

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WAYNE
54 Broad Street, Lyons NY 14489

INDEX #:

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ORDER TO SHOW CAUSE WHY THE COURT SHOULD NOT DECLARE A PETITION FILED DECEMBER 18, 2013 WITH THE VILLAGE OF LYONS TO BE SUBSTANTIALLY NON-COMPLIANT PURSUANT TO GML 17-A SECTION 785 WITH FATAL DEFECTS, THE CERTIFICATION ARBITRARY & CAPRICIOUS NULL AND VOID, AND PROHIBITING RESPONDENTS FROM PASSING A RESOLUTION TO ACCEPT CERTIFICATION OR SCHEDULING AND HOLDING A REFERENDUM PURSUANT TO GML 17-A SECTION 785.
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PETITIONERS – appearing Pro Se;
Jack Bailey, Andrew DeWolf

-against-

RESPONDENT;
Village of Lyons NY – Village Clerk & Village Board of Trustees

UPON THE ANNEXED AFFIDAVIT ON BEHALF OF ABOVE NAMED RESPONDENTS, SWORN TO ON JANUARY 4, 2014; AND UPON ALL OF THE PAPERS AND PROCEEDINGS HEREIN:

LET THE RESPONDENTS SHOW CAUSE AT A TERM OF THE SUPREME COURT OF WAYNE COUNTY, 54 BROAD STREET LYONS NY 14489 ON JANUARY 16, 2014 at 0900 HOURS, AS SOON THEREAFTER AS COUNSEL MAY BE HEARD, WHY AN ORDER SHOULD NOT BE MADE:

Declaring December 18, 2013 Petition of Connie Rios to be substantially non compliant with law, and fatally defective. Declaring the Village Clerk Certification to be arbitrary, contrary to law, null and void. Prohibiting Respondents from proceeding further until a hearing on January 16, 2014 before this Court.

SERVICE of a copy of this **ORDER TO SHOW CAUSE** and annexed AFFIDAVIT on the Village at 76 William St, Lyons NY 14489. By Personal Service by JANUARY 9, 2014.

PROOF of such service to be filed with the clerk before the return date of this **ORDER TO SHOW CAUSE**.

Petitioners (Pro SE):
Jack Bailey, Andrew DeWolf

Respondents:
Village of Lyons NY Clerk & Board of Trustees
76 William St, Lyons NY 14489

DATED: _____

SO ORDERED: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WAYNE

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In the matter of the Elector Initiated Dissolution of the Village of Lyons:

Jack Bailey
Andrew DeWolf

Petition pursuant to GML 17-A Title III
Section 785, CPLR 63 and CPLR 78.

PETITIONERS,

Assigned Justice:

For a Preliminary Injunction pursuant to Article 6311 and a decision pursuant Article 7803 of The Civil Practice Law and Rules,

-against-

Village of Lyons – Village Clerk & Board of Trustees

RESPONDENT

_____X

.....

PLEASE TAKE NOTICE that Petitioners (Appearing *pro se*) dated January 4,2014; together with attached exhibits, move for a **Temporary Restraining Order and Preliminary Injunction** prohibiting Respondents from scheduling and holding a referendum under GML 17-A; and hereby move via **Order to Show Cause** as to why the COURT should not declare the Petition of December 18, 2013 to be Substantially Non-Compliant with GML 17-A Section 785 and fatally defective. Why the Court should not declare the Village Clerk Petition Certification Arbitrary, null & void. Why the COURT should not immediately prohibit respondents from passing a resolution accepting the Village Clerk certification and scheduling or holding a referendum pursuant to GML 17-A Section 785.

Petitioners: Jack Bailey
35 High Street
Lyons NY 14489

Andrew DeWolf
7 Sisson Street
Lyons NY 14489

.....

