

^{Special Election}
At an ~~Open Party~~ Part of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22nd day of July, 2014.

PRESENT:

HON. David I. Schmidt
JUSTICE

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In the Matter of the Application of

INDEX # 700014 /14

HARRIS WEISS and AUSTIN STERNLICHT,

Petitioners,

ORDER TO SHOW CAUSE

-against -

ZEPHYR R. TEACHOUT

and THE NEW YORK STATE BOARD OF ELECTIONS

Respondents,

For an Order Pursuant to Sections 16-100, 16-102 and 16-116 of the Election Law, Declaring Invalid the Designating Petition Purporting to Designate the Respondent-Candidate for the Public Office of Governor of the State of New York, in the Democratic Party Primary Election to be held on September 9, 2014, and Restraining the BOARD OF ELECTIONS from Printing and Placing the Name of Said Candidate Upon the Official Ballots of Such Primary Election.

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Upon the annexed petition of Harris Weiss and Austin Sternlicht, duly verified the 21st day of July, 2014, and upon the original Democratic Party designating petition naming Respondent Zephyr R. Teachout (hereinafter "the Respondent-Candidate") as a candidate for the public office of Governor of the State of New York, and upon all the proceedings heretofore had

herein, it is hereby;

~~ORDERED~~ ^{LET} that the Respondents named herein above, show cause before this Court at the Special Election Part, to be held at the Supreme Court Courthouse, 360 Adams Street in the Borough of Brooklyn, County of Kings, City and State of New York, Room 541, on the 28th day of July, 2014 at 10:00 a.m. of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

1. Declaring Respondent Zephyr R. Teachout disqualified as a candidate for Governor of the State of New York in the Democratic Party Primary Election to be held on September 9, 2014; and
2. Enjoining, restraining, and prohibiting the NEW YORK STATE BOARD OF ELECTIONS from printing and placing the name of the said Respondent on the official ballots to be used at the September 9, 2014 Democratic Party Primary Election in the State of New York; and
3. why the Petitioners should not have such other and further relief as to this Court may seem just and proper in the premises; and it is further

SUFFICIENT CAUSE APPEARING THEREFOR, leave is hereby granted to the Petitioners to submit, upon the return day of this Order to Show Cause and any adjournments thereof, and the argument thereof, such additional evidence, exhibits, and other proof as may be necessary.

SUFFICIENT CAUSE APPEARING THEREFOR, ~~it is further~~

~~ORDERED~~ ^{LET} that service of a copy of this order, together with a copy of the papers upon which it is granted, on the Respondent New York State Board of Elections be made by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to the said Respondent at its office at 40 North Pearl Street, Suite 5, Albany, New York 12207-2729, and by depositing the same in a Post Office Branch regularly maintained by the United States Postal Service in the City of New York by Express Mail, Guaranteed Overnight Delivery ^{with next day delivery} on or before 6:00 p.m. on the 22nd day of July, 2014; and ~~it is further~~

LET
~~ORDERED~~, that service of a copy of this Order to Show Cause, together with a copy of the papers upon which it is granted, upon the Respondent Zephyr R. Teachout, be made either (1) by delivering the same to such Respondent personally pursuant to CPLR 308 (1) on or before the 24th day of July, 2014; or (2) ~~by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to the said Respondent at the address set forth in her designating petition filed with the New York State Board of Elections and by depositing the same in a Post Office Branch regularly maintained by the United States Postal Service in the City of New York, by~~ ~~Guaranteed Next Day Delivery Express mail, by 6:00 p.m. on the 22nd day of July, 2014~~; or (3) by affixing the same to the outer or inner door of the residence of the said Respondent at the address set forth in her designating petition filed with the New York State Board of Elections, ~~and by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to said Respondent at the address set forth in her designating petition filed with the New York State Board of Elections and by depositing the same in a Post Office Branch regularly maintained by the United States Postal Service in the City of New York, by Guaranteed Overnight Delivery~~ ^{with next day delivery} Express mail, on or before 6:00 p.m. on the 23rd day of July, 2014; and that such service shall be deemed due, timely, good and sufficient service thereof, and such service shall constitute sufficient notice hereof.

