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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. THOMAS A. ADAMS,

Justice

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NASSAU COUNTY

Application of PHILIP M. PIDOT,
Candidate,

Petitioner,

- against -

DOMINIC J. MACEDO, ROBERT DONNO,
MARK S. SAUVIGNE and MARLENE LOBATO,
Objectors and THE NEW YORK STATE BOARD
OF ELECTIONS,

Index No.: 003448/16 \\
Motion Seq. Nos. 2 & 3

Respondents.

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Papers considered by the Court:

Order to Show Cause (mot. seq. #1)	1
Order to Show Cause (mot. seq. #2)	2
Order to Show Cause (mot. seq. #3)	3
Affirmation in Opposition	4
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On May 11, 2016, this Court heard oral arguments on the Petition brought by an ex parte Order to Show Cause (motion sequence numbered 1) which was signed by the Honorable Michael Melkonian, in the above captioned proceeding, on May 6, 2016, at Kingston, New York.

The aforesaid Petition sought the following relief:

1. Declaring the Republican Party designating Petition which names the

Petitioner Philip M. Pidot, as candidate of such party for the office of Representative in Congress from the 3rd Congressional District, New York to be legally sufficient, effective and valid to designate the said Petitioner as candidate of such political party in the June 28, 2016 Primary Election for such office, and

2. Directing and compelling the Respondent New York State Board of Elections to certify, print and place the name of the Petitioner on the June 28, 2016 Republican Party Primary Election ballot for the office of Representative in Congress from the 3rd Congressional District, New York, and

3. Restraining, prohibiting and enjoining the Respondent New York State Board of Elections from certifying and causing the printing of the Republican Party Primary Election ballots for the June 28, 2016 Primary Election for the office of Representative in Congress from the 3rd Congressional District, New York, which does not contain the name of the Petitioner Philip M. Pidot as a candidate for such office such Primary Election and

4. Joining the companion case commenced by the Respondent Objectors (Nassau County Index No. 3124/16) to invalidate the Petitioner's Republican designating petition for trial before this court because of the common question of law and fact that interrelate to the validity of the Republican Party designating petitions which names the Petitioner herein, and determining whether the interests of justice and judicial economy are better served by the joint trial of the issues herein.

Within the said Order to Show Cause, it was:

ORDERED, that based upon the allegations set forth in the Verified Petition regarding the circumstances which prevent immediate filing of the Petition and Order to Show Cause herein with the Nassau County Clerk, and the Court finding such allegations sufficient to grant the relief requested therein, the Court does hereby Order that the Petitioner may file the Application for an Index Number herein, together with the RJI and appropriate filing fees with the Nassau County Clerk no later than five days after the date hereof and that such filing may be made personally by or on behalf of the Petitioner in the Office of the

Nassau County Clerk herein or by Express Mail or Federal Express addressed to such clerk on or before May 11, 2016 by 5:00 p.m. of such date and such filing will be timely compliance with the requirements to commence the instant proceeding, and service of the Order to Show Cause and the Verified Petition upon which it was granted upon the Respondents herein shall be allowed prior to the filing of such Order to Show Cause and Verified Petition with the Nassau County Clerk as directed herein. . . .

The “. . . circumstances which prevent immediate filing of the Petition and Order to Show Cause herein with the Nassau County Clerk and the Court finding such allegations sufficient to grant the relief requested therein . . .” were not set forth in the said Order to Show Cause, but were alleged in the annexed Verified Petition by the attorney for the Petitioner in paragraphs numbered “21” and “22” as:

21. Because counsel for the Petitioner maintains his office for the practice of law in the County of Albany and deprives your Petitioner and their attorney of the opportunity to timely, conveniently and professionally present this Order to Show Cause and the Verified Petition in support of such Order to Show Cause to the Nassau County Clerk and a Justice of this Court within the time period required to achieve the objectives of the proceeding to timely file and serve the instant proceeding to preserve the Petitioner’s rights to review the administrative determinations of the Respondent Board of Elections, your Petitioner requests an Order granting the extension of time for the filing of the RJI and Application for Index Number and filing of the original Order to Show Cause with the Nassau County Clerk, and allowing for service of the pleadings herein prior to such filing.