Respondents: Village of Lyons Clerk & Board of Trustees
76 William Street
Lyons NY 14489

.....
DATED: January 4, 2014

Petitioners, appearing *pro se*, along with Verified Petition so Move and allege as follows:

Jurisdiction, Venue and Parties:

1). Petitioners appearing *pro se*, reside within the geographic limits of the borders of the Village of Lyons, County of Wayne, State of NY; are registered to vote in same, signed the original dissolution petition, and preserved via served written notice their intent to object to the legality of the December 18, 2013 Petition at question; therefore, they have standing to bring this action.

2). Respondent, Village of Lyons Board of Trustees and Village of Lyons Clerk, are the formal recognized government entity serving the municipality incorporated as the Village of Lyons and the only parties by law answerable to the petition pursuant to the requirements of GML 17-A Title III Section 785.

3). This proceeding pursuant to Articles 63 and 78 of the Civil Practice Law and Rules is the proper mechanism for seeking review and recourse.

4). Petitioners have no other recourse than pursuing relief as allowed in CPLR 7803. Therefore, this court is the proper venue.

Relief Requested

5). Petitioners seek a Temporary Restraining Order and a Preliminary Injunction prohibiting Respondents from passing a resolution accepting the certification of the December 18 Petition of Connie Rios and from scheduling a referendum until a complete judicial review has occurred pursuant to CPLR 7803 and a decision has been reached in this case. Otherwise, Petitioners believe Respondents will proceed forth at the Special Village Board Meeting scheduled for January 9, 2014, in passing a resolution accepting the Village Clerk Certification of the Petition at question and scheduling a referendum. Such action would be injurious to the interests of Petitioner Electors in this case because it will thwart their rights under the

initial Elector Initiated Petition to be treated equally under the law, ensure any following petitions adhere to the same statutory requirements, and further would thwart the majority vote of November 6, 2012 affirming the will of the majority of electors that voted to dissolve the Village of Lyons. Petitioners believe the Petition Certified by the Village Clerk is substantially non-compliant with the law and fatally flawed with the potential for fraud in the petition evidenced in exhibits for further review. Petitioners believe that the Village Clerk failed to adhere to the statutory process for authenticating the petition, and thus the certification is flawed, arbitrary & capricious, illegal and void. By allowing the Village Board of Trustees to accept this illegal certification, pass a resolution, and schedule a vote, such will render any court proceedings potentially moot and irreversible unless action is taken by the Court to preserve Petitioner and elector rights in this case. (See **Exhibit E**)

6.) Petitioners seek JUDICIAL REVIEW of the Final Determination of the Village Clerk of the Village of Lyons that the December 18, 2013 petition was substantially compliant with law, and contained the proper threshold of legal signatures to satisfy the requirements of GML 17-A Title III Section 785.

7.) Petitioners ask the Court to DECLARE that the Village Clerk failed to adhere to the requirements of the law, that the Certification process used was arbitrary and capricious, and to DECLARE the December 18, 2013 Petition fatally defective and substantially non-compliant pursuant to the requirements of the above referenced law.

8) Petitioners ask the court to PROHIBIT Respondents from passing a resolution, scheduling and holding a referendum on the Final Dissolution Plan of the Village of Lyons.

9.) Petitioners ask the Court to COMPEL the Village of Lyons Board of Trustees to continue the dissolution process articulated by GML 17-A as if there were no legal petitions filed and commence the Dissolution Plan adopted by the Village of Lyons.

10.) Petitioners ask the Court to grant costs if Petitioners substantially prevail in these proceedings.

Background and Facts

11.) This proceeding arises from an initial Elector Initiated Petition submitted to Deputy Clerk Karen DeSain August 2, 2012. On August 9, 2012 Village Clerk Denise Darcangelis certified the original petition. (**Exhibit F**)

12.) Village Electors voted to dissolve the Village of Lyons November 6, 2012. The vote was certified November 27, 2012 affirming a majority of legal Village Electors chose to dissolve the Village of Lyons.

