

At an IAS Term, Special Election 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 St., Brooklyn, NY on the 24<sup>th</sup> Day of September, 2012

PRESENT: David J. Schmidt, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

In the Matter of the Application of  
RUSSELL C. GALLO,

*Petitioner,*

- against -

BEN AKSELROD

- and -

THE BOARD OF ELECTIONS IN THE CITY OF  
NEW YORK

*Respondents,*

For an Order Pursuant to Sections 16-106, 16-112 and 16-113 of the Election Law, Directing the preservation of all ballots cast in the Independence Party Primary Election held on September 13, 2012 for the Public Office of Member of Assembly from the 45<sup>th</sup> Assembly District, in the County of Kings and directing the examinations of all ballots cast in said election by Petitioner's counsel and agents; invoking the court's jurisdiction to rule on the casting or canvassing, or refusal to cast or canvass, any ballot as set forth in Election Law Section §16-106(1); preserving Petitioner's rights under Section 9-209(4)(d) of the Election Law and Section 16-113 of the Election Law, and related sections of law; declaring Petitioner the lawfully elected candidate in this election.

Index No. 700026/12

ORDER TO SHOW  
CAUSE

RECEIVED  
KINGS COUNTY CLERK  
2012 SEP 24 AM 10:12

RECEIVED  
KINGS COUNTY CLERK  
2012 SEP 24 PM 4:51

Upon the annexed petition, duly verified on the 23<sup>rd</sup> day of September, 2012 and upon a review of the papers and proceedings heretofore had herein,

Let the Respondents herein show cause before the Special Elections Part of this Court held in and for the County of Kings, at the Courthouse at 360 Adams St., Brooklyn, NY, Room

541 at 12:00 AM/PM in the        noon of the 28<sup>th</sup> day of September, 2012, or as

①

soon thereafter as counsel may be heard why an Order of this Court should not be made and entered pursuant to Articles Eight, Nine and Sixteen of the Election Law:

1. Determining that five (5) votes cast by Independence Party voters RAMON A. CHUEQUE, THERESA ALFANO, ANTONIA GUARRACI, FRANK REDA and ETHEL ARODZERO-REDA for Petitioner on the Primary Election Day of Thursday, September 13, 2012 written in on ballots erroneously given to them by poll workers employed by Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK be counted in favor of Petitioner for the Independence Party Primary for the public office of Member of Assembly from the 45<sup>th</sup> Assembly District; and
2. Ordering that the canvass of the votes made by Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK be corrected and adjusted to reflect a proper tally of the votes, which would include 5 additional votes for Petitioner as detailed above; and
3. Ordering that any re-canvass and/or manual hand recount of the votes made by Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK be corrected and adjusted to reflect a proper tally of the votes, which would include 5 additional votes for Petitioner as detailed above; and
4. Ordering the Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK and the Commissioners thereof, to certify Petitioner as the person duly elected as the Independence Party candidate for Member of Assembly for the 45<sup>th</sup> Assembly District, or alternatively enjoining the improper issuance of any certification of this election in favor of any other person other than Petitioner; and
5. Ordering and declaring Petitioner to have been duly elected as the Independence Party nominee for Member of Assembly from the 45<sup>th</sup> Assembly District at the September 13, 2012 Primary Election, or ordering, in the alternative, that the number of irregularities in this election is so great that it is impossible to determine the winner of the election and that the Independence Party shall not field any candidate for Member of Assembly from the 45<sup>th</sup> Assembly District; and
6. Such other and further relief as the Court deems necessary; and it is

**ORDERED** that, subject to court review and direction, that Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK produce upon the day of the hearing: *if court requests on date of hearing*

- a. All ballots cast in the Independence Party Primary Election for Member of Assembly from the 45<sup>th</sup> Assembly District;
- b. All 5 ballots cast on September 13, 2012 at the poll site locations in the 5<sup>th</sup>, 22<sup>nd</sup>, 58<sup>th</sup> and 81<sup>st</sup> Election Districts of the 45<sup>th</sup> Assembly District where Petitioner's name was written-in;
- c. All 5 index cards filled out by the poll workers the five above-mentioned voters when they voted at their respective poll site locations;
- d. The poll books from the 5<sup>th</sup>, 22<sup>nd</sup>, 58<sup>th</sup> and 81<sup>st</sup> Election Districts of the 45<sup>th</sup> Assembly District;
- e. All reports of canvass, canvass sheets, voter index card for the Independence Party primary and other records which are the subject of this proceeding; and it is further

**ORDERED**, that Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK preserve inviolate all ballots cast for the subject Primary Election as well as the disputed ballots in questions cast books from the 5<sup>th</sup>, 22<sup>nd</sup>, 58<sup>th</sup> and 81<sup>st</sup> Election Districts of the 45<sup>th</sup> Assembly District where Petitioner's name was written in.

