

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D32218  
O/kmb

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Argued - August 16, 2011

PETER B. SKELOS, J.P.  
JOSEPH COVELLO  
RUTH C. BALKIN  
LEONARD B. AUSTIN  
SANDRA L. SGROI, JJ.

2011-07042

DECISION & ORDER

In the Matter of Peter E. Cipriano, petitioner-respondent,  
v Matthew J. Graves, appellant, et al., respondents.

(Index No. 700004/11)

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition designating Matthew J. Graves as a candidate in a primary election to be held on September 13, 2011, for the nomination of the Republican Party as its candidate for the party position of Male Member of the Republican State Committee from the 49th Assembly District, Matthew J. Graves appeals from a final order of the Supreme Court, Kings County (Schmidt, J.), dated August 5, 2011, which, after a hearing, granted the petition to invalidate the designating petition.

ORDERED that the final order is reversed, on the law, without costs or disbursements, the petition to invalidate is denied, the proceeding is dismissed, and the Board of Elections in the City of New York is directed to place the name of Matthew J. Graves on the appropriate ballot.


The appellant's claim that the petitioner lacked standing to commence this proceeding was raised as an affirmative defense in his answer to the petition. Contrary to the petitioner's contention, the appellant did not thereafter waive that claim.

It is undisputed that, following the petitioner's commencement of this proceeding, the Board of Elections in the City of New York invalidated a petition designating the petitioner as a candidate for the same office sought by the appellant. Therefore, the petitioner lost his status as an "aggrieved candidate" and no longer had standing as an aggrieved candidate to contest the

appellant's designating petition (Election Law § 16-102[1]; see *Matter of White v Bilal*, 21 AD3d 573, 574; *Matter of Cocco v Moreira-Brown*, 230 AD2d 952, 953; *Matter of Novak v Jones*, 19 AD2d 781, 782, *affd* 13 NY2d 883). Accordingly, the Supreme Court should have denied the petition to invalidate the appellant's designating petition and dismissed the proceeding.

SKELOS, J.P., COVELLO, BALKIN, AUSTIN and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court