13.) On November 4, 2013 the Village of Lyons Board of Trustees adopted a Final Dissolution Plan pursuant to GML 17-A and by order of Honorable Supreme Court Judge Nesbitt on August 27, 2013 via Index # 2013-75906.

14.) On December 18, 2013 Elector Connie Rios submitted a petition named "*Petition to seek a referendum on the question whether Village of Lyons Elector Initiated Dissolution Plan shall take effect?*"

15.) On December 20, 2013 Elector Jack Bailey submitted a Notarized Notice of Intent to Dispute the Legality of the December 18, 2013 Petition with a goal of preserving Petitioner rights to object to a facially and legally deficient petition. (**Exhibit A**)

16.) The Village of Lyons Offices closed December 21-25 & 28-29 for the weekends and Christmas Holiday. During that time Petitioners worked diligently to sort through over 95 non-paginated petitions (while balancing jobs and the Christmas Holiday), for substantial adherence to GML 17-A Title III, Sections 779 & 785 screening also for potential fraud, and illegal signatures/addresses etc. pursuant to the Registered list of eligible voters maintained by the Wayne County Board of Elections as of December 20, 2013.

17.) Petitioner Andrew DeWolf personally delivered the formal objections of Petitioners to Respondents at 0805hrs on December 30, 2013 which was the next scheduled business day of the village. We had completed our review on Saturday December 28, 2013 but the Village Offices were closed. (**Exhibits A,B,C, 1-66.**)

18.) Upon delivering the formal objections of Petitioners to the December 18, 2013 Petition of Connie Rios, Respondent Village Clerk Denise Darcangelis notified Petitioners that she had already certified the December 18, 2013 Connie Rios Petition on Friday, December 27, 2013. Village Clerk Denise Darcangelis verbally acknowledged she received a FOIL request from Petitioners seeking a copy of such but declined to provide a copy. She ordered Petitioners to complete another handwritten FOIL request, admitted the certification was a one page document, and proceeded to refuse Petitioners permission to either inspect or obtain a copy of the aforementioned formal certification. She reported that pursuant to FOIL, she was not required to provide such for 5 business days and she was exercising those rights because her office was too busy to make a single copy. This interaction was witnessed by Deputy Clerk Karen DeSain and former Police Chief Stephen VanDuyne.

19.) December 26, 2013; Village Clerk Denise Darcangelis formally certifies the December 18, 2013 Petition of Connie Rios and notifies the Village Board of such action. **(Exhibit D)**

20.) January 2, 2014; Village Board of Trustees scheduled a Special Meeting of the Board to enact a resolution and set a date for referendum asking whether the dissolution plan shall take effect. **(Exhibit E)**

21.) January 3, 2013; Petitioners were delayed in filing this Article 78 petition due to Respondents failure to produce the single page Formal Certification from the Respondent until Friday January 3, 2014.

22.) January 3, 2014; Village Clerk Denise Darcangelis responded to a December 27, 2013 Freedom of Information Request providing copies already presented, 2 emails, but no Notice of Special Meeting or any communications discussing the December 18, 2013 Petition as specifically requested. **(Exhibit H)**

Basis for Relief

23.) Pursuant to CPLR 63, Petitioners have clear right to request both a Temporary Restraining Order and Preliminary Injunction prohibiting Respondents from proceeding further actions under GML 17-A until a full review of the facts on their merits can be considered by the court and a decision is reached. Respondents have already certified a facially deficient petition with fatal defects, declined to respond or review the filed objections, and have scheduled a Special Meeting of the Village Board for January 9, 2014. Without Court Order, Respondents will proceed to adopt a resolution and schedule a referendum that would negate the very reasons for judicial review and render any court decisions moot, which would not be in the interest of justice and would be against Electors interests in this case. **(See Exhibits A,C,D,E)**

24.) Pursuant to GML 17-A Title III, Section 785 Part 3 and Part 4; (Part 3) The Clerk of the Village of Lyons is statutorily required to authenticate that the Petition is in substantial compliance with provisions of Section 779 of Title III. (Part 4)The Clerk shall make a final determination within 10 days as to the sufficiency of the signatures on the petition.

