

STATE OF NEW YORK
STATE EDUCATION DEPARTMENT

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In the Matter of the

HEMPSTEAD UNION FREE SCHOOL DISTRICT
and BOARD OF EDUCATION OF THE
HEMPSTEAD UNION FREE SCHOOL DISTRICT,

Petitioners,

-against-

GWENDOLYN JACKSON, SHELLY BRAZLEY,
CAPRICE RINES, DAVID GATES, MARIBEL
TOURE, HANS THEVENOT and JEFF SPENCER,

Respondents.

-----X

RESPONDENTS', MARIBEL TOURE AND GWENDOLYN JACKSON,
MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS'
APPLICATION SEEKING A STAY OF THE SWEARING-IN OF
RESPONDENTS, ANNULMENT OF THE ELECTION RESULTS,
THE ORDER OF A NEW ELECTION, AND THE APPOINTMENT
OF A MONITOR FOR THE NEWLY CALLED SPECIAL ELECTION

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PRELIMINARY STATEMENT

We represent Respondents Maribel Toure and Gwendolyn Jackson. This Memorandum of Law is submitted in opposition to the Petitioners application to the New York State Commissioner of Education seeking:

- a stay of the swearing-in of [Gwendolyn] Jackson and [Maribel] Toure until the Commissioner has had an opportunity to review the allegations and finally determined the Verified Petition; and
- that the Commissioner annul the election results; and
- that the Commissioner direct that a new election take place to determine which two people will take the Board Trustee seats that are set to be vacated on June 30, 2015; and
- that the Commissioner appoint the New York State Attorney General's office as the monitor for the newly called, special election to ensure fairness in the process.

The election which is now being contested took place May 19, 2015 at the Alverta B. Gray Schultz Middle School library, located at 70 Greenwich Street, Hempstead, New York 11550. It is with this backdrop that Respondents respectfully oppose each and every aspect of the Petition and the relief sought therein. A careful reading of the Petition and all those items offered as support demonstrates that this is an exercise in an attempt to for the District to imitate the process from last year when the District was the Respondent. In that process the District and others were forced to answer to the manner in which they conducted the election and allowed the election to be turned into an embarrassment for the People of Hempstead. In the Commissioner's decision it was clear that the level of abuse of the election process had been 'outing' and the reasons why the Hempstead School District had been plagued with so many problems for so many years became evident. The current Petition is apparently aimed at trying to abuse the appeal mechanism by engaging in manufacturing issues where there are none and claim violations where none exist.

In the pages to follow, we will address the points raised by Petitioners at the expense of the taxpayers, and demonstrate that there is no basis for a stay and indeed no basis for the consideration or granting of any of the relief sought by the District Petitioners. First, we note that there are no individual Petitioners and that this application is done in the name of the Board of Education of the Hempstead Union Free School District. While verified by Mr. Lamont Johnson, who is now the President of the Hempstead School Board, there is no statement that he was authorized to verify this Petition and there is nothing contained in the petition which indicates that his swearing to the truth of the Petition is indeed based on his actual knowledge. In fact, since Mr. Johnson was not a candidate and was not directly engaged in the running and administration of the election, serious questions exist if his oath taken on the verification is supportable as is necessary in order for the verification to be valid. (See *Appeal of Crowley, et al.*, 39 Ed Dept Rep 665, Decision No. 14,345) Consequently, since there is nothing even vaguely suggesting that Mr. Johnson has any first hand information about any aspect of the Petition, it should be dismissed.

Referencing as their Exhibit A, Petitioners provide the Commissioner with a copy of the decision which found that these very same Petitioners' the Board of Education of the Hempstead Union Free School District to have engaged in some of the very same behavior they now allege. Indeed, the Commissioner's finding that:

On the record as a whole, these irregularities show a clear and convincing picture of informality to the point of laxity with respect to the provisions of Education Law §2018-b. While I have been understandably reluctant to overturn the results of a school district election where technical violations exist, this reluctance must of necessity yield to a showing of extensive disregard for statutory requirements, a has been established by petitioners in this case. (Citations omitted)(54 Ed Dept, Decision No, 16660 (NYCOMMED), 2014 WL444250)