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ORDERED, all specifications of objections, not previously served and filed with the Board of Elections, shall be served upon the opposing party and filed with the Clerk of the Part on or before the return date herein; failure to serve and file same shall be deemed a waiver and further proof shall be precluded.

ENTER

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J.S.C

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 J.S.C

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

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In the Matter of the Application of

HARRIS WEISS and AUSTIN STERNLICHT,

INDEX # *700014* /14

VERIFIED PETITION

Petitioners,

- against -

ZEPHYR R. TEACHOUT,

and **THE NEW YORK STATE BOARD OF
ELECTIONS ,**

Respondents,

**For an Order Pursuant to Sections 16-100,
16-102 and 16-116 of the Election Law,
Declaring Invalid the Designating Petition Insofar
as it Purports to Designate the Respondent-
Candidate for the Public Office of Governor of the
State of New York, in the Democratic Party
Primary Election to be held on September 9, 2014,
and Restraining the NEW YORK STATE BOARD
OF ELECTIONS from Printing and Placing the
Name of Said Candidate Upon the Official Ballots of
Such Primary Election.**

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Petitioners, by their attorney, Martin E. Connor, respectfully show and allege:

1. That at all times hereinafter mentioned, your Petitioner Harris Weiss was, and still is, a duly qualified voter of the State of New York who is enrolled in the Democratic Party. He resides at 2 Raleigh Drive, New City, New York 10956 and is entitled to vote in the September 9, 2014 Democratic Party Primary Election for Governor of the State of New York.

2. That at all times hereinafter mentioned, your Petitioner Austin Sternlicht was, and still

is, a duly qualified voter of the State of New York who is enrolled in the Democratic Party. He resides at 3 Loder Street, Rye, New York 10580 and is entitled to vote in the September 9, 2014 Democratic Party Primary Election for Governor of the State of New York.

3. That at all of the times hereinafter mentioned, the Respondent NEW YORK STATE BOARD OF ELECTIONS was and is charged with the responsibility of the supervision of the conduct of official state-wide elections held in the State of New York, including the duties of receiving for filing designating petitions for state-wide public offices, the review and determination of objections and specifications of objections to such designating petitions, notification of a determination of non-compliance, and the determination of the candidates to be placed throughout the State of New York on the official Primary Election ballots for state-wide offices.

4. That on July 14, 2014, there were received at the NEW YORK STATE BOARD OF ELECTIONS certain papers allegedly constituting a petition purporting to designate for the September 9, 2014 Democratic Party Primary Election the following person for the public office as hereinafter set forth:

Name of Candidate: ZEPHYR R. TEACHOUT

Place of Residence: 171 Washington Park
Brooklyn, New York 11205

Public Office: Governor of the State of New York

These papers were timely filed by mail on July 10, 2014.

5. That after the filing of the said designating petition, written Objections to the aforesaid purported designating petition and/or cover sheet(s), were filed in the office of the NEW YORK STATE BOARD OF ELECTIONS by your Petitioners by mailing them on July 17, 2014.

5a. Specifications of Objections will be filed by your Petitioners in support of the Objections to the purported designating petition's naming of Respondent Teachout with the same said BOARD OF ELECTION by mailing them on or before July 23, 2014. These Specifications of Objections and the Objections are incorporated herein, and hereby are referred to and made a part hereof, as though fully set forth herein.

6. On or before July 23, 2014, your Petitioners will serve by Certified Mail a duplicate copy of said Specifications of Objections upon the Respondent candidate.

7. The said BOARD OF ELECTIONS has not yet made a determination as to whether the petition complies with the Election Law of the State of New York and the Rules and Regulations of the New York State Board of Elections insofar as said Board has jurisdiction to do so.

8. The said BOARD OF ELECTIONS has not yet made a determination upon the aforesaid Objections and Specifications of Objections.

9. Upon information and belief, the aforesaid Specifications of Objections will come on for a hearing at some time in the next week and said Specifications of Objections will, of necessity (the Board lacking jurisdiction to rule on them), have to come before this Court for determination.

10. That based on binding precedents as to the jurisdiction and competency of Boards of Elections with respect to ruling on questions concerning residency, the matters raised in the said Specifications of Objections are exclusively within the jurisdiction of this Court, and should be heard and determined by this Court.