25.) Pursuant to NYS Civil Practice Law and Rules Article 7803: Part 1 -Petitioners may seek Judicial Review of whether the Village Clerk complied with the above law as required. Part 2-Petitioners may ask the court to prohibit the Village Board of Trustees and the Village Clerk from scheduling and holding a referendum contrary to the law. Part 3-Petitioners may ask the court to declare that the Certification of

the Petition was contrary to the law, that the process and results of review were applied differently in an arbitrary and capricious manner, and determine that the petition is illegal pursuant to the law.

26.) *Heath v. Town of Islip* 169 Misc. 2d 382(1996) “Where language is statutorily mandated as part of the content of a petition, it is considered a matter of substance not form, requiring strict compliance. Herein, the absence of the statutorily prescribed statement aforequoted is fatal. As this defect tainted every petition involved, the clerk correctly invalidated all 5,859 signatures.... See *Higby v. Mahoney* 48NY2d 15(1979) on upholding statutory intents and judicial restraint in the tripartite scheme of balance when considering substantial compliance with law. “It is only the careless or inadvertent failure to follow the mandate of statute and case law which give rise to the complaints that come before us.” See also: *Matter of Frome v. Board of Elections of Nassau County* 57 NY2d 741(1982), *Matter of Angelis v. Town of New Baltimore* 30AD3d 940 (2006) in regards to substantial compliance on form versus substance.

27.) *Matter of Hutson v. Bass*, 54 N.Y.2d 772, 774 “While substantial compliance is acceptable as to details of form, there must be strict compliance with statutory commands as to matters of prescribed content”

28.) *Cavallaro v. Schimel* 194 misc. 2d 788 (2003) Ministerial duty of sufficiency review is to determine whether petition facially meets the requirement of the law, whether the signatures on the petition were qualified voters, and whether qualified voters may have signed twice.

AS AND FOR CAUSES OF ACTION REQUESTED

The Village Clerk of Lyons failed to follow the requirements of the law and authenticate that the Petition is in substantial compliance with the provisions of Sections 779 and 785 of GML 17-A Title III. The Village Clerk acted arbitrarily and capriciously in her manner of dealing with both petitions that came before her. By having signed the petition in question herself, and showing clear differences in how she dealt with both petitions, such behavior calls into question the diligence of duty performed by the Clerk and the validity of the entire process for authentication Further, it leaves open the question of influence of personal, financial, and ethical conflicts of interest in the final determination of the clerk. The majority of the Village Board of Trustees and the Mayor all were signors to the petition with declared interest to move forward short of court intervention. Finally, beyond the fatal defects in the petition there exists or are substantial challenges which leave open the question of possible fraud in the petitions or intimidation of electors in the petition signing process.

29.) Petitioners re-allege paragraphs 1 to 28.

30.) Petitioners further allege that Respondents retained full ability via the internet to review the law as well as the sample petition in the law. They had full access to the NYS Dept. of State Handbook for reference. Additionally, as employees of the Village, Respondents also had access to Village Attorney Art Williams as well as the “Dissolution Expert” Wade Beltramo, Chief Counsel of the NYS Conference of Mayors whom they are dues paying members of and entitled to consult with. (See **Exhibit B**)

31.) The Petition fails to substantially comply with the requirements of GML 17-A Title III Sections 785 and 779, making it fatally defective because it does not contain one of the statutory required clauses intended to help prevent fraud, nor does it include proper pagination to allow reasonable and appropriate review against possible fraudulent activity. (See **Exhibit B, Exhibit C** “Specification of Objections” page paragraphs 1-6, and **Exhibits 1-66**)