It is well understood that the Commissioner of Education is vested with exclusive authority to deal with improper district meetings or elections and it is within the Commissioner's discretion to order a new meeting and/or election. See New York Education § 2037; *Summerville v. Roosevelt Union Free Sch. Dist.*, 513 N.Y.S.2d 252, 252 (1987); *see also Turco v. Union Free School Dist. No. 4*, 251 N.Y.S.2d 141, 142 (1964). Notably, the Commissioner of Education has annulled the results of a vote within an election *Weller Library Comm'n v. Bd. of Educ. of Mohawk Cent. Sch. Dist.*, Decision No. 14875, 2003. *Capobianco v. Ambach*, 492 N.Y.S.2d 157, 159 (1985) held, "...in view of the findings of the absentee ballot violations, which clearly affected the final outcome of the election, the Commissioner's determination to compel a new election was appropriate and within the scope of his authority." Conversely, the Commissioner will not entertain the overturning of an election or upset the outcome of the collective will of the voters without a strong showing of the need to do so. To accomplish their goal and prevent the seating of duly elected Trustees and invalidate the election, the Petitioners must establish not only that irregularities allegedly occurred, but that, if true, would impact the outcome of the election. *See; Matter of Boyes, et al. v. Allen, et al.*, 32 AD2d 990, *affd* 26 NY2d 709; *Appeal of Caswell*, 48 Ed Dept Rep 472, Decision NO. 15,920; *Appeal of Lanzilotta*, 48 Ed Dept Rep 428, Decision No. 15,905. Of interest in this Petition, is the fact that it was the Petitioners that administered and oversaw the election and created rules and engaged in actions intending to suppress the votes of voters as was clearly addressed by the affidavits of Melissa Figueroa and Mimi Pierre Johnson, identified as Exhibits A & B. The Petitioners make no claim that the alleged improper actions made any impact on the outcome of the election and they fail to even suggest that the votes cast by any of the voters were impacted, altered or changed in any way. From a review of the documents offered it appears that they are strewn with conclusions and

hearsay that lacks credibility and value in such a proceeding such as this. Likewise, the claims made about the actions of Mr. Dennis Jones are utterly without merit. Mr. Jones, is a retired detective in the New York City Police Department and is a resident and voter in the Hempstead Union Free School District. His affidavit, Exhibit C, addresses the paucity of the Petitioners' assertions and the apparent desperate nature of their application.

ARGUMENT

POINT I

NEITHER GWENDOLYN JACKSON OR MARIBEL C. TOURE FALSIFIED CANDIDATE CAMPAIGN EXPENDITURE DOCUMENTS

Pursuant to New York State Education Law §1529(1) and (2) an initial statement of campaign expenditures must be filed at least 30 days before the election, a second statement must be filed on or before the fifth day preceding the election and a final statement must be filed within 20 days after the election. In School Board elections it is expected that the statement will cover the period up to and including the day next preceding the day specified for the filing of the statement. The statute requires that if any contribution in excess of \$1,000 is received after the close of the period to covered in the last statement filed before the election that contribution must be reported within 24 hours of its receipt.

In the event the appropriate statement is not filed with the district clerk, the law provides that the candidate must promptly file a copy of such statement upon notice from the school district and/or the commissioner that the statement was not received. It is well understood that if a candidate still fails to file the statement then the only way the law can be enforced is for any other "candidate voted for at the election" or "any five qualified voters" to commence legal action in Supreme Court

requesting the court to order the candidate to file the required statements. In other words, school officials can and should remind candidates to file the appropriate expenditure statements, but only the state Supreme Court has the authority to order candidates to file these statements.

Both Gwendolyn Jackson and Maribel Toure who ran as separate individuals, are being accused of falsifying their expenditures. (See Exhibit D) Is the failure to report all expenditures of a campaign sufficient to warrant a stay of the swearing in process of the elected individuals as well as grounds to have a new election?

Under New York State Education Law §1529 if the appropriate statement is not filed with the district clerk, the law provides that the candidate must promptly file a copy of such statement upon notice of the school board and/or the commissioner that the statement was not received. As of this date no such notice has been filed or received by either Ms. Toure or Ms. Jackson, Further, if they had failed to file a complete statement of election expenditures, that fact would be an insufficient basis for setting aside the results of a school board election.” (See *Appeal of Muench*, 38 Ed. Dep’t. Rep. 649 (1999); see also *Appeal of Guttman*, 32 Ed. Dep’t. Rep. 228 (1992); *Matter of Pendergast*, 20 Ed. Dep’t. Rep. 127 (1980)).

