

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

909

CAE 10-01644

PRESENT: PERADOTTO, J.P., LINDLEY, PINE, AND GORSKI, JJ.

IN THE MATTER OF ANDREW W. GOODELL,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

WILLIAM L. PARMENT, ET AL., RESPONDENTS,
NANCY G. BARGAR AND CHAUTAUQUA COUNTY BOARD
OF ELECTIONS, BY NORMAN GREEN AND BRIAN ABRAM,
ELECTION COMMISSIONERS, RESPONDENTS-RESPONDENTS.

GOODELL & RANKIN, JAMESTOWN (R. THOMAS RANKIN OF COUNSEL), FOR
PETITIONER-APPELLANT.

FREDERICK A. LARSON, JAMESTOWN, FOR RESPONDENT-RESPONDENT NANCY G.
BARGAR.

LAW OFFICE OF MICHAEL R. CERRIE, DUNKIRK (MICHAEL R. CERRIE OF
COUNSEL), FOR NORMAN GREEN, ELECTION COMMISSIONER OF RESPONDENT
CHAUTAUQUA COUNTY BOARD OF ELECTIONS.

MICHAEL J. SULLIVAN, FREDONIA, FOR BRIAN ABRAM, ELECTION COMMISSIONER
OF RESPONDENT CHAUTAUQUA COUNTY BOARD OF ELECTIONS.

Appeal from an order of the Supreme Court, Chautauqua County
(John T. Ward, A.J.), entered August 6, 2010 in a proceeding pursuant
to the Election Law. The order dismissed the petition.

It is hereby ORDERED that the case is held, the decision is
reserved and the matter is remitted to Supreme Court, Chautauqua
County, for a hearing in accordance with the following Memorandum:
Petitioner commenced this proceeding seeking, inter alia, to
invalidate the certificate of declination filed by respondent William
L. Parment with respect to Parment's designation as the Independence
Party candidate for the office of Member of the State Assembly for the
150th District and to invalidate the certificate of substitution
naming respondent Nancy G. Bargar as the Independence Party candidate
for that office. Petitioner alleged that Parment never filed the
certificate of declination pursuant to the Election Law but, rather,
that it was mailed to Norman Green, the Democratic Election
Commissioner of respondent Chautauqua County Board of Elections
(Board), who filed the certificate of declination one week after the
deadline. Petitioner thus further alleged that the Board improperly
recorded the certificate of declination and accepted the certificate
of substitution. Supreme Court dismissed the petition.

We conclude that the record before us is insufficient to determine whether the certificate of declination was properly filed pursuant to the Election Law. We therefore hold the case, reserve decision and remit the matter to Supreme Court for an expedited hearing at which Parment, the Election Commissioners and other relevant employees of the Board, as well as any other witness may testify concerning the delivery and handling of the certificate of declination to and by the Board.

Entered: August 20, 2010

Patricia L. Morgan
Clerk of the Court