

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

JACK BAILEY and ANDREW DEWOLF,

Petitioners,

vs.

**VERIFIED ANSWER
AND RETURN**

INDEX # 76640

VILLAGE OF LYONS, VILLAGE CLERK
AND BOARD OF TRUSTEES,

Respondents.

THE RESPONDENTS, Village of Lyons Village Clerk and Board of Trustees, by their attorney, Arthur B. Williams, Esq. for its Answer and Return, respectfully allege as follows:

1. ADMITS the allegations contained in paragraphs 1 to the extent that they signed the original petition and are registered voters, 2, 3, 11-15, 16 to the extent that the Village Office was closed, 17 to the extent that objections were filed, 18 to the extent that the petitions had already been certified and that a FOIL request had been made, 19, 20, and 24; lacks knowledge or information sufficient to form an answer to paragraph 16 and 21, and DENIES each and every other allegation contained in the Petition.

THE ISSUES

2. The issues are whether the Petitioners have standing to bring the immediate action and whether the petition certified by the Village Clerk is sufficient.

THE FACTS

3. This matter is the result of the voter initiated dissolution plan which was adopted by the Lyons Village Board on November 4, 2013.

4. Thereafter, on December 18, 2013 Connie Rios submitted to the Village Clerk a petition entitled "Petition to seek a referendum on the question of whether the Village of Lyons dissolution plan shall take effect"

5. On December 16, 2013 the Village Clerk certified the petition having found that there were sufficient valid signatures to require that the Village Board schedule a special election on the proposition stated in the petition.

6. On January 9, 2014, the Lyons Village Board met and scheduled a special election on the proposition for March 18, 2014.

THE PETITIONERS LACK STANDING

7. As set forth in the legal memorandum of law being submitted herewith, the Petitioners lack standing under GML section 779 and section 785 in that both statutes specifically state. *"the contact person or any individual who signed the petition may seek judicial review of such determination in a proceeding pursuant to article 78 of the civil practice law and rules."* Neither of the petitioners are named as the contact person on the petition nor are either one of them signatories to the petition.

8. Additionally, the general rules of standing preclude the petitioners from maintaining this proceeding in that they cannot show any "injury in fact" and that any perceived injury is merely speculative.

THE PETITION CERTIFIED BY THE VILLAGE CLERK IS SUFFICIENT

9. For the reasons set forth in the attached memorandum of law, the Village Clerk properly determined the sufficiency of the petition.

10. The Village Clerk determined that a total of 491 signatures would be required in order to cause the referendum to be scheduled. The submitted petition contained a total of 615 signatures of which the Village Clerk disqualified 45 signatures for various reason including persons not being a registered voter, illegible signatures or for improper dating of the petition. There were 570 remaining valid signatures well in excess of the number needed to sustain the petition.

WHEREFORE, the Respondent, Village of Lyons, Village Clerk and Board of Trustees, respectfully requests that this Court **DISMISS** the Petition herein or in the alternative, make a finding that the petition submitted is sufficient thus allowing a special election to be held on the issue of whether the plan of dissolution take effect and granting such other and further relief as the Court deems just and proper.

DATED: January 13, 2014

RETURN

EXHIBIT "A"

Affidavit of Village Clerk regarding sufficiency of petition requesting a referendum on the question of whether the elector initiated plan of dissolution should take effect.

VERIFICATION

STATE OF NEW YORK)
COUNTY OF WAYNE) ss. 7

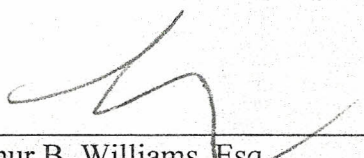
Arthur B. Williams, Esq. an attorney duly admitted to practice in the State of New York, affirms under penalty of perjury the following:

I am a member of the law Nesbitt & Williams, attorney for the Respondent, the Village of Lyons Board of Trustees.

I am acquainted with the facts and circumstances thereof. I have prepared and read the annexed **ANSWER AND RETURN** and know the contents thereof; that the same is true of my knowledge, except as to those matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true.

