

**King v Simpson**

2023 NY Slip Op 31512(U)

May 3, 2023

Supreme Court, New York County

Docket Number: Index No. 153895/2023

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 41

ANDY L. KING, Aggrieved Candidate,  
Petitioner

Index No. 153895/2023

- against -

DECISION AND ORDER

ALLISON SIMPSON,  
Respondent-Objector,  
and

BOARD OF ELECTIONS IN THE CITY OF NEW  
YORK,  
Respondent

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

The New York City Council expelled petitioner from the City Council and from his office as a Council Member October 5, 2020, before he completed his second term of four years that was to extend to the end of 2021. N.Y.C. Charter § 45. New York City Charter § 25(a) provides that: "A member of the council who resigns or is removed from office prior to the completion of a full term shall be deemed to have held that office for a full term for purposes of section 1138 of the charter." Charter § 1138(a), which sets term limits for the New York City offices of Mayor, Public Advocate, Comptroller, Borough President, and Council Member, disqualifies a candidate for any of those offices

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if he has held the office for two or more consecutive full terms. Charter § 1138(a) does not disqualify petitioner from eligibility for election to the office of City Council Member, however, because he did not resign and was not removed from that office in 2020. He was expelled.

## II. REMOVAL VERSUS EXPULSION

New York Constitution Article XIII § 5 prohibits the removal of local or legislative officers and requires that any provision for removal of other officers be by statute. Provisions for removal under the City Charter comport with this requirement. Therefore removal of non-legislative officers and expulsion of legislative officers from office carry distinct meanings under the City Charter. Removal entails a superior officer or body removing an inferior officer from an inferior office. The City Charter recognizes the New York State Governor's authority to remove a New York City Mayor, Public Advocate, Comptroller, Borough President, and Police Commissioner, but not a Council Member. N.Y. Pub. Off. Law §§ 33, 34; N.Y.C. Charter §§ 4, 9, 24(a), 81(b), 92, 431. The Charter authorizes the removal of various inferior City officers by superior City officers or bodies: by the Mayor, N.Y.C. Charter §§ 6, 8(f), 168(b), 431, 523, 554, 557(a), 626(a), 662, 801, 1061(b), 2301(b); by the Comptroller, id. § 94(a); by a Borough President, id. § 82(1); by a commissioner, id. §§ 432, 496, 1526(1), 2401; by an agency or

department head, id. §§ 815(f), 1101(a), 1170; by the Chief Medical Examiner, id. § 557(c); by the Board of Education, id. § 1131; and by the appointing City authority, id. §§ 20-d(f)(3), 50(e), 193, 1057-tt(d), 2602(f), 2606(b), 3103(b), for example. The Charter authorizes the City Council to remove the City Clerk, but not its own members. Id. § 48(a). No Charter provision authorizes or recognizes a public body's removal of its own members, because a superior body or officer effects a removal from office.

Consequently, Charter § 25(a) does not expand the term "removed" to encompass the distinct term "expel[led]" used in Charter § 45. Although respondents urge that the term "removed" would be rendered meaningless if it did not encompass expulsion, had the City Council intended § 25(a) to apply to the specific procedure for expulsion in Charter § 45, the Council easily could have done so. The more plausible explanation for the term "removed" is that it simply parrots the identical term in each of the Charter provisions for considering a term limited officer to have served two consecutive full terms, as removal does apply to each of the four other term limited offices. N.Y.C. Charter §§ 4, 9, 24(a), 81(b), 92. Section 25(a) simply applied the same standard to all five offices to which § 1138(a) applied.

If removal encompasses every creation of a vacancy in an office as respondents suggest, the Council would not have

included the term "resigned" in Charter § 25(a). Nor would the New York State Legislature have enumerated other reasons for a vacancy besides removal in New York Public Officers Law § 30(1), such as death, conviction of a felony, refusal to take the oath of office, residence outside the office's political subdivision, or a court order, as well as resignation. Respondent Board of Elections in the City of New York insists that elections to fill a vacancy in the City Council are held pursuant to Public Officers Law § 30, which provides for elections to fill vacancies in both elected and appointed offices, including when a superior officer or body removes public officers from office. Elections to fill a City Council vacancy do not fall under Public Officers Law § 30, however; they are held pursuant to a mayoral proclamation. N.Y.C. Charter § 25.

### III. LEGISLATIVE HISTORY

Since the law surrounding Charter § 25(a) in the Charter itself, the New York Public Officers Law, and the New York Constitution defines removal, the court does not resort to § 25(a)'s legislative history to define the term. Lynch v. City of New York, 35 N.Y.3d 517, 521 (2020) ("In view of that plain language conclusion, there is no need to consider the legislative history . . . ."); Walsh v. New York State Comptroller, 34 N.Y.3d 520, 524 (2019) ("Where the statutory language is unambiguous, a court need not resort to legislative history."); Xiang Fu He v.


Troon Mgt., Inc., 34 N.Y.3d 167, 173 (2019) ("Read in context, the phrase . . . is clear and unambiguous . . ., and so there is no need to resort to legislative history."); Avella v. City of New York, 29 N.Y.3d 425, 437 (2017) ("The plain language of the statute does not authorize the proposed construction, and we therefore need not consider the legislative history."). The legislative history does suggest, however, that the City Council's principal concern was to prevent a Council Member from voluntarily leaving office before completing his term to avoid term limits, which is not petitioner's circumstances. If the City Council intended to cover a broader range of circumstances, it needed to use more encompassing language than "resigns or is removed." N.Y.C. Charter § 25(a).

#### IV. CONCLUSION

The parties agree that the only reason respondent Board of Elections in the City of New York invalidated petitioner's designating petitions as a candidate for New York City Council Member from the 12th Council District in the Primary Election June 27, 2023, was his ineligibility for that office under New York City Charter §§ 25(a) and 1138(a). Because he did not resign and was not removed from that office in 2020, but was expelled from that office, for the reasons explained above, the court grants the petition. The court declares and adjudges that petitioner's designating petitions filed with respondent Board of

Elections in the City of New York to be placed on the ballot in the Primary Election June 27, 2023, as a candidate for City Council Member for the 12th City Council District are valid and enjoins respondent Board to place petitioner on the ballot as a candidate for that office.

DATED: May 3, 2023



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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C