

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DELAWARE**

In the Matter of MIKE MARTUCCI,

Petitioner,

Index No. EF2020-640

-against-

THE NEW YORK STATE BOARD OF ELECTIONS;
THE BOARD OF ELECTIONS OF SULLIVAN COUNTY;
THE BOARD OF ELECTIONS OF DELAWARE COUNTY;
THE BOARD OF ELECTIONS OF ORANGE COUNTY;
THE BOARD OF ELECTIONS OF ULSTER COUNTY; and
JEN METZGER, Candidate for the New York State Senate, 42nd
Senate District,

Respondents.

ATTORNEY AFFIRMATION OF PERRY GROSSMAN

I, Perry Maxwell Grossman, an attorney being duly admitted to practice law before the Courts of the State of New York, hereby affirm the following under penalty of perjury:

1. I am a Senior Staff Attorney in the Voting Rights Project at the New York Civil Liberties Union (“NYCLU”), where I have participated substantially in the NYCLU’s litigation and public advocacy in matters related to voting rights and elections since June 2017. I serve as counsel for Proposed Intervenors in this proceeding, and as such I am fully familiar with the facts and circumstances contained herein. I make this Affirmation in support of Proposed Intervenors’ motion for intervention. The purpose of this affidavit is to describe to the Court the history and nature of the NYCLU’s longstanding commitment to protecting the voting rights of New Yorkers, and to describe events I witnessed at the Ulster County Board of Elections in Kingston, New York on November 17, 2020, regarding Petitioner’s objections to absentee and affidavit ballots at issue in this Action.

The NYCLU's Longstanding Commitment to Protecting New Yorkers' Voting Rights

2. New York Civil Liberties Union is the New York State affiliate of the American Civil Liberties Union and a not-for-profit, nonpartisan organization with over 190,000 members and supporters. The NYCLU is dedicated to protecting and promoting the civil rights and civil liberties—including, centrally, voting rights—of all New York residents. Since its founding, the NYCLU has had years of experience successfully defending and expanding the franchise of New York voters through litigation, policy advocacy, and field organizing and has committed a significant amount of its resources to that goal. Among its many cases protecting the right to vote, within the past three years alone, the NYCLU recently served as counsel in the following representative matters:

- *NAACP, Spring Valley Branch v. East Ramapo Central School District*, No. 17-cv-8943 (S.D.N.Y.), co-lead counsel in successful vote dilution case challenging at-large method of electing school board members under Section 2 of the Voting Rights Act.
- *Spring Valley Branch of the NAACP v. Rockland Cnty Bd. of Elections*, 03592/2020 (N.Y. Sup. Ct.), lead counsel in successful action to extend early voting hours.
- *League of Women Voters v. New York State Board of Elections*, Index No. 160342/2018 (N.Y. Sup. Ct.), co-lead counsel in state constitutional challenge to law requiring voters to register at least 25 days in advance of an election.
- *Gill v. Whitford*, 138 S. Ct. 1916 (2018), counsel of record at United States Supreme Court for amicus brief in partisan gerrymandering case.
- *Little v. Latfor*, Index No. 2310-2011 (N.Y. Sup. Ct.), counsel for intervenors in action challenging New York State law concerning redistricting and reapportionment of incarcerated populations
- *Jackson v. Nassau Cty. Bd. of Sup'rs*, 818 F. Supp. 509 (E.D.N.Y. 1993), counsel in challenge to method of voting used by county board of supervisors
- *Levy v. Scranton*, 780 F. Supp. 897 (N.D.N.Y. 1991), lead counsel in class action challenging policy denying students the ability to register to vote using their campus residence.
- *Bishop v. Lomenzo*, 350 F. Supp. 576 (E.D.N.Y. 1972), lead counsel in action challenging constitutionality of New York Election Law provisions regarding voter registration.

3. The NYCLU also serves as a public resource to New Yorkers with information concerning registration and voting rights, including through partnerships to coordinate voter education and registration campaign, as well as non-partisan voter protection activities.

4. Because litigation typically requires a substantial amount of time, expense, and technical know-how, it can be extremely difficult as a practical matter for individuals to take legal action against policies or practices that would undermine their right to vote. Oftentimes, those most severely affected by voting restrictions are in communities that are already politically marginalized or vulnerable, such as low-income families or the elderly, adding to the difficulties such individuals face in taking action to protect their rights. These are just some of the reasons why individuals need, and a healthy democracy depends on, organizations like the NYCLU to advocate for the rights of individual voters. Furthermore, Petitioner has brought this Action in a district located far away from many voters whose ballots are challenged in this proceeding, adding to the potential hardship of individual voters seeking to vindicate their rights.