**SUFFICIENT REASON APPEARING THEREFORE**, leave is hereby granted to the Petitioner to submit on the date set for the hearing or the trial of this matter additional witnesses, exhibits, proofs and other evidence as may be necessary, and;

**SUFFICIENT REASON APPEARING THEREFORE**, it is further

**ORDERED**, that, pending the hearing and determination of this Court upon the within Petition, the Respondent, BOARD OF ELECTIONS IN THE CITY OF NEW YORK, is hereby temporarily enjoined and restrained from certifying any candidate as being a candidate duly elected as the Independence Party nominee for the public officer of Member of Assembly from the 45<sup>th</sup> Assembly District, and it is further;

**ORDERED** that in the event the canvass of ballots continues beyond the return date specified hereinabove, counsel for the parties hereto may adjourn same by stipulation, and counsel shall obtain approval of the Court by telephone of same immediately upon agreeing thereon, that the canvass may proceed with all due speed, and

SUFFICIENT CAUSE APPEARING THEREFORE, this proceeding shall be deemed to have been commenced by the signing of this Order to Show Cause; *files with the clerk*

SUFFICIENT CAUSE APPEARING THEREFORE, ~~it is further~~ <sup>stipulated</sup>

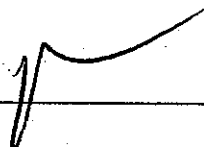
~~ORDERED~~, that Petitioner shall cause a copy of this Order, together with a copy of the Petition and all Affidavits attached thereto, upon which this Order was granted, upon:

a. BOARD OF ELECTIONS IN THE CITY OF NEW YORK, by personally delivering same to the Brooklyn Borough office thereof at 345 Adams Street, Brooklyn, NY 11201 thereof on or before September 24, 2012; <sup>Pursuant to CPLR 308(1)</sup>

b. Respondent BEN AKSELROD, by personally delivering same ~~to his residence at~~ <sup>Pursuant to CPLR 308(1)(2)</sup> 1207 Avenue N, Brooklyn, NY on or before September 24, 2012;

and that such service shall be deemed good and sufficient service thereof.

ENTER:

  
\_\_\_\_\_, J.S.C.

HON. DAVID L. SCHMIDT

*over dph,  
MAC  
permitted  
next  
day  
delivery  
JSc*

(4)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

In the Matter of the Application of  
RUSSELL C. GALLO,

*Petitioner,*

- against -

BEN AKSELROD

- and -

THE BOARD OF ELECTIONS IN THE CITY OF  
NEW YORK

*Respondents,*

For an Order Pursuant to Sections 16-106, 16-112 and 16-113 of the Election Law, Directing the preservation of all ballots cast in the Independence Party Primary Election held on September 13, 2012 for the Public Office of Member of Assembly from the 45<sup>th</sup> Assembly District, in the County of Kings and directing the examinations of all ballots cast in said election by Petitioner's counsel and agents; invoking the court's jurisdiction to rule on the casting or canvassing, or refusal to cast or canvass, any ballot as set forth in Election Law Section 116-106(1); preserving Petitioner's rights under Section 9-209(4)(d) of the Election Law and Section 16-113 of the Election Law, and related sections of law; declaring Petitioner the lawfully elected candidate in this election.

Index No. \_\_\_\_\_

VERIFIED  
PETITION

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Petitioner, by his attorney, respectfully shows:

1. Petitioner RUSSELL C. GALLO is the candidate of the Republican Party and of the Conservative Party for the public office of Member of Assembly from the 45<sup>th</sup> Assembly District who ran a write-in campaign for the vacant Independence Party line for the public office of Member of Assembly from the 45<sup>th</sup> Assembly District in the Primary Election held on March 20, 2012.
2. Respondent BEN AKSELROD was the Primary Candidate for the Democratic Party for the

public office of Member of Assembly from the 45<sup>th</sup> Assembly District in the Primary Election held on September 13, 2012 who, upon information and belief, also ran a write-in campaign for the vacant Independence Party line for the public office of Member of Assembly from the 45<sup>th</sup> Assembly District in the Primary Election held on September 13, 2012.

