

STATE OF NEW YORK : COUNTY OF DUTCHESS  
SUPREME COURT

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In the Matter of the Application of

**OLIVIA CONTI, SARA KANGAS, TANYA SORENSON,  
CASEY ASPROOTH-JACKSON, SARAH BESSEL and  
IRIS S.B. LARSON**, registered voters in the Town of Redhook,

Petitioners,

-against -

**FRAN KNAPP and DAVID GAMACHE**, Commissioners  
of Elections, constituting **THE DUTCHESS COUNTY  
BOARD OF ELECTIONS**,

Respondents.

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**VERIFIED PETITION**

Index No:

RJI No:

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**TO THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS:**

Your petitioner herein respectfully shows this Court and alleges:

**NATURE OF THE PROCEEDING**

1. Petitioner brings this proceeding pursuant to Article 16 of the New York State Election Law seeking an Order which, among other things,

(a) directs that the affidavit ballots of petitioners and all other Bard students that were registered voters who sought to vote in the election district within which they are registered and were made to vote by affidavit ballot as a result of an order of the Dutchess County Supreme Court

(Brands, J.), which was modified on a CPLR 5704 motion to the Appellate Division, Second Department (Dillon, A.J.A.D.), be cast and counted by the Dutchess County Board of Elections without being subject to an objection;

(b) orders that the Dutchess County Board of Elections is enjoined from certifying the results of the Election in the Town of Redhook pending further order of this Court;

(c) permanently enjoins the Dutchess County Board of Elections from subjecting Bard students who are registered to vote to procedures more rigorous than the average voter when they attempt to vote on a voting machine; and

(d) for such other relief as the court deems just and proper.

#### **THE PARTIES**

2. At all times hereinafter mentioned, Petitioner **OLIVIA CONTI**, is a student at Bard College who resides on campus at 102 Village E and who is registered to vote from the address 106 Tewksbury. Both addresses are in election district 5 in the Town of Redhook.

3. At all times hereinafter mentioned, Petitioner **SARA KANGAS**, is a student at Bard College who resides on campus at 111 Oberholzer and who is registered to vote from the address 208 Oberholzer. Both addresses are in election district 5 in the Town of Redhook.

4. At all times hereinafter mentioned, Petitioner **TANYA SORENSON**, is a student at Bard College who resides on campus at 201 Shafer and who is registered to vote from the address 201 Shafer. This address is in election district 5 in the Town of Redhook.

5. At all times hereinafter mentioned, Petitioner **CASEY ASPROOTH-JACKSON**, is a student at Bard College who resides on campus at 105A Village F and who is registered to vote from the address 116 Cruger Apt. Both addresses are in election district 5 in the Town of Redhook.

6. At all times hereinafter mentioned, Petitioner **SARAH BESSEL**, is a student at Bard College who resides on campus at 292 Robbins and who is registered to vote from the address 228 Cruger. Both addresses are in election district 5 in the Town of Redhook.

7. At all times hereinafter mentioned, Petitioner **IRIS S.B. LARSON**, is a student at Bard College who resides on campus at 301 Obreskove and who is registered to vote from the address 301 Obreskove. This address is in election district 5 in the Town of Redhook. Ms. Larson has not moved but she wrote Bard College's mail address on her affidavit ballot because the inspector said a dorm address is not a proper residence.

8. Presently and at all times hereinafter mentioned, the respondents were and still are Commissioners of the Dutchess County Board of Elections, and together constitute the Respondent **DUTCHESS COUNTY BOARD OF ELECTIONS**. Such board is empowered to determine whether an affidavit ballot should be cast and counted and certify the results of an election.

#### **FACTS CONSTITUTING BASIS FOR RELIEF**

9. Petitioners reassert each and every allegation herein contained in paragraph 1 through 6 hereof.

10. On election day, November 3, 2009, Attorney John Ciampoli obtained an Order to Show Cause in Dutchess County Supreme Court (Brands, J.) on behalf of Thomas Martinelli, Chairman of the Town of Poughkeepsie Republican Committee. (see EXHIBIT A).

11. The Order to Show Cause "ordered that the Dutchess County Board of Elections, preserve the ballots of any and all voters in the 2009 General Election in the County of Dutchess who are challenged on the basis of residency, by requiring all such challenged voters to cast their ballots as affidavit ballots, or alternatively, for such voters to appear before a justice of this Court and on the basis of adequate evidence of residency, apply for an order of the Court allowing them to

vote on the voting machine, or alternatively, to have such voters directed to the polling place that is appropriate for the residence they currently live at, where they shall cast affidavit ballots....”

