 1142047 (N.Y.A.D. 4 Dept.))

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Supreme Court, Appellate Division, Fourth
 Department, New York.

Matter of Michael P. McMANUS, Anthony
 Giordano, Marion L. Miles and Jason
 Pielaet, Petitioners-Appellants,

v.

M. Betsy RELIN and Peter M. Quinn,
 Commissioners of Elections, Constituting
 Board of Elections of Monroe County, and Tom
 Fiorilli, Respondents-Respondents.

Nos. 939.7, 01-01756.

Aug. 23, 2001.

Petitioners commenced special proceeding pursuant to Election Law seeking reversal of an order of the Supreme Court, Monroe County, Syracuse, J., invalidating their designating petitions. The Supreme Court, Appellate Division held that court erred in invalidating signatures on designating petitions on the ground that the subscribing witness in the "STATEMENT OF WITNESS" portion of the designating petitions provided an incorrect address where the witness was in the process of moving from one apartment to another during the period in which signatures were being obtained and he provided his new address as a current address on some designating petitions signed before he actually moved, and where both addresses were within the correct political subdivision.

Reversed.

[\[1\] Elections](#)  126(1)

[144k126\(1\) Most Cited Cases](#)

Court erred in invalidating signatures on designating petitions on the ground that the subscribing witness in the "STATEMENT OF WITNESS" portion of the designating petitions provided an incorrect address; the witness was in the process of moving from one apartment to another during the period in which signatures were being obtained and he provided his new address as a current address on some designating petitions signed before he actually moved, and both addresses were within the correct political subdivision. [Election Law § 6-132\(2\)](#).

[\[2\] Elections](#)  10

[144k10 Most Cited Cases](#)

Where the Election Law violation does not involve the substantive requirements of witness eligibility and there is no implication of fraud, resort to strict construction should be avoided if it would lead to injustice in the electoral process or the public perception of it.

Appeal from Order of Supreme Court, Monroe County, Syracuse, J.--Election Law.

PRESENT: PIGOTT, JR., P.J., GREEN, [PINE](#),
[WISNER](#) AND [LAWTON](#), JJ.

*1 [\[1\]](#) Order unanimously reversed on the law without costs, petition granted and designating petitions validated. Memorandum: Petitioners commenced this special proceeding pursuant to [Election Law § 16-102](#) seeking an order validating their designating petitions and designating them as Republican Party candidates for Rochester City Council at-large for the Republican primary to be held on September 11, 2001. Petitioners contend that Supreme Court erred in invalidating signatures on designating petitions on the ground that the subscribing witness in the "STATEMENT OF WITNESS" portion of the designating petitions provided an incorrect address. The witness was in the process of moving from one apartment to another during the period in which signatures were being obtained and he provided his new address as a current address on some designating petitions signed before he actually moved. We agree with petitioners that reversal is required.

Pursuant to [Election Law § 6-132\(2\)](#), "[t]here shall be appended at the bottom of each [designating petition] sheet a signed statement of a witness who is a duly qualified voter of the state and an enrolled voter of the same political party as the voters qualified to sign the petition, and who is also a resident of the political subdivision in which the office or position is to be voted for." That section further provides that the signed statement of the witness shall be deemed the equivalent of an affidavit and, "if it contains a material false statement, shall subject the person signing it to the same penalties as if he had been duly sworn." In addition, [section 6-132\(2\)](#) provides a sample form to be completed by the witness, including the statement, "I now reside at (residence address)."

[\[2\]](#) Where, as here, the Election Law violation does not involve the "substantive requirements of witness

eligibility" and "there is no implication of fraud, resort to strict construction should be avoided if it would lead to injustice in the electoral process or the public perception of it" (*Matter of Pulver v. Allen*, 242 A.D.2d 398, 400, 661 N.Y.S.2d 836, lv denied 90 N.Y.2d 805, 662 N.Y.S.2d 431, 685 N.E.2d 212, citing *Matter of Staber v. Fidler*, 65 N.Y.2d 529, 534, 493 N.Y.S.2d 288, 482 N.E.2d 1204). Given the fact that both addresses are within the correct political subdivision and in the absence of any indication of fraud, we conclude that the court erred in invalidating the designating petitions that failed to comply with Election Law § 6-132(2).

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**State of New York
Supreme Court : County of Monroe**

In the Matter of the application of

**Michael P. McManus, Anthony Giordano,
Marion L. Miles, and Jason Pielat,**

Petitioners,

-against-

Index No. 2001/8635

**M. Betsy Relin, and Peter M. Quinn,
Commissioners of Elections, constituting
the Board of Elections of Monroe County,
and Tom Fiorelli**

Respondents.

APPEARANCES:

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counsel), attorneys for petitioners
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MEMORANDUM DECISION

ANDREW V. SIRACUSE, J.

The four petitioners here are seeking Republican party nominations for at-large seats in the Rochester City Council. They circulated petitions with the aim of placing their names before the party electorate in a

primary election, and for that purpose 930 valid signatures of registered Republicans are needed. The respondent Board of Elections invalidated 486 of the 1387 names they submitted, however, and this petition followed. During the course of this proceeding the Board agreed to restore certain signatures, but the petitioners are still 25 names short of the number required.

The majority of the invalidations were on petitions witnessed by Anthony Giordano. In all of these petitions he listed his address as 300 Alexander Street, Apartment D-8. At the time he began collecting petitions Mr. Giordano's registration record listed his address as 275 Park Avenue, and it was not until July 5 that he applied to the Board for a change of address and supplied proof of the change. This proof gave his moving date as July 2, 2001. The Board struck 391 names on petitions witnessed by Mr. Giordano before July 2 and 10 names on a single sheet dated July 3.