3. Petitioner is unaware of any other candidate who may have ran a write-in campaign for the vacant Independence Party line for the public office of Member of Assembly from the 45<sup>th</sup> Assembly District in the Primary Election held on September 13, 2012.
4. The Respondent Board of Elections in the City of New York is responsible for canvassing the returns of the elections held within the County of Kings and certifying the results of elections for the subject public office, acting in their capacity as the County Board of Canvassers.
5. The subject 45<sup>th</sup> Assembly District, State of New York consists of part of Kings County, City and State of New York.

#### JURISDICTION

6. Petitioner has standing under Sections 16-100, 16-102, 16-106, 16-112 and 16-113 to bring this proceeding.
7. This Petition is brought pursuant to Election Law Section 16-102 (1) which grants jurisdiction to the court to rule on an action contesting "the nomination or designation of any candidate for any public office or party position or any independent nomination, or the holding of an uncontested primary election, by reason of a petition for an opportunity to ballot having been filed, or the election of any person to any party position may be contested in a proceeding instituted in the supreme court by any aggrieved candidate".
8. It is also brought pursuant to Election Law Section 16-106 (1) which grants jurisdiction to

the court to rule on contested ballots, either challenging the casting of such ballots or the refusal to cast such ballots. It also invokes the court's jurisdiction under Section 16-106 (4) for the correction of errors in the Board of Elections' canvass and grants the court the jurisdiction to order a re-canvass. The statute sets forth a Statute of Limitations of 20 days from the election day (or the contested action of the Board of Elections) for commencement of such a proceeding. Election Law §16-106 (5).

9. It also invokes the Court's jurisdiction under Section 16-102(3) which empowers the Court with the discretion to "direct reassembling of any convention or the holding of a new primary election, or caucus where it finds there has been such fraud or irregularity as to render impossible a determination as to who rightfully was nominated or elected."
10. This petition is brought to continue to preserve the ballots, review irregular and possibly fraudulent returns from voting machines, preserve the voting machine ballots and determine where Petitioner may have been deprived of votes by malfunctioning or tampered with voting machines, to protect the Petitioner's rights to have this Court, review all determinations of the Boards of Elections as is provided for in the Election Law, invoke the court's jurisdiction to rule on the validity of disputed ballots, allow for this Court to make adjustments in the canvass as may be necessary, enjoin any certification of election results which would prejudice the rights of the Petitioner, and to bar or prevent any procedural defect which might be asserted to defeat this Court's determinations.

#### **DISCOVERY OF VOTER IRREGULARITIES**

11. The Primary Election in question was an uncontested primary by reason of a petition for an opportunity to ballot having been successfully filed by the Petitioner. No candidate's name was printed on the ballot itself. Independence Party members could only vote by writing in the candidate of their choice.

12. As no candidate's name appeared on the ballot, Respondent NYC Board of Elections did not provide any unofficial election night counts.
13. Upon information and belief, Respondent NYC Board of Elections did not create any report of canvass for each poll site location for the Independence Party Primary election for Member of Assembly in the 45<sup>th</sup> Assembly District.
14. Upon information and belief, Respondent NYC Board of Elections failed to provide each poll site with Independence Party index cards to correspond to ballots distributed to voters.
15. Upon information and belief, Respondent NYC Board of Elections began the canvass of all write-in votes made within the 45<sup>th</sup> Assembly District for all races, including the race at issue, on Thursday, September 20, 2012.
16. During the canvass, Petitioner, who was monitoring, noticed several irregularities. Specifically, Petitioner identified five (5) Independence Party voters in four election districts who signed in to vote at their respective poll site locations, yet no Independence Party primary ballot was cast in those election districts:
  - a. Election District 5: Upon information and belief, Independence Party voter RAMON A. CHUEQUE, residing at [REDACTED], signed in to vote at the poll site located at 1215 Avenue O as "Voter #88" and was given an incorrect ballot by the poll workers employed by Respondent NYC Board of Elections. On said incorrect ballot, Mr. CHUEQUE wrote in Petitioner's name, believing he was casting a vote in his party's primary.
  - b. Election District 22: Upon information and belief, Independence Party voter THERESA ALFANO, residing at [REDACTED], signed in to vote at the poll site located at 1901 Ocean Parkway as "Voter #4" and was given an incorrect ballot by the poll workers employed by Respondent NYC Board of Elections. On said



incorrect ballot, Ms. ALFANO wrote in Petitioner's name, believing she was casting a vote in her party's primary. See: "EXHIBIT A".