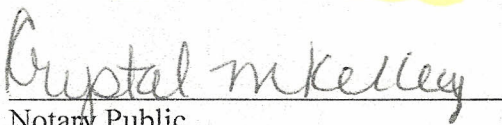
The source of my information and the grounds of my belief of the allegations contained in the answer herein are derived from my investigation of the facts of this action, communications with the Village Clerk for the Village of Lyons.

This verification is made by me, pursuant to CPLR 3020(D)(2), because Respondent is the Village of Lyons.



Arthur B. Williams, Esq.
NESBITT & WILLIAMS
Attorney for the Respondent
180 East Union Street
Newark, New York 14513
(315) 331-1334 (office)
(315) 331-1033 (facsimile)

Subscribed and sworn to before me
on the 13th day of January, 2014.



Notary Public

CRYSTAL M. KELLEY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01KE6071973
Qualified in Wayne County
My Commission Expires March 25, 2014

STATE OF NEW YORK
SUPREME COURT

COUNTY OF WAYNE

JACK BAILEY and ANDREW DEWOLF,

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COPY

AFFIDAVIT

INDEX # 76640

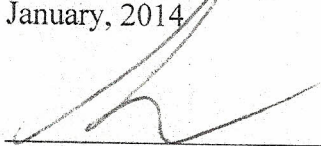
VILLAGE OF LYONS BOARD OF TRUSTEES,

Respondent.

Denise Darcangelis being duly sworn deposes and says that:

1. I am the Village Clerk for the Village of Lyons, New York.
2. On December 18, 2013, I was presented with a petition seeking a referendum on the question of whether the Elector-Initiated Plan of Dissolution should take effect.
3. Pursuant to General Municipal Law Section 785 (4), I made a final determination regarding the sufficiency of the number of signatures on the Petition.
4. In making my determination; I utilized the information provided to me by the Wayne County Board of Elections; that being the Wayne County Board of Elections Summary Voter Master List dated November 20, 2013.
5. The Petition contained 615 signatures and of those 615 signatures, 570 signatures were determined by me to be valid. I disqualified 45 signatures for various reasons such as not being a registered voter, improper dating, or having witnessed one's own signature leaving a total number of valid signatures at 570. (Attached

Sworn to this 13th day of
January, 2014



Notary Public

ARTHUR B. WILLIAMS
Notary Public, State of New York
Qualified in Wayne County
Commission Expires Nov. 30, 2014

Exhibit 1: #6 - told election officials at time of
voting address change. Said they would
make address change - Allowed to vote 11/13.

Exhibit 2 #9 Leland Bona 43 Catherine St.
sure he signed vote book same way

Exhibit #3 #1 ~~Bona~~ printed 1st then signed
or B. (Jr.) not written.

Exhibit 4 #7 - I agree did not count
#9 I agree did not count

Exhibit 5 #7 I agree did not count

Exhibit 6 #9. I agree did not count

Exhibit 7 #1 Agree did not count
#10 Amy Harris -

Exhibit 8 #3 Agree did not count ✓
#6 Ron vs Ronald E
#7 Nick vs Nicholas

* Exhibit 9 #9 Chris vs Christopher G

* Exhibit 10 #4 Carmie vs Carmela A
#9 Agree not counted

- Exhibit 11 #1 Agree not counted
* #2 S.E vs Java E

* Exhibit 12 #3 Agree not counted
#4 Agree - not counted

Exhibit 13 #2 Agree did not count
#3 Robert vs Robert A

Exhibit 14 #1 Randy vs Randall L
#2 Ricky vs Rick L

Exhibit 15 #8 Agree did not count

Exhibit 16 #3 Amanda Vanvalkburg Benjen vs
Amanda Vanvalkinburg

- #6 Counted as signature

#10 Gabe vs Gabriel A

Exhibit 17 - #1 Agree did not count
#6 Agree did not count

Exhibit 18 #5 Agree did not count

Exhibit 19 #4 Listed page 41

Exhibit 20 #3 Agree did not count

#4 Joe vs Joseph A.

