



**Board of  
Elections**

# **Election Law Updates**

**State Board of Elections**

**September 19, 2017**

# Ballot Access Case Law

# Residency Requirements

## Glickman v. Laffin, 27 NY3d 810(2016)

- Registering in another jurisdiction “broke the chain of New York electoral residency”
- Residency did not recommence until voter registered in New York again

# Residency Requirements

- Generally, for local office, you do not have to be a resident to file a petition
  - Local Law Exception
- Statewide Office, Assembly and Senate
  - A Resident of the State for Five Years
- Assembly and Senate
  - A resident of the district for One Year
    - Exception during redistricting years

# Adjudicating Residency for Candidates

- Courts will look at several different factors in determining whether a candidate meets residency requirements
- In Glickman, the Court held that registering in another jurisdiction broke the chain of his New York electoral residency

## Hoose v. Malick, Sup Ct, Albany County (2016)

The trial court found that an upstate candidate for State Senate failed the one-year residency requirement because the candidate was registered to vote in New York City until July, 2016 (two months before the primary) and the candidate testified that she had made no plans to change her election residency until July 2016.

- Question related to when new residency begins
- “did not recommence until he registered to vote in New York in 2015.”

# Cancelling Enrollment

Election Law § 16-110 [2] establishes a procedure for cancelling a voter's enrollment when a party finds the voter is “not in sympathy with the principles of such party”.

Green Party of Erie County v. Erie County Board of Elections, 54 Misc.3d 318 [Sup Ct, Erie 2016]

- If a voter appears via an affidavit and an attorney, the investigation committee must make evidentiary findings in order for the disenrollment to stand.
- If a candidate is disenrolled after accepting nomination, removal of the ballot is not the appropriate relief

## Petitions; Title of Office

- Matter of Roberta James v. Westchester BOE, 53 Misc.3d 423 [Sup Ct, Westchester 2016]
  - For party positions, the petition must clearly state that the petition is related to a party position; not a public office.
  
- Zacher v Ceretto, Sup Ct, Albany County (2016).
  - Member of the New York State 145<sup>th</sup> Assembly District was sufficient. The word “member” adequately describes the position being sought.



## Petition; Date

- Avella v. Johnson, 142 AD3d 1111 [2nd Dept 2016]).
  - Second Department holds that the date must be in strict compliance with statute. If the petition signatures only bear the month and day, but not the year, the signatures are invalid as they do not strictly conform to statute.

## Petitions; Signatures

- Benson v. Eachus, Sup Ct, Albany County(2016).
  - Signature has to match the buff card, even if the signor testifies that she signed the petition.

## Petitions; Notaries

- Matter of Sheldon v Bjork, 142 A.D.3d 763 [4th Dept 2016].
  - Fourth Department joined a Second Departments prior holding.
  - The fact that notary's signature was stapled to signature sheets instead of “appended [to] the bottom” of each sheet as required by Election Law § 6-132 (2), did not require invalidation of signatures and opportunity to ballot petitions.

# Regulations in Progress

# Regulations Being Proposed

- 6201 – Fair Campaign Code Update
  - Use of Hearing Officers in Relation to the Disclosure of Polls
- 6216 – HAVA Complaint Update
  - Streamlines HAVA Complaint Procedure
  - Discussed during BMD presentation
- 6200 – Campaign Finance Update
  - Relates to Committee of Three and the removal of a Treasurer
  - Discussed during Campaign Finance presentation
- Deadline for Public Comment on All of the Proposals is July 10th

# Passed Legislation Pending Review by Governor

## Passed Legislation Pending Review by Governor

- (Assembly Bill 6907-A / Senate Bill 443-A) The statute currently allows “half day” shifts. This legislation will allow local boards at their option to authorize shorter or longer “split” shifts. This proposal is NYSBOE 2017 program bill 17-08.

## Passed Legislation Pending Review by Governor

- (Assembly Bill 5740 / Senate Bill 1567) Requires boards to publish directory of candidate websites as provided by the candidates. This proposal is similar to NYSBOE 2017 program bill 17-09.

## Passed Legislation Pending Review by Governor

- (Assembly Bill 8019 / Senate Bill 5058) Repeals Election Law § 2-126, related to the use of party funds in primaries, because the provision has been declared unconstitutional. This proposal is NYSBOE 2017 program bill 17-22.



## Passed Legislation Pending Review by Governor

- (Assembly Bill 567 / Senate Bill 218) Repeals statutory language requiring that a witness to a party designating petition or independent nominating petition must reside in the district in which the office is to be voted for and to add language that such a witness may not witness a petition for a candidate competing for the same office.

# Questions?