22. In addition, give the urgency to achieve service and notice to the other Respondents in this matter, your Petitioner is required to prepare and copy all of the pleadings herein and prepare for service and notice upon all of the Respondents in the manner set forth in the Order to Show Cause. Unless the Court grants the provision allowing such service prior to the filing requirements of CPLR section 304, insufficient, untimely or inadequate notice and service

may result from the great distance and travel time between Albany County, where your Petitioner's attorney maintains his law office, and Nassau County where the instant proceeding is venued.

The hereinabove described method for commencing the instant Special Proceeding is set forth in CPLR section 304(a):

(a) An action is commenced by filing a summons and complaint or summons with notice in accordance with rule twenty-one hundred two of this chapter. A special proceeding is commenced by filing a petition in accordance with rule twenty-one hundred two of this chapter. Where a court finds that circumstances prevent immediate filing, the signing of an order requiring the subsequent filing at a specific time and date not later than five days thereafter shall commence the action.

After hearing oral argument and considering all the papers submitted in support of motion sequence numbered 1, this Court orally dismissed the Petition, finding that the Petitioner had not demonstrated that the circumstances confronting the Petitioner prevented the immediate filing of the Petition which was the subject matter of the Special Proceeding (*see Matter of Connolly v Chenot*, 275 AD2d 583 [3rd Dept 2000] and *Matter of Kerins v Hinrichs*, 286 AD2d 458 [2d Dept 2001] citing to *Matter of Connolly v Chenot*, *supra*).

Motion sequence numbered 2 brought by Order to Show Cause by the Petitioner, signed by this Court on May 19, 2016 as amended on May 23, 2016 seeks, pursuant to Rule 5015 [*sic*] of the CPLR, to vacate the hereinabove described oral decision and order of this Court upon the ground, *inter alia*, set forth in paragraph numbered 15 in Counsel's Affidavit in Support of Motion:

15. More importantly, Judge Adams substituted his judgment for that of Judge Melkonian who had reviewed the Verified Petition and ordered that the Order to Show Cause could be filed with the Nassau County Clerk after he had signed the Order to Show Cause and more particularly ordered that service of the Order to Show Cause on the respondents could be made prior to such filing with the Nassau County Clerk by Express Mail.

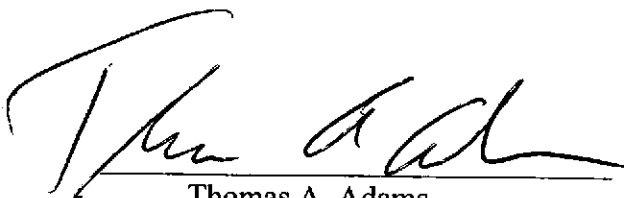
This Court finds that counsel's reliance on *Gravagna v Board of Elections*, 21 AD3d 504 (2nd Dept 2005) is misplaced in that the facts in the instant proceeding are materially different from those set forth in the *Gravagna v Board of Elections*, *supra*.

Therefore, this Court finds and determines that the Petitioner herein has failed to meet the requirements set forth in *Kerins v Hinrichs, supra*, therefore he is bound by the holding in *Connolly v Chenot, supra*.

All other issues raised by the Petitioner in motion sequence numbered 2 are herewith found not to be dispositive of the Petitioner's prayers for relief. Accordingly, motion sequence numbered 2 is denied in all respects and dismissed.

Motion sequence numbered 3 brought by the Respondents, Dominic J. Macedo, Robert Donno, Mark S. Sauvigne and Marlene Lobato, for an order of this Court dismissing motion sequence numbered 2 is denied as moot and in the exercise of this Court's inherent discretion dismissed.

DATED: June 7, 2016



Thomas A. Adams,
J.S.C.

ENTERED

JUN 07 2016

NASSAU COUNTY
COUNTY CLERK'S OFFICE