#8 Joe vs Joseph J

#9 L vs Laura

Exhibit 21 #3 Agree did not count

#5 Ackie vs Aquila 5

Exhibit 22 #3 Aaron Pruner vs Aaron MJ Pruner

16 Depew Ave vs 16 Depew Ave Apt.

#6 Agree did not count

#9 Glen vs Glenwood B

Exhibit 23 #6 Agree did not count

#9 Agree did not count

Exhibit 24 #1 Agree did not count

#4 Agree did not count

#6 Agree did not count

Exhibit 25 #2 Cannot read Sam's Signature

Exhibit 26 #9 Address change
 Still Village Did Bd of Elections
 fail to update

Exhibit 27 #3 Agree did not count

Exhibit 28 #2 36 Phelps St vs 36 Phelps St Apt 1

Exhibit 29 #1 31 Pearl St vs 31 Pearl St Apt 313
 #2 Pat vs Patricia J

Inconsistent X X Nothing said about Address
 X #3 Nothing said about Address

Exhibit 30 #1 Robert M vs Robert M II

#3 Listed page 5

#6 Agree did not count

#10 Agree did not count

* Did not want to throw 10 out?

Exhibit 31 #8 Did not count

#10 78 Williams St vs 78 Williams Apt D

Exhibit 32 #4 Dawn M. Gowan vs Dawn Cole-Gowan

#5 Listed Page 32

#9 17 Lawrence St vs 17 Lawrence St Apt 1

#10 Page 25 listed

Exhibit 33 #7 5 vs Suzanne
#8 CJ vs. Clarence J

Exhibit 34 #4 14 Franklin St Apt 4 same as
list page 41

Exhibit 35 #5 Frank vs Francis J
#6 Ague did not count

Exhibit 36 #1 Barb vs Barbara J
#7 Page 18 Bill vs Sterling Jr
#8 written/printed 2 lines
#9

Exhibit 37 #2 Did not count
#3 Did not count

Exhibit 38 #4 57 William St vs 21 Montezuma St
#4 Did not count

Exhibit 39 #5 Terry vs Terence J

Exhibit 40 #2 Tom vs Thomas S

Exhibit 41 #1 Did not count

#5 Did not count

#6 Did not count

#8 Mary vs Mary ANN L

#10. Signature - his signature

Exhibit 42 #2 7 North vs 7 North Joy St

Exhibit 43 #1 Gino vs Gino-Salone

Exhibit 44 #1 Did not count

Exhibit 45 #6/7 Ted vs Theodore D

Exhibit 46 #8 Delbert L. Warner Jr vs Delbert L Warner Sr

#10 Agree did not count

Exhibit 47 #2 Did not count Agree

Exhibit 48 #1 Anthony Tiballi vs Anthony W Jr Tiballi

Exhibit 49 #2 Signature attempt made

Exhibit 50 #6 Did not count agree

Exhibit 51 #2 Michael E Tyler vs Michael E Tyler Jr

— Exhibit 52 #5 Amanda Percy vs Amanda Clarke
#6 Agree Did not count
#7 Kevin Horne vs Kevin M Jr. Horne
#8 Page 27 Listed at 150 Canal St

? Exhibit 53 #7 355 Spruce vs 214 Canal

? Exhibit 54 #2

Exhibit 55 #4 IM vs Michelle M
Attempt made
#5 Dispute Page 3

Dispute Exhibit 56 Did not put count on bottom

Exhibit 57 #3 Agree did not count

#4 Agree did not count

Dispute Not count on bottom dispute

Dispute Exhibit 58 No count on bottom

Exhibit 59 #3 Listed Page 43 w/ different address

? #4

Exhibit 60 #7 Ed vs. Edward J Sr.

Exhibit 61 #4 Agree did not count
#5 Date - did not cater
#6 25 Spencer vs. 37 Layton

? Exhibit 62 #9 Signed Married Name

Exhibit 63 #1 Agree did not count
#3 - Agree did not count

Exhibit 64 #8 B.E vs Brooks E

Exhibit 65 #1 31 Layton vs 33 Layton

X Exhibit 66 #2 Dispute - Did not sign 2X
#7 Agree did not count