32.) The Petition further fails to substantially comply with the requirements of GML 17-A Sections 779 and 785 because cumulatively, the substantial defects cause it to fail to reach the required threshold of at least 25% of the legal electorate signing the petition in a manner complying with the published Registered List of Voters maintained by the Wayne County Board of Elections as of December 20, 2013 0918hrs. Further, the petition contains non-registered voters, voters who have moved and failed to re-register, possible fraudulent witness statements, illegible names, and names and addresses legally questionable due to multiple possible identities of which may be ineligible per BOE list of voters. (See **Exhibits 1-66**)

33.) The Village Clerk applied different standards in how she reviewed both petitions instead of adhering to the requirements set forth in Sections 779 and Sections 785 of the law, making the Final Determination both Arbitrary and Capricious because the standards were applied different, contrary to law, and pursuant to Respondent’s own bias in the case. In **Exhibit F**, Respondent clearly delineates that she invalidated signatures for being Non-Registered Voters, different addresses than the Board of Elections Master List, witnesses to their own signatures, and deficiencies in signature lines with dates or names. Reviewing **Exhibit D** for comparison, a reasonable lay person would conclude that none of those screening parameters were utilized and that a “rubberstamp” approval was given. Facially reviewing both exhibits, it’s clear that a marked difference is present affirming arbitrariness and capriciousness. (See **Exhibit D** and **Exhibit F** for comparison and contrast)

34.) Respondent Village Clerk Denise Darcangelis, the final statutory entrusted decision maker in the process, was a signor to the petition on December 3, 2013 and witnessed by Village Trustee Sean Dobbins. Respondent had full opportunity at that time to review whether the petition substantially complied with the law and correct any noted deficiencies. (See **Exhibit 25**.)

35.) Respondents signed the December 18, 2013 Petition at question and at that time each had ample opportunity to review the petition for substantial compliance and correct any noted deficiencies: Mayor Terry R. VanStean (**Exhibit 61**), Trustee Dennis D. Alvaro (**Exhibit 40**), Trustee Sean C. Dobbins (**Exhibit 25**), Trustee Richard A. Evangelist (**Exhibit 15**) Deputy Clerk Karen A. DeSain (**Exhibit 8**).

36.) By being a signor to the petition, Respondent Village Clerk Denise Darcangelis cannot be considered a presumed objective 3rd party and should instead be considered ethically and legally biased against performing her duties that would authenticate that the December 18, 2013 was substantially non-compliant with law. Further, we argue that by being entrusted as the sole authority for determining authenticity of compliance and compromising her position by being a signor to the petition in question, the Village clerk deviated from what is codified in Public Officers Law Section 74 “Code of Ethics” for Public Officers.

37.) (See **Exhibit G** – Finger Lakes Times Article 12/31/2013) Petitioners believe that indirect and possibly direct elector intimidation occurred by the passers of the petition in that persons of noted authority passed these petitions along with ordinary citizens, and that such authority over electors daily lives would be enough to coerce the signatures of electors out of fear of offending the Employees of the Village they would depend on for Fire, Police, Code Enforcement, DPW, and Water & Sewer Services.

38.) The Village Police Chief Richard Bogan (**Exhibit 33**), Officers of the Police force Jeff Shields & Anthony Bartucca (**Exhibits 11 & 54**), Code Enforcement Officer & Fire Chief of Village Robert Darcangelis(**Exhibit 14**), Parking Enforcement Officer Denise Eaton (**Exhibit 40**), Police Secretary Helen Weimer (**Exhibit 16**), Interim Head of DPW Thomas Gowan (**Exhibit 31**), Planning Board John McCranels (**Exhibit 2**), Planning Board Scott Bailey (**Exhibit 3**) – Above references are single examples of multiple witness petitions. All were witnesses to the signatures on the petition and were positions of authority that provided an unspoken coercion to sign out of fear of offending vital employees that electors would depend on in daily life.