Despite the allegation posed against both Gwendolyn Jackson and Maribel Toure, being false, if in fact there was a clerical error on the expenditure form, the mistake would not warrant a stay in the swearing in of the elected officials nor is it a sufficient reason to conduct an entirely new election. Here, as seen by the Affidavit of Ms. Jackson, she filed and then amended her filings in an effort to make sure that the filings were more detailed for the benefit of transparency, which was part of her platform.

The filing of this petition is a flagrant ploy from disgruntled individuals, as well as an abuse

of the administrative/legal system in an effort to postpone the rightful swearing in of candidates who ran a successful campaign and properly won seats on the School Board. It is with conceited verbosity that the individuals allege that campaign finances were not reported, however, the petitioners have failed to show proof that there is reason to suspect that there was an error made on the expenditure statements, and that the error was made to deceive voters, or put either petitioner at an advantage in the election that would be so tremendous as to drastically effect the outcome of the election. In fact, Ms. Jackson's Affidavit sets this issue to rest. (See Exhibit D) She is clear that she and Ms. Toure, maintain separate bank accounts and separate finances as they ran as a team and were successful.

The petitioners' allege that the second report made by Maribel' Toure, executed on May 18, 2015, states expenditures made by her or on her behalf exceeded \$500 and that she attached an itemized statement of expenditure, which the petitioners claim to not have received thus accusing Maribel Toure of perjuring her affidavit. Maribel Toure timely filed her expenditure statement and is able to reproduce any and all necessary materials needed to fix any clerical errors that may have occurred. The allegation which outside entities violated N.Y. Education Law § 1528.1 (c) is inflated and unjustified. The petitioner's claim that "the role of money on the District's election was so severe and pervasive that it vitiated the fundamental fairness of the election" (Petitioners Notice Of Petition, 9) but have not fostered any evidence to prove that the monetary difference between any/or all of the candidates and Candidate Toure was so significantly different that it would have the ability to affect the outcome of the election. The Petitioners also fail to foster any convincing evidence that Gwendolyn Jackson presented any perjured expenditure statements. In fact, in an attempt to double check all her records, Ms. Jackson found approximately \$100 that she could claim and has now submitted an amended second statement which is attached to Exhibit D. Nonetheless,

Candidate Jackson is able to reproduce any and all necessary documents to fix any clerical errors if there prove to be any.

Regardless of the slightest of possibility that the expenditure forms were not filed or reported accurately, the two candidates by governing law have the duty to correct the expenditure statements to assure accurate records, but there is no law justifying any further measures taken. This petition was created to not only waste the time of the court, but to create an undue hardship in the rightful swearing in of the elected candidates Maribel Toure and Gwendolyn Jackson. There is no merit behind these claims, nor are they sufficient enough to impose a stay on the swearing in process or the grounds to illicit a new election which would cost the District as well as its voters, unnecessary time, effort and money.

POINT II

THERE WAS NO ELECTIONEERING INSIDE THE 100 FOOT BOUNDARY AND NO ELECTIONEERING WITHIN 25 FEET OF A VOTING BOOTH

Pursuant to Education Law §2031-a.2, "Electioneering within the polling place, or within one hundred feet therefrom in any public street, or within such distance in any place in a public manner and no banner, poster or place card on behalf of or in opposition to any candidate or issue to be voted upon shall be allowed in or upon the polling place or within one hundred feet therefrom during the election."

It is well understood that all disputes over any district meeting or election must be referred to the Commissioner of Education, including when the school board itself believes that election results are in dispute. Once the results of an election are declared, there is no authority in the election officials or the voters to recanvass the results (*Appeal of LaValley*, 12 Ed Dept Rep 33 (1972).