11. That it is certain that the BOARD OF ELECTIONS will not dispose of the above-mentioned Objections and Specifications of Objections before July 24, 2014 the last day

allowed by statute for the commencement of this proceeding.

13. Upon information and belief, that the aforesaid alleged designating petition filed by, or on behalf of, Respondent Zephyr R. Teachout is insufficient, ineffective and invalid, and does not conform to the provisions of the Election Law since the candidate is not qualified for the office for which she has been delegated and the Respondent NEW YORK STATE BOARD OF ELECTIONS should be restrained and enjoined from printing the name of said Respondent upon the official ballots of said Primary Election.

14. Respondent Teachout is not qualified to hold the office of Governor of the State of New York since she has not been a continuous resident of the State from November 9, 2009 to the present time as mandated by Article IV, Section 2, of the New York State Constitution.

15. Respondent Teachout has admitted in a television interview that for extended periods during the five-year period preceding the election she did not have a permanent place of abode in New York State.

16. Upon information and belief, for a long period of time during the five-year period Respondent Teachout did not have a New York driver's license; rather she had driver's licenses in other states.

17. Upon information and belief, for a significant length of time during the five-year period Respondent Teachout maintained her mailing address in the State of Vermont and only filed a NCOA change to New York quite some time after November 2009.

18. Upon information and belief, Respondent Teachout maintained other *indicia* of residence in Vermont during the five-year period and at times when she had no place of abode in New York.

19. Petitioner reserves the right to produce upon the hearing of this proceeding additional

documentary proof concerning Respondent Teachout's lack of New York residence during the time mandated by the Constitution following discovery in this matter pursuant to subpoena.

20. Your Petitioner requests leave and reserve the right to submit upon the argument and hearing of this application, evidence by way of affidavits, testimony, and documentary proof to substantiate and support this application.

21. Other than this proceeding, your Petitioners have no adequate, sufficient, or effective remedy at law.

22. In order to effect immediate service of the annexed Order to Show Cause and this Petition on the Respondent NEW YORK STATE BOARD OF ELECTIONS it is respectfully requested that this Court direct that such service may be made by Express Mail, Guaranteed Overnight Delivery, to the office of the said BOARD OF ELECTIONS at 40 North Pearl Street, Suite 5, Albany, New York 12207-2729.

23. The Petitioners request leave to effect service of a copy of the Order to Show Cause, together with a copy of the papers on which it is granted, upon Respondent Candidate other than by personal service because:

- (a) This proceeding must be instituted on or before July 24, 2014;
- (b) Petitioner may, despite diligent effort, be unable to effect personal service upon such Respondent on or before such date, because such Respondent may purposely absent herself from her homes and places of business;
- (c) Petitioner is aware that in election matters governed by Article 16 of the Election Law, orders granting alternative methods of service are routinely granted by this Court in accordance with statute and prior decisional case law.

24. In order that issues with respect to the allegations of this Petition be joined

expeditiously, it is respectfully requested that the Court fix the time within which the respective Answers of the Respondent shall be served upon your Petitioners' attorney.

25. No previous application by Petitioners has been made for the relief sought herein or for the Order to Show Cause hereunto the annexed, or for any similar relief.

WHEREFORE, your Petitioners respectfully pray for the relief requested in the annexed Order to Show Cause and for a final Order granting the relief prayed for in the said Order to Show Cause, and for such other and further relief as to this Court may seem just and proper in the premises.

Dated: Brooklyn, New York
July 21, 2014

Respectfully submitted,



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Attorney for Petitioners.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No. *700614/14*

HARRIS WEISS, et ano.,

Petitioners,

-against-


ZEPHYR R. TEACHOUT, et ano.,

Respondents.

ATTORNEY'S CERTIFICATION

The undersigned, being an attorney admitted to practice law in and before the Courts of the State of New York, hereby certifies that, to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the within papers or the contentions therein are not frivolous as defined in 22 NYCRR 103-1.1c.

July 21, 2014


MARTIN E. CONNOR

ORDER TO SHOW CAUSE
AND VERIFIED PETITION

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EX-PARTE/PART 12
KINGS COUNTY
SUPREME COURT