Conclusion

39.) The legislature entrusted the Respondents as public officials to act in sustained good faith and perform statutory required duties, even while they may be reluctant and hostile participants to a process which seeks to completely dissolve the entity they serve and may work against Respondents personal, financial, and social interests. In considering the issues at hand and the larger picture of justice and maintaining balance in the tripartite scheme of government, it is critical that we defer to the legislature in this case and enforce valid law and prior judicial case precedent. Petitioners are part of the original electors who initiated this legal process and were held to the same standards we now ask this court to invoke equally. Respondents, including the sole authority for authenticating the final petition, have the same rights to express constitutionally protected speech, but must exercise caution as public officials to avoid placing themselves in an ethically compromised position such as occurred in this case. Therefore, we ask this Court to essentially *de-novo* review whether the petition was substantially compliant or was instead fatally defective. We further ask this Court to decide whether the Village Clerk acted arbitrarily and capriciously in certifying it contrary to law. Finally, we ask this Court to protect the Electors interest in this by granting the appropriate restraining order, injunction, reviewing the merits of the case with the law and previous case precedents considered, and then decide our pleadings pursuant to the impassionate equal justice rule of law.

Please take further notice that pursuant to CPLR 7804, answering papers must be served at least five (5) days before the return date here-in.

Dated: January 4, 2014
Wayne County NY

Appearing *pro se*:

:

Jack Bailey
35 High Street
Lyons NY 14489

Andrew DeWolf
7 Sisson Street
Lyons NY 14489

SUPREME COURT JUDGE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WAYNE

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Verification - Affidavit

Each of the following states, deposes, and affirms that:

- 1). I am a resident and registered voter in the Village of Lyons who signed the original Elector Initiated Dissolution petition.
- 2). I have read the foregoing petition and know the contents thereof, and the same are true to the best of my knowledge except as to matters stated to be alleged upon information and belief, and as to those matters I believe them to be true.

PETITIONERS

Jack Bailey: _____

Andrew DeWolf: _____

Sworn to this 4th day of January 2014:

Notary Public

Exhibits Summary

- Exhibit A: December 20, 2013 Notice to Village Clerk of intent to dispute December 18,2013 Petition as to its validity.
- Exhibit B: NYS Citizen's Guide to Petitioning for Local Government Consolidation or Dissolution.
- Exhibit C: Notarized Notice of Objection & Specification of Objections sheet delineating all of Petitioner's specific objections to the December 18, 2013 Connie Rios Petition. States 6 paragraphs explaining why Petition fatally defective and fails to substantially conform with GML 17-A Sections 779 and 785. Then presents and explains the 66 exhibits supporting our objections. Followed by initial exhibits 1-66 submitted to the Village and now incorporated into our exhibits to the Court.
- Exhibit D: Formal Certification of Village Clerk to Connie Rios certifying December 18, 2013 petition as valid, dated December 26, 2013 not December 27, 2013 as Petitioners were told. Also, page 2 of exhibit is the email obtained via FOIL notifying the board at 0938hrs on December 26, 2013.
- Exhibit E: Special Notice of the Village Board dated January 2, 2014, which was not noticed on the website until January 3, 2014. Sets a special meeting for January 9, 2014 to pass a resolution accepting certification and setting a date for referendum.
- Exhibit F: (Out of date/Sequence due to late developing evidence).This is the Formal Certification of the Village Clerk certifying the

original elector initiated petition. We enter this to show the clear differences between how the two petitions were handled by the clerk, and even how they were certified.

Exhibit G: Finger Lakes Times Article in which interviewee stated they felt pressured to sign the petition because it was Village Police Officers who came to her door and “she didn’t want to be a target.”

Exhibits 1-66 (Was the original exhibits presented to village, now incorporated into this case, see Exhibit C for further) 66 petitions pages with specific objections as previously noted as evidence of fatal defects as well as showing substantial non-compliance with GML 17-A Sections 785 and 779.