Indeed the Board cannot engage in self help and do what the Hempstead School Board did in this instance. A review of Petitioners' Exhibit B. As the Commissioner will see from a review of the minutes of May 20, 2015 after accepting the and certifying the results of the election, the Board then moved and accepted a motion to reconsider accepting the results of the May 19, 2015 election. Clearly, this ultra vires action was contrary to the authority of the Board and was an action that only the Commissioner could take. *Appeal of the Bd. Of Education of Beekmantown CSD*, 50 Ed Dept Rep, Dec. NO. 16,253 (2011); *Appeal of the Bd. Of Education of the Ruch Henrietta CSD*, 48 Ed Dept Rep 486 (2009); and *Appeal of the Bd. Of Education of the Schroon Lake CSD*, 47 Ed Dept Rep 502 (2008). This fact was made known to the Board by letter dated May 22, 2015 to their attorneys, attached hereto as Exhibit E.

Mimi Pierre Johnson, co-campaign manager for Maribel Toure and Gwendolyn Jackson during the May 19th, 2015, Hempstead School District Board Election was accused of allegedly electioneering within twenty-five feet of the voting machine. As co-campaign manager Ms. Johnson's responsibilities were to address any issues or concerns, which were communicated to her through her constituents and report them to the District Attorney or District Clerk. Upon a issue of translation between two monolingual Spanish speaking women, Ms. Johnson was called upon to handle the situation and attempt to have the voters to gain access to the polls and not have their vote suppressed.

The District's Attorney Monte Chandler spoke to Ms. Johnson about any pressing issues that may appear throughout election day. She was given clear instructions and was told to come to the library where he would be stationed so he could address any concerns. So that she would not be accused of improper conduct, Ms. Johnson refrained from communication with any one other than

Mr. Chandler, Attorney Kershaw and/or District Clerk Wright. Her affidavit clearly sets out what she did and what she did not do. Contrary to the Petitioners' assertions no electioneering took place by Ms. Pierre-Johnson and the bald assertion that she did so is clearly unsupportable.

At no time did Ms. Pierre-Johnson advocate for any candidate, any ballot initiative or any subject for consideration by voters. Her efforts were to see that people that sought to vote were not excluded. She did this by abiding by the rules of the State and the District. Even still, the Petitioners do not provide any claim, no less proof that this alleged act would change the outcome of the election.

Ms. Johnson followed the guidelines set for her by Attorney Chandler the entire day. Later that day when an issue of translating the voting process and ballot information presented itself, in regard to two monolingual Spanish speaking women. As to not offend the electioneering statute, Ms. Johnson walked to the library requesting to speak with Attorney Chandler or District Clerk Wright. Although the law is clear and was discussed earlier with Attorney Chandler she met much resistance from him when this issue came to pass. He expressed that only district translators would be assisting in translating despite the rules presented to her earlier that morning.

With respect to a voting translator, a voter who has requested their preference of translator because they feel comfortable should not be denied. Election Law §8-306(3). The right to vote process in America is a civil right which has been fought for and safeguarded by The Constitution. Ms. Pierre-Johnson, knowing that many have died for the privilege to be able to vote in peace and without the pressure from outside influence sought to enforce that right for persons that were in effect being turned away. (See Exhibits A and B) Every American, whether English speaking or not should be able to exercise this right when determining representation for future of the community

in which they live. As to be denied such is a gross injustice and offends the foundation of America and the voters that came to vote that very day.

POINT III

THE ATTEMPT BY THE DISTRICT TO SUPPRESS VOTERS' RIGHTS AND DEPRIVE VOTERS OF THE FRANCHISE WAS PROPERLY ADDRESSED BY MS. FIGUEROA

Under Section 203 of the Federal Voting Rights Act, Nassau County must provide language access service during elections to Hispanic [Spanish speaking] voters, to ensure that all voters are able to cast a "meaningful and effective ballot." There is nothing which indicates that the Hempstead School District is exempt from this requirement.

On May 19, 2015, Melissa Figueroa was asked by two monolingual Spanish speaking voters, to serve as an interpreter through the voting process. Upon entering the voting room, Ms. Figueroa, alongside two unnamed female voters, were denied entry into the polls. Upon attempt to rectify the confusion, Ms. Figueroa and the voters were bombarded by a hostile group of people. This group began to yell at them and told them to leave, which, created an intimidating environment. Such behavior led to a denial of their Constitutional right to cast a vote in an election. Through the actions taken by but not limited to School Board Clerk Patricia Wright, School Board Attorney Monte Malik Chandler and Betty Cross, the voters and Ms. Figueroa were both made to feel unwelcome, discriminated against and uncomfortable. (See Exhibit A, Affidavit of Melissa Figueroa)

Ms. Figueroa was a volunteer for the Jackson/ Toure campaign who also made a monetary donation to the campaign. Nonetheless, she was never an employee of Ms. Jackson, Ms. Toure, or an agent of the voter's union. Ms. Figueroa volunteered her time to assist individuals whom cannot

speak or read English to help them exercise their right to vote for a candidate of their choice. Ms. Figueroa was asked to serve as a translator by the two monolingual Spanish speaking voters, and was inappropriately and unforgivingly halted from assisting the voters. This was all in the shadow of the outrageous actions taken by Petitioners to embarrass Ms. Toure and publicly make her produce her passport and proof of citizenship. (See Exhibit F)

“Under to New York Election Law and the Voting Rights Act, voters are entitled to receive assistance from the person of their choice. The voter may elect to be assisted by a person of his/her choice, aside from an employer (or the employer’s agent) or agent of the voters union. If the voter does not select a specific person, he/she will be assisted by two election inspectors, each from a different party.” Election Law, §8-306 (3).

The two female voters felt comfortable asking Ms. Figueroa to assist them in casting their vote. They were denied the right to choose their own interpreter and thus told district interpreters would be assisting them. By being denied their choice of an interpreter, the women were intimidated by representatives of the District of Hempstead, and were forced to surrender their right to choose their own assistance. The two women were faced with voter discrimination.

Ms. Figueroa, to assure that her presence did not disrupt voters, waited in the hallway of the building outside of the voter room. While waiting, she was surprisingly forced to move upon the request of Betty Cross, whom ordered security to remove the two voters, (whom had not cast their vote) and Ms. Figueroa. Despite a security guard physically placing their hands on Ms. Figueroa’s person, Ms. Figueroa did not react negatively, nor did she conduct herself in a manner that would be deemed as either unprofessional or disruptive.

Ms. Figueroa was not allowed to, nor did she re-enter the polling room, but rather walked the

two voter's to the voting room door, and watched them enter the polls alone and cast their vote for the candidate of their choice.

Despite Ms. Figueroa's volunteer efforts in support the Jackson/ Toure campaign, she in no way conducted herself in a manner which would misrepresent herself, nor did she attempt to sway the decisions of voters whom solicited her help to translate due to a language barrier. The allegations against Ms. Figueroa are both false and inflated, and no thought should be afforded to them. Instead, the Petitioners should fully evaluate their actions and address the need for so many issues to have been raised before and after the election about the failures and errors made. (See Exhibit G)

WHEREFORE, Respondents Maribel Touré and Gwendolyn Jackson respectfully request:

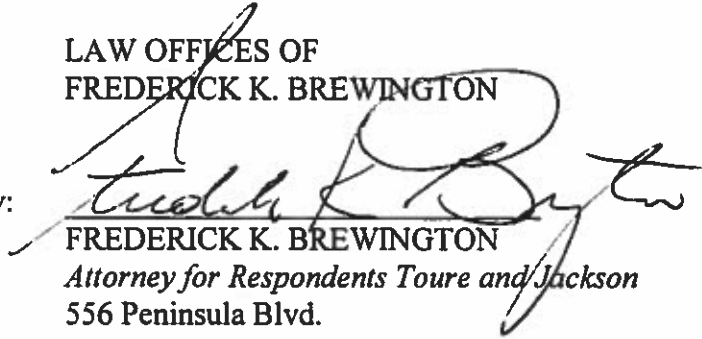
- the denial of a stay of the swearing-in of [Gwendolyn] Jackson and [Maribel] Toure until the Commissioner has had an opportunity to review the allegations and finally determined the Verified Petition; and
- the denial that the Commissioner annul the election results; and
- the denial that the Commissioner direct that a new election take place to determine which two people will take the Board Trustee seats that are set to be vacated on June 30, 2015; and
- the denial that the Commissioner appoint the New York State Attorney General's office as the monitor for the newly called, special election to ensure fairness in the process.
- Such other relief as the Commissioner deems just and proper.

DATED: Hempstead, New York
June 19, 2015

Respectfully Submitted,

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