

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

Index # 2014-76640  
Hon. John Nesbitt

.....X

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

**Jack Bailey**  
**Andrew DeWolf**

**Petitioner reply to Respondent Answer  
and Cross Motion dated January 6, 2014**

PETITIONERS,

-against-

**Village of Lyons – Village Clerk & Board of Trustees**

RESPONDENT

\_\_\_\_\_X

.....  
**PLEASE TAKE NOTICE** that Petitioners intend this filing as a formal reply to the correspondence to Judge Nesbitt from Nesbitt & Williams Law Offices dated January 6, 2014 which provides a threshold argument and cross motion for dismissal.

Petitioners:	Jack Bailey	Andrew DeWolf
	35 High Street	7 Sisson Street
	Lyons NY 14489	Lyons NY 14489

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

- .....
- 1.) On January 6, we received a copy of a letter of correspondence addressed directly to Hon. Judge Nesbitt that appears to be an Answer and Cross Motion by respondents to the original petition by Petitioners moving via Order to Show Cause.
  - 2.) The Respondents assert a threshold argument that Petitioners lack standing, and move for a dismissal. It does not address the fatal defects, substantial non-compliance, or potential fraud in first petition nor the arbitrariness and capriciousness of the Village Clerk’s Certification of the second petition.
  - 3.) In response to the motion for dismissal for lack of standing pursuant to GML 785, Petitioners ignore key arguments about the design and legislative intent behind the entire GML 17-A, and especially Section

785 of Title III. GML 17-A was passed by the legislature and signed by the governor with a stated goal of empowering the electorate with the ability to dissolve or consolidate the layers of government and promote efficiency and cost savings.

A.) Part 1 of Section 785 sets for the continuance of government until the final dissolution date.

B.) Part 2 is a savings clause, that empowers the electors with the ability to vote again on whether the final dissolution plan adopted should be continued and the village dissolves, or whether the process should cease. Because the gravity of this would be the result of overturning the initial vote of the electorate and the decision is whether to follow the final plan and dissolve, the legislature again ensured that all of the original requirements would be adhered to for the second process.

C.) Part 3 requires that any petition submitted must also substantially comply with the requirements of section 779 just as the initial petition was required to do.

D.) Part 4 entrusts the Village Clerk to properly authenticate the second petition in the same manner the first petition was reviewed, and within 10 days she must either certify or deny the second petition.

E.) Finally, in looking to further understand legislative intent here, reference Part 7 where the question is required to be read an affirmed positively by the electorate, and acknowledges that the electorate has already voted to dissolve and this vote is to continue dissolution or stop it, via voting for the plan or against it.

4.) Petitioners were original electors who signed the first petition to commence an Elector Initiated Dissolution and were subjected to the review of the Village Clerk pursuant to Section 779 of this law. Respondents are signors and beneficiaries of the second petition which seeks to force another vote on whether the dissolution plan should be commenced or whether dissolution proceedings should cease. The law requires that the second petition be held to the same standards as the first petition.

6.) Petitioners assert standing pursuant to the rights of certorai codified in CPLR 7803, and that the second petition, if illegal, would disenfranchise the legal vote of November 6, 2012 and Petitioners rights to be treated the same by their government officials as Respondents were afforded.

7.) The purpose of Section 785 part 4 is to ensure that if the Village Clerk declares the second petition invalid, then the electors who signed that petition have clear statutory standing to appeal such decision. Its purpose is to protect against disenfranchisement of electors and ensure proper standard of review. In the instant case, the Village Clerk is also an elector who signed the petition at question with obvious bias towards ensuring that a second vote occurs, and Petitioners believe the Village Clerk used her official position to apply different criteria in reviewing the second petition for the purpose of forcing a second vote which would ensure her personal interests that the dissolution process cease.

8.) C.P.L.R Article 78 is in place to allow citizens the right to have the judiciary review the actions and decisions of public officials, and insure those actions were legal and justified. It is pursuant to this concept that Petitioners have standing to seek judicial review. Petitioners do allege that Respondents failed to comply with the law, acted in error of law, and utilized an arbitrary and capricious process to do so, and certified a possibly fraudulent petition. We further allege that Respondent's compromised their official duty by signing the petition at question and opening the process up to independent judicial review, which is why CPLR 78 exists and thus grants standing in this case.

9.) Petitioners have reviewed the CPLR 6301 and do agree that we erred in moving for a Temporary Restraining Order, but contend that we do retain the rights to move for a Preliminary Injunction against respondents. Pursuant to CPLR 6311 – Petitioners do have the right to ask for a preliminary injunction because we served Respondents first and properly, they have acknowledged such service, and this was presented to a Special Term of the Supreme Court. The issue at hand is whether a Certification of a Petition should be allowed to proceed, and a vote scheduled on January 9, 2014 which would negate the results of a November 6, 2012 legal vote. Petitioners contend the petition certified is fatally defective, illegal, possibly fraudulent, the process used to certify it was arbitrary and capricious, and as such all proceedings after will serve to disenfranchise a legal vote and petitioners interests. It is always the goal of the courts to protect the interests of electors, which a preliminary injunction will do in this case.

10.) Respondents themselves believe that this second petition and vote is for the community to again confirm whether we wish to dissolve. **(Exhibit B)** Per Mayor Vanstean the vote question should read “Shall the Village of Lyons be dissolved? Similar to the first vote, but I will check that for sure with the consultants when we meet on Monday.”

11.) The Respondents never replied to Petitioner’s filed objections, and instead replied via the media. **(Exhibit A)**. The Village Attorney Art Williams stated “As far as I am concerned and according to the statute, the village believes the petition is sufficient.” Thus, he acknowledges that the entire issue here is whether the Village Clerk acted arbitrarily, capriciously, and contrary to the commands of the law when she certified this petition. Such questions are allowed for review under CPLR 7803 and further affirm standing. Further, “According to Williams, One Lyons would have to file an Article 78 against the Village in Wayne County Court for their objections.” By stating such, Respondents affirm that we have standing to pursue this in Court.

### **Conclusion**

The motion for dismissal on threshold grounds that the petition lacks standing is without merit, Petitioners did err in moving for a Temporary Restraining Order but do have grounds to move for a preliminary injunction and the rest of our relief requested in the initial Petition/Order to Show Cause Motion dated January 4, 2014 and filed January 6, 2014. Both sides of this argue that the electorate should not be disenfranchised. By being afforded independent dispassionate judicial review, the electors can be reassured that the entire process was legal, justified, and not pursuant to any possible fraud. Such is the purpose of Article 78 and the reason we are before this Court.

Dated: January 8, 2014

SUPREME COURT JUDGE

SUPREME COURT OF THE STATE OF NEW YORK

Index #2014-76640

COUNTY OF WAYNE

.....X

**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 Petitioner Reply to Respondents Reply and Cross Motion for Dismissal, 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 8<sup>th</sup> day of January 2014:**

---

**Notary Public**