5. The candidates attempt in this Action to invalidate hundreds of absentee and affidavit ballots based on erroneous grounds, and/or without providing the statutorily required opportunity to cure any purported defects, would seriously undermine the NYCLU's goal of protecting the voting rights of New Yorkers. The NYCLU is well positioned—based on its years of voting rights litigation experience, legal resources, and familiarity with the law and facts underlying this Action—to represent and fight for the collective voting rights of the hundreds of individuals whose lawfully cast ballots are threatened by this Action.

The Canvass of Absentee and Affidavit Ballots at the Ulster County Board of Elections

6. On November 17, I was at the Ulster County Board of Elections in Kingston, New York, to observe the canvass of paper ballots, including absentee and affidavit ballots. There I

personally witnessed Robert Farley, a representative of Petitioner, raise objections to the ballots of John Mellitt, residing at 34 South Chestnut Street in New Paltz; John Burdick, residing at 16 Woodland Drive in New Paltz; and Theresa Logan, residing at 170 Plains Road in New Paltz, among many other Ulster County voters.

7. Mr. Mellitt's affidavit ballot was prepared to be included in the canvass of ballots on November 17, 2020. Robert Farley, a representative of Petitioner Martucci, interposed objections to Mr. Mellitt's affidavit, stating that he objected because the ballot was "incomplete," "incorrect," and had a purported "signature" issue. An adhesive note was affixed to Mr. Mellitt's affidavit ballot envelope, indicating the objection was made by "GOP" and that the basis for the objections were "incomplete," "incorrect," and "signature." The envelope was circulated around the table for review. I personally reviewed Mr. Mellitt's ballot, a true and correct copy of which is attached as Exhibit 1. The notations on the envelope from the Ulster County Board of Elections staff indicate that Ulster Board of Elections staff had reviewed Mr. Mellitt's ballot and verified his eligibility to vote.

8. Mr. Burdick's absentee ballot was prepared to be included in the canvass of ballots on November 17, 2020. Robert Farley, a representative of Petitioner Martucci, interposed objections to Mr. Burdick's ballot, stating that he objected to Mr. Burdick's ballot because of the timestamp on the affirmation envelope and the signature. An adhesive note was affixed to Mr. Burdick's absentee ballot envelope, indicating the objection was made by "GOP" and stating the basis for the objections. The envelope was circulated around the table for review. I personally reviewed Mr. Burdick's absentee ballot envelope, a true and correct copy of which is attached as Exhibit 2. I also reviewed Mr. Burdick's registration record, including his signature, from the

records of the Ulster County Board of Elections, a true and correct copy of which is included as Exhibit 3.

9. Ms. Logan's absentee ballot was prepared to be included in the canvass of ballots on November 17, 2020. Robert Farley, a representative of Petitioner Martucci, interposed an objection to Ms. Burdick's ballot, stating that he objected because "voter did not sign." An adhesive note was affixed to Mr. Burdick's absentee ballot envelope, indicating the objection was made by "GOP" and stating the basis for the objection. The envelope was circulated around the table for review. I personally reviewed Ms. Logan's absentee ballot envelope, a true and correct copy of which is attached as Exhibit 4. I also reviewed Ms. Logan's registration record, including her signature, from the records of the Ulster County Board of Elections, a true and correct copy of which is included as Exhibit 5.

10. There are over 1,000 NYLCU members who are registered voters within the 42nd Senate District, including several members who cast affidavit or absentee ballots that have drawn objections from the candidates in this case. I am aware that during the canvass, representatives of the Petitioner in this case interposed an objection to the absentee ballot of Nicole McEntee, who resides at 29 Prospect St. in New Paltz, New York, on the basis of her signature. Ms. McEntee is a member of the NYCLU who has given financial support to the organization. I personally reviewed Ms. McEntee's absentee ballot envelope, a true and correct copy of which is attached as Exhibit 6. I also reviewed Ms. McEntee's registration record, including her signature, from the records of the Ulster County Board of Elections, a true and correct copy of which is included as Exhibit 7.

WHEREFORE, it is respectfully requested that this Court grant this motion to intervene.

Dated: Bronx, New York
November 24, 2020.



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