

**Matter of Stammel v Rensselaer County Bd. of
Elections**

2021 NY Slip Op 32667(U)

December 8, 2021

Supreme Court, Rensselaer County

Docket Number: Index No. EF2021-270445

Judge: Adam W. Silverman

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This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court, held in and
for the County of Rensselaer, in the City of
Troy, New York, on the 8th day of
December, 2021.

PRESENT: HON. ADAM W. SILVERMAN,
Acting Justice of the Supreme Court

SUPREME COURT
COUNTY OF RENSSELAER STATE OF NEW YORK

In the Matter of the Application of

MICHAEL E. STAMMEL,
Petitioner-Candidate-Aggrieved,

For a Judgment Pursuant to Article 16 of the
Election Law

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-against-

THE RENSSELAER COUNTY BOARD OF
ELECTIONS,
Board-Respondent, and

RICHARD J. MOONEY,
Candidate-Respondent.

APPEARANCES:

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ADAM W. SILVERMAN, A.J.S.C.

Petitioner, a candidate for the position of Mayor of the City of Rensselaer, Rensselaer County, challenges the validity of one absentee ballot cast in the General Election for that office held on November 2, 2021. Petitioner brought this proceeding by proposed Order to Show Cause and Verified Petition pursuant to Articles 8, 9, 10, 11, and 16 of the Election Law seeking to enjoin the Rensselaer County Board of Elections (“Board-Respondent”) from opening and canvassing certain objected to ballots. On November 12, 2021, upon consent of the parties, this Court signed the Order.

On November 18, 2021, in accordance with Election Law § 9-209 and upon consent of the parties, the Court directed Board-Respondent to properly canvass all uncanvassed affidavit ballots and the 129 absentee ballots that were objected to at the canvass that commenced on Monday, November 8, 2021. The Court further directed that Board-Respondent preserve all challenged affidavit and absentee envelopes in strict accordance with the procedure preserving judicial review (*see Matter of King v Smith*, 308 AD2d 556, 557 [2d Dept 2003]; *Matter of Tenney v Oswego County Bd. of Elections*, 70 Misc 3d 680, 684 [Sup Ct, Oswego County 2020, DelConte, J.]; *Matter of O’Keefe v Gentile*, 1 Misc 3d 151, 154 [Sup Ct, Kings County 2003, Tomei, J.]).

On November 29, 2021, Board-Respondent and Respondent Richard J. Mooney joined issue by answer. On December 2, 2021, the parties mutually consented to the submission of one exhibit in this proceeding, including the relevant ballot envelope and records from Board-Respondent relating to the single remaining ballot challenge. By letter dated December 8, 2021, Petitioner withdrew the fraud allegation and requests the Court review the remaining disputed ballot solely on the grounds alleging the voter’s signature on the absentee ballot envelope does not match the voter’s signature on file with the Board of Elections.¹

¹ To the extent the December 8, 2021 correspondence does not specifically withdraw the signature mismatch challenge as relates to the application signature [Petition ¶ 21 (Further, the signature on . . . the [T.R.] Application . . . do[es] not match the signature on file with the Board”)], “[t]here is no provision in the Election Law which requires the inspectors to compare the signature on the envelope containing the absentee ballot to the signature on the application for the absentee ballot” (*Forman v Haight*, 69 Misc 3d 803, 824 [Sup Ct, Dutchess County 2020, Marx, J.], quoting *Matter of Mondello v Nassau County Bd. of Elections*, 6 AD3d 18, 25 [2d Dept 2004]).

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Where a signature on the ballot envelope is found to be "substantially different" from the signature on the buff card, the absentee ballot cannot be counted (*Matter of Kolb v Casella*, 270 AD2d 964, 964, [4th Dept 2000], *lv denied* 94 NY2d 764 [2000]; *Matter of Hosley v Valder*, 160 AD2d 1094, 1096 [3d Dept 1990] ["The signature on the voter registration card was substantially different than the signature on the absentee ballot envelope"]; *see also Matter of Johnson v Martins*, 79 AD3d 913, 920-921 [2d Dept 2010], *affd* 15 NY3d 584 [2010]).

The Court, having reviewed the exhibit entered by stipulation into evidence, finds that the signature on the remaining absentee ballot envelope is substantially different from Board-Respondent's record and must be removed from the canvass – Ex. 1 (Ballot of T.R.).

Accordingly, it is hereby


ORDERED that Petitioner's challenge to the absentee ballot because the signature on the ballot envelope does not correspond to the signature contained on the voter registration card is **granted**. The Board of Elections is directed to remove the ballot - Ex. 1 (Ballot of T.R.).

The Court has uploaded the original Decision/Order to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the Rensselaer County Clerk.

Counsel for the Petitioners is not relieved from the applicable provisions of CPLR 2220 and 202.5b (h) (2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action/proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

SO ORDERED AND ADJUDGED**ENTER.**

Dated: December 8, 2021
Troy, New York


ADAM W. SILVERMAN
Acting Justice of the Supreme Court

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INDEX NO. EF2021-270445**Papers Considered:**

1. Exhibit 1 entered into evidence by stipulation of the parties.
2. Petitioner's Correspondence to the Court dated December 8, 2021.