Election Law § 6-132 (2) requires that subscribing witnesses include a valid address in their statements, and strict compliance is required with this section (*Liepshutz v Palmateer*, 65 NY2d 965; *Lemishov v Black*, 63 NY2d 684). The petitioners admit that the witness is required to list his residence, but argue that case law recognizes that witnesses may have multiple residences, and that the subscription states only that the address given is where the witness actually resides—not where he is

registered. Mr. Giordano denies any fraudulent intent, adding that he believed that it would be confusing to have different addresses on petitions he witnessed at different dates.

It is not necessary for the court to rule on whether or not petitioners have accurately stated the law as to multiple residences, because at no point did Mr. Giordano maintain more than one. He lived first at 275 Park Avenue and later at 300 Alexander Street, and the fact that he signed the lease on the Alexander Street apartment before July 1 and could have moved in June is irrelevant. The court certainly sees no reason to conclude that Mr. Giordano acted with anything other than the most innocent of motives, but the witness statements for the 391 signatures that were executed before Mr. Giordano's move each contain a false statement, and because strict compliance is required the Board acted properly in invalidating them.

The court agrees with the petitioners, however, that the one sheet witnessed on July 3 was improperly invalidated. The statement to which *the witness swears is "I now reside at [address]."* Although Mr. Giordano did not execute his change of address with the Board until July 5, he did in fact reside at 300 Alexander Street on July 3. It would have been as improper for him to give 275 Park Avenue as an address on July 3 as it was for him to use 300 Alexander Street before his move.

The petitioners also argue that Mr. Giordano is a Commissioner of Deeds, and that if he had witnessed the signatures in that capacity no address would have been required. This is true; but he did not choose to do so. Mr. Giordano decided to proceed as a subscribing witness and signed statements subject to the penalties of perjury that included his address. He is accountable for the accuracy of those statements.

The petitioners are thus only fifteen signatures short, but there are only 21 signatures left in contention. Of these, eight are on a sheet where the witness statement, while signed, contains no address at all. The petitioners claim that the witness placed her address on a signature line. She appears to have done so, but afterwards some person crossed the address off. The county is correct to argue that there is no valid address here; and there would be no basis for importing even an un-crossed-out address into the witness statement at the bottom of the page.

The petition thus fails, as there would not be sufficient valid signatures even if all thirteen remaining issues were decided in the petitioners' favor. For the benefit of the parties, of collectors of petitions, and to facilitate review, however, these remaining issues will be addressed in summary fashion.

The Board correctly invalidated the signature at page 13, line 6, because the voter had not even attempted to register to vote until two days after he signed the petition.

The Board erred, however, in striking the signatures of Eugenia Jane Tantalo, who signed as E. Tantalo and is registered as Jane Tantalo (pg. 115, ln. 4), and of Charlene Maloney, who signed with her married name but is registered under her maiden name (pg. 144, ln. 8); see Election Law §§ 6-134 (5), (10); see also, *In re Lynch* (108 Misc. 668); 9 Op. State Comp. 318, 1953.

The undated signature at page 167, line 10, is invalid, as is the one at page 119, line 10, which was dated after the witness subscription. The date is required of all signatures, and one dated after the subscription is facially invalid as being unsubscribed. However, the signatures at page 106, line 4, and page 107, line 10, should have been upheld as valid. The June 8 date may be an error, but the court cannot base any ruling on this possibility. There is, though, no requirement that signatures be gathered in order, or that they be subscribed on the date on which they were executed. A June 8 signature would be valid, and the Board erred in striking it as bearing an improper date.

The court cannot see how an incorrect address can somehow be considered a harmless error. The Board, therefore, properly invalidated the signatures at page 41, line 2; page 83, line 5; and page 152, line 1.

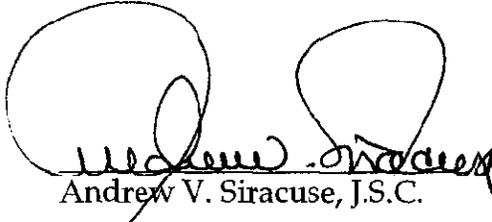
One signature was made by an enrolled Republican voter's wife, because he felt he could not sign properly within the small space provided. He initialled the signature she executed (pg. 149, ln. 2). The

Board would have been willing to accept this procedure had the signatory been blind, but not otherwise. There is no provision in the Election Law either authorizing this procedure for the blind or limiting its use, however, and the court finds that the signature should have been permitted.

Finally, Election Law § 5-304 (4) is clear that a change in party enrollment is effective as of the Tuesday following the next general election, so the signature at line 18, page 7 was properly invalidated (*see, Basolino v DeGrace*, 230 AD2d 870).

The petition is dismissed, without costs or disbursements, and Mr. Van Varick may prepare the order. The court commends both parties for their cooperation in stipulating to the facts at issue. Such a practice is especially valuable in a case such as this one, where a decision is needed quickly.

DATED: Rochester, New York
August 13, 2001



Andrew V. Siracuse, J.S.C.

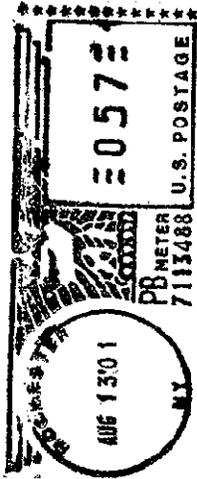
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