12. Notwithstanding the difference between Election Law § 8-302(3)(b) and Election Law § 8-302(3)(e), the Order to Show Cause made no distinction between challenged voters who live in the same election district within which they are registered, and thereby appear in the poll book, and challenged voters who live in a different election district than the one they are registered in and therefore don't appear in the poll book.

13. The Order to Show Cause and Verified Petition contained no index number and had not been filed with the Clerk of the Court.

14. The Order to Show Cause and Verified Petition did not name any of the voters who were affected by the order and therefore was issued ex parte as to all such voters.

15. On election day, Vassar College student, Willa Conway attempted to vote in the election district within which she was registered to vote and was told her residency was being challenged and that she had to vote by affidavit ballot. Ms. Conway then made a motion to Judge Dillon, Associate Justice of the Appellate Division, Second Department, pursuant to CPLR 5704(a), to intervene and vacate the Supreme Court ex parte order.

16. Judge Dillon granted the motion to intervene at approximately 7:30 pm on election night and modified the order to apply only to the Town of Poughkeepsie and to provide that the challenge mechanism in Election Law § 8-504 be utilized for residency challenges as required by the election law. (see EXHIBIT B).

17. Petitioner Martinelli's attorney, John Ciampoli, was asked about an index number during oral argument on the motion and he represented to the Court that the Order to Show Cause allowed him to purchase an index number and file his papers within 2 days and that he would do so.

18. Despite the representations made to Judge Dillon, the Order to Show Cause did not contain a provision that an index number could be purchased up to 2 days after election day, petitioner did not purchase an index number or file his Verified Petition, and no proceeding was actually commenced.

19. Petitioner Martinelli abused the judicial process by obtaining an Order to Show Cause in violation of the CPLR and Court Rules to suppress students' vote in Dutchess County until shortly before the polls closed.

20. As a result of the original Order to Show Cause, students of Bard College whose names appeared in the poll book, including the petitioners, were required to vote on affidavit ballots despite arriving to vote in the election district within which they reside and are registered. (see EXHIBIT C).

21. Student voters were targeted in both the Town of Poughkeepsie and in the Town of Redhook to suppress the students' vote and affect the outcome of the election. This targeting of a class of people with more rigorous requirements than those permitted by the Election Law is a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, the New York Constitution and New York Election Law.

22. Petitioners' affidavit ballots and the ballots of all similarly situated Bard students should be counted as if cast on a voting machine, without an opportunity for the Dutchess County Board of Elections to rule on an objection.

23. As a result of the foregoing, your petitioners pray that the said affidavit ballots be cast as if on a voting machine on November 3, 2009, with no challenge to the ballot possible. Petitioner further prays that a permanent injunction be issued barring the Dutchess County Board of Elections from applying more rigorous procedures to student than the general population of registered voters.

24. An order to show cause is requested under the provisions of Section 16-106 and section 16-116 of the Election Law.

25. Petitioners request leave to effect service of a copy of the order to show cause on the respondent **DUTCHESS COUNTY BOARD OF ELECTIONS** and the Commissioners thereof, **FRAN KNAPP** and **DAVID GAMACHE**, by leaving ONE copy of such Order and supporting papers, during normal business hours, at the office of the **DUTCHESS COUNTY BOARD OF ELECTIONS** at 47 Cannon Street, Poughkeepsie, New York 12601 on or before the 23 day of November, 2009.

26. Your petitioners request leave and reserve the right to submit upon the argument and hearing of this application additional and supplemental proof by way of affidavits, documentary proof, oral testimony and other evidence to substantiate the allegations contained in this petition.

27. Petitioner requests that the respondent **DUTCHESS COUNTY BOARD OF ELECTIONS** produce upon the argument and hearing of this application all the books, records and papers relevant to this proceeding.

28. Your petitioner has no adequate remedy or relief at law or in equity, other than the relief herein applied for.

29. No previous application has been made for the relief sought or for the order to show cause related hereto, or for any similar order or relief.

**WHEREFORE**, your petitioner prays for an order

(a) directing that the affidavit ballots of petitioners and all other Bard students that were registered voters who sought to vote in the election district within which they are registered and were made to vote by affidavit ballot as a result of an order of the Dutchess County Supreme Court (Brands, J.), which was modified on a CPLR 5704 motion to the Appellate Division, Second

Department (Dillon, A.J.A.D.), be cast and counted by the Dutchess County Board of Elections without being subject to an objection,;

(b) ordering that the Dutchess County Board of Elections is enjoined from certifying the results of the Election in the Town of Redhook pending further order of this Court;

(c) permanently enjoining the Dutchess County Board of Elections from subjecting Bard students that are registered to vote to procedures more rigorous than the average voter when they attempt to vote on a voting machine; and

(d) for such other relief as the court deems just and proper.

Dated: November 12, 2009  
Cairo, New York

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