- c. Election District 58: Upon information and belief, Independence Party voter ANTONIA GUARRACI, residing at [REDACTED], signed in to vote at the poll site located at 1215 Avenue O as "Voter #11" and was given an incorrect ballot by the poll workers employed by Respondent NYC Board of Elections. On said incorrect ballot, Ms. GUARRACI wrote in Petitioner's name, believing she was casting a vote in her party's primary. See: "EXHIBIT B".
- d. Election District 81: Upon information and belief, Independence Party voter FRANK REDA, residing at [REDACTED], signed in to vote at the poll site located at 2609 East 7<sup>th</sup> Street as "Voter #4" and was given an incorrect ballot by the poll workers employed by Respondent NYC Board of Elections. On said incorrect ballot, Mr. REDA wrote in Petitioner's name, believing he was casting a vote in his party's primary. See: "EXHIBIT C".
- e. Election District 81: Upon information and belief, Independence Party voter ETHEL ARODZERO-REDA, residing at [REDACTED], signed in to vote at the poll site located at 2609 East 7<sup>th</sup> Street as "Voter #5" and was given an incorrect ballot by the poll workers employed by Respondent NYC Board of Elections. On said incorrect ballot, Mrs. ARODZERO-REDA wrote in Petitioner's name, believing he was casting a vote in his party's primary. See: "EXHIBIT D".

17. In those same four election districts, there were a total of five (5) votes cast for Petitioner via write-in vote on various Democratic Primary ballots.

18. These votes were ruled invalid as to the Independence Primary election because they were not cast on Independence Party Primary ballots – ballots which Respondent NYC Board of

Elections failed to properly provide these voters in clear error of Respondent's ministerial duties.

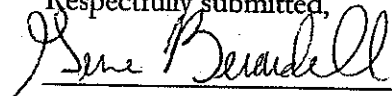
19. Upon information and belief, Respondent BEN AKSELROD leads Petitioner by 3 votes in an exceedingly close primary election after the initial canvass of write-in ballots. Thus, the balance of this election depends on whether these 5 votes are counted for the Petitioner.
20. There is no issue that these 5 voters are properly registered to vote.
21. There is no issue that these 5 voters are properly enrolled in the Independence Party.
22. There is no issue that these 5 voters were entitled to vote in the Independence Party Primary for Member of Assembly in the 45<sup>th</sup> Assembly District held on September 13, 2012.
23. There is no issue that the in the Independence Party Primary for Member of Assembly in the 45<sup>th</sup> Assembly District held on September 13, 2012 was the only election for which these 5 voters were entitled to vote.
24. There is no issue that these 5 voters went to their respective poll site locations to vote in the Independence Party Primary for Member of Assembly in the 45<sup>th</sup> Assembly District held on September 13, 2012.
25. There is no issue that these 5 voters signed the poll books at their respective poll site locations.
26. There is no issue that these 5 voters were issued ballots by poll workers employed by Respondent NYC Board of Elections.
27. There is no issue that these 5 voters received the wrong ballots provided by poll workers employed by Respondent NYC Board of Elections.
28. There is no issue that these 5 voters wrote in Petitioner's name as their choice in the Independence Party Primary for Member of Assembly in the 45<sup>th</sup> Assembly District held on September 13, 2012 on said ballots erroneously provided by Respondent NYC Board of

Elections.

29. It is axiomatic that a voter must not be disenfranchised as a result of a ministerial error by the government.
30. Petitioner requests leave to and reserves the right to submit further proofs by way of witnesses, affidavits and evidence on the date set by this court for the trial and hearing of this matter, and to amend these pleadings to reflect the facts of the conduct of the subject election and/or facts adduced by the way of further investigation and/or a canvass of the ballots for the election for the subject public office by the Board of Elections.
31. Respondent NYC Board of Elections has completed its canvass of this instant Primary Election and will, upon information and belief, begin a re-canvass and/or manual hand re-count of all Independence Party ballots herein.
32. Without Court intervention at this juncture, Petitioner will be permanently deprived of 5 votes – votes he earned from Independence Party members that is greater than the margin of victory herein – and will be deprived of his rightful place on the ballot as the Independence Party candidate for the General Election.
33. No prior application for the relief requested herein has been made by the Petitioner to any court, excepting, as specified herein, which order(s) do/does not necessarily protect your Petitioner's rights under the law.
34. Petitioner has no other remedy at law other than that applied for herein. Leave is respectfully requested and the Petitioners respectfully reserve the right to amend these pleadings as needed.
35. Leave is respectfully requested and Petitioners respectfully reserve their right to produce evidence in support of this petition by way of testimony, affidavits, and other evidence at the trial or hearing of this matter.

WHEREFORE, Petitioner respectfully requests the relief sought in the annexed Order to Show Cause and such other and further relief as this Court may deem to be just and proper in the premises.

Dated: New York, New York  
September 23, 2012

Respectfully submitted,  
  
\_\_\_\_\_  
GENE BERARDELLI, ESQ.  
*Attorney for Petitioner*  
RUSSELL C. GALLO  
299 Broadway, 17<sup>th</sup> floor  
New York, New York 10007  
(347) 301-6143

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Index No. \_\_\_\_\_

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AFFIRMATION OF  
EMERGENCY

GENE BERARDELLI, ESQ., an attorney duly admitted to practice law in the State of New York affirms the following under the penalties of perjury:

1. I am the attorney for Petitioner RUSSELL C. GALLO. I submit this affirmation of emergency along with the attached Order to Show Cause.
2. We bring this emergency to the court's attention in order to expedite determining this instant matter in light of the Respondent's deadline of October 2<sup>nd</sup> for certification of the primary election at issue.
3. In accordance with Rule 202.7, I gave notice to both Steven Richman, general counsel to the NYC BOARD OF ELECTIONS and Stephen Kitzinger, attorney for Respondent NYC BOARD OF ELECTIONS that our office would be appearing in Court on September 24, 2012 at 2:15 PM.

Dated: New York, New York  
September 23, 2012

Respectfully submitted,



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GENE BERARDELLI, ESQ.

*Attorney for Petitioner*

RUSSELL C. GALLO

299 Broadway, 17<sup>th</sup> floor

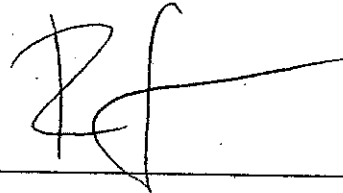
New York, New York 10007

(347) 301-6143

VERIFICATION

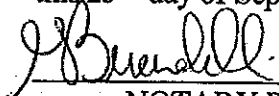
STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF KINGS )

I, RUSSELL C. GALLO, being duly sworn, depose and say, that the deponent is the Petitioner in the within proceeding; that deponent has read the foregoing Petition and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters deponent he believes them to be true.



RUSSELL C. GALLO

Sworn to before me,  
this 23<sup>rd</sup> day of September, 2012.

  
NOTARY PUBLIC

GENE R. BERARDELLI

Notary Public, State of New York

02BE6144093

Qualified in Kings County

My Commission Expires 4/24/2014

EXHIBIT A



## AFFIDAVIT

THERESA ALFANO, having been duly sworn, deposes and states:

- 1) My name is Theresa Alfano, and I reside at [REDACTED] in Brooklyn, NY. My residence is located within the 45<sup>th</sup> Assembly District.
- 2) I write this affidavit in support of Russell Gallo's application because I voted for Russell Gallo, but my vote was apparently not counted. My vote must count.
- 3) I am a registered voter enrolled in the Independence Party.
- 4) On Thursday, September 13, 2012, I went to my poll location at the Sephardic Community Center located at 1901 Ocean Parkway.
- 5) I intended to vote in the Independence Party primary for Member of Assembly. That primary was the only primary I was entitled to vote in on that day.
- 6) When I arrived at my poll site, I went to the appropriate table for my Election District, the 22nd.
- 7) When I got to the table, I told the poll workers at the table that I wanted to vote in the Primary.
- 8) The poll workers told me to sign in to their poll book. I looked at the book, found my name and signed in the appropriate place.
- 9) After signing, I was handed a ballot to go vote. I assumed that it was the correct ballot, as I am only entitled to vote in the Independence Primary.
- 10) I wrote in the name "RUSSELL C GALLO" into the write-in section of the ballot. I knew that the Independence Party primary was a write-in primary, so this would be the only way I could vote.
- 11) I then scanned in the ballot into the voting machine and went home.
- 12) I am now being told that there were no Independence Party ballots counted from my Election District. I am also told that there was no Independence Party ballot in the ballot box from my Election District or any other Election District from my poll location. How could this be? I signed in to vote and I voted for Russell Gallo.
- 13) The only thing I can think of is that I was handed the wrong ballot by the poll workers. I recall that there was a Democratic primary taking place for the same office. I must have received that ballot instead of the correct ballot from the poll workers.
- 14) The Board of Elections is responsible for making sure I am able to vote when I am entitled to do so. By handing me the wrong ballot, they made a big mistