*State of New York*
*Supreme Court, Appellate Division*
*Third Judicial Department*

Decided and Entered: May 30, 2024 CV-24-0878

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In the Matter of CARA J. CASTRONUOVA,
Appellant,
v MEMORANDUM AND ORDER

ANTHONY NUNZIATO et al.,
Respondents,
et al.,
Respondent.

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Calendar Date: May 29, 2024

Before: Garry, P.J., Pritzker, Ceresia, McShan and Powers, JJ.

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*Cara J. Castronuova*, Elmont, appellant pro se.

*Brown & Weinraub*, Albany (*James P. Curran* of counsel), for Anthony Nunziato and others, respondents.

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Per Curiam.

Appeal from a judgment of the Supreme Court (Justin Corcoran, J.), entered May 10, 2024 in Albany County, which, among other things, dismissed petitioner's application, in a proceeding pursuant to Election Law § 16-102, to declare valid the designating petition naming petitioner as the Republican Party candidate for the public office of Member of the United States Senate in the June 25, 2024 primary election.

On April 4, 2024, petitioner filed a designating petition containing 15,727 signatures – 727 more than the required 15,000 – with respondent New York State Board

of Elections seeking to be nominated as the Republican Party candidate for the public office of Member of the United States Senate in the June 25, 2024 primary election. Respondents Anthony Nunziato and Carl C. Aliviado Jr. subsequently filed general and specific objections challenging approximately 2,650 signatures on petitioner's designating petition and, upon review, the Board found that 2,029 signatures were invalid, leaving petitioner with 13,698 signatures – 1,302 signatures short to receive the designation.[1] Accordingly, the Board issued a determination invalidating petitioner's designating petition. Following the Board's determination, petitioner commenced this proceeding pursuant to Election Law § 16-102 seeking to declare her designating petition valid. Following a hearing, Supreme Court dismissed the petition, determining, as relevant here, that petitioner was required to prove that at least 1,302 of the signatures deemed invalid by the Board were valid and that she established that only 310 of those signatures were valid, which resulted in only 14,008 valid signatures. Petitioner appeals, and we affirm.

As an initial matter, petitioner concedes that Supreme Court's decision and her arguments raised on appeal are based upon "uncontroverted materials" and "uncontroverted facts" and are thus limited solely to issues of law.[2] That said, petitioner's

[1] In the interim, Nunziato, Aliviado and respondent Michael D. Sapraicone, another Republican Party candidate for the public office of Member of the United States Senate, commenced a related proceeding pursuant to Election Law § 16-102 seeking to invalidate petitioner's designating petition on numerous grounds, including fraud. Supreme Court consolidated that proceeding with the instant proceeding and, following an April 29, 2024 hearing, rejected petitioner's counterclaims pertaining to, among other things, the timeliness and form of the general and specific objections that respondents filed with the Board. The invalidation petition in that proceeding, however, was subsequently withdrawn following the Board's determination invalidating the designating petition.

[2] To the extent that petitioner, in her brief, raises challenges to any of Supreme Court's findings relative to the invalidating petition commenced by respondents and her counterclaims asserted in response thereto, such arguments are academic and need not be addressed because the invalidation petition was withdrawn. In addition, by not adequately raising them in her brief, petitioner has abandoned any of her claims relative to the general and specific objections filed with the Board, including her claims that the general objections were the object of forgery, that the general and specific objections were untimely and that the general and specific objections were facially deficient pursuant to Election Law § 6-154 (3).

various constitutional claims cannot succeed. Her generalized constitutional claims under the Seventeenth Amendment of the US Constitution – to wit, that the signature requirements of the Election Law deprive the electorate of their voting and associational rights – fail because she did not raise this or any of her other equal protection and due process constitutional claims in her verified petition (*see Matter of O'Connor v Sharpe*, 208 AD3d 1458, 1462 [3d Dept 2022]).

Supreme Court ruled that petitioner had established only 14,008 valid signatures, leaving petitioner 992 signatures short of the required 15,000 signatures (*see* Election Law § 6-136 [1]). Petitioner argues that Supreme Court erred in finding that 437 of the signatures on the designating petition were invalid because those signers omitted their town or city of residence as is strictly required by Election Law § 6-130 (*see Matter of Salka v Magee*, 164 AD3d 1084, 1085-1086 [3d Dept 2018], *lv denied* 31 NY3d 914 [2018]). Petitioner reasons that omission of such information from the signers' addresses does not serve as a permissible basis to invalidate signatures on the designating petition (*cf. Molinari v Powers*, 82 F Supp 2d 57, 63, 72-77 [ED NY 2000]); however, we do not reach this issue because, even if petitioner were to prevail on this claim, there would still be insufficient signatures to validate the petition (*see* Election Law § 6-136 [1]; *see generally Matter of De Bruin v McGee*, 40 NY2d 909, 910 [1976]). In any event, were we to address this claim, we would find it to be without merit, as "we have already found that such a requirement [that a signer provide their complete address including the town or city in which they live] 'does not restrict access to the State ballot or place an unconstitutional burden on the candidates' 1st and 14th Amendment rights to associate' " (*Matter of Stark v Kelleher*, 32 AD3d 663, 665 [3d Dept 2006], *lv denied* 7 NY3d 707 [2006], quoting *Matter of Zobel v New York State Bd. of Elections*, 254 AD2d 520, 522 [3d Dept 1998]; *see Matter of Stoppenbach v Sweeney*, 98 NY2d 431, 433 [2002]; *Matter of Canary v New York State Bd. of Elections*, 131 AD3d 792, 793 [3d Dept 2015]). In sum, despite petitioner's zealous advocacy for a policy change to the petitioning process, she has failed to sufficiently allege or demonstrate that the designating petition contained the requisite number of signatures and, accordingly, we are satisfied that the petition was properly deemed invalid.[3] In view of the foregoing, we need not address any of petitioner's remaining contentions to the extent they are properly before us.

[3] With regard to signatures that were found to be invalid because the signers were purportedly not registered or enrolled in the Republican Party or provided a wrong or incorrect address, petitioner either failed to preserve an objection below or abandoned a challenge to these invalidated signatures by not raising any specific arguments relative

Garry, P.J., Pritzker, Ceresia, McShan and Powers, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

Robert D. Mayberger
Clerk of the Court

thereto in her brief (*see Matter of Silano v Oxford*, 10 AD3d 466, 467 n [3d Dept 2004], *lv denied* 3 NY3d 603 [2004]).