

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

967.1

CAE 09-01642

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, GREEN, AND PINE, JJ.

IN THE MATTER OF CHARLES G. MASICH, MICHAEL J. ABRAMO, JOHNATHAN A. LAVELL, MONIQUE H. SCHREGEL, ERIK K. STRAUCH, KIMBERLY A. DAVIS, WALTER E. AMACHER, DYLAN G. QUINLAN AND RALPH J. ABRAMO, PETITIONERS-APPELLANTS,

V

MEMORANDUM AND ORDER

DENNIS E. WARD AND RALPH M. MOHR, AS COMMISSIONERS OF AND CONSTITUTING THE ERIE COUNTY BOARD OF ELECTIONS, ET AL., RESPONDENTS, NEW YORK STATE INDEPENDENCE PARTY COMMITTEE, BECKY JO SUMMERS, ET AL., RESPONDENTS-RESPONDENTS.

JEROME D. SCHAD, WILLIAMSVILLE, FOR PETITIONERS-APPELLANTS.

JOHN CIAMPOLI, ALBANY, FOR RESPONDENT-RESPONDENT NEW YORK STATE INDEPENDENCE PARTY COMMITTEE.

BOUVIER PARTNERSHIP, LLP, BUFFALO (EMILIO COLAIACOVO OF COUNSEL), FOR RESPONDENTS-RESPONDENTS BECKY JO SUMMERS, ET AL.

Appeal from an order of the Supreme Court, Erie County (Frank A. Sedita, Jr., J., for Diane Y. Devlin, J.), entered August 11, 2009 in a proceeding pursuant to Election Law article 16. The order dismissed the petition.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Supreme Court properly dismissed the petition seeking to invalidate the certificate authorizing over 100 designating petitions for candidates in Erie County based on the failure to join 102 unnamed candidates whose names appear on the certificate of authorization issued by the New York State Independence Party Executive Committee. Because there was only a single certificate of authorization, the 102 unnamed candidates would have been inequitably affected had the court granted the relief sought in the petition, and petitioners thus were required to join them as necessary parties (see CPLR 1001 [a]; 1003). In view of our determination, we need not address the merits of the petition.

Entered: August 19, 2009

Patricia L. Morgan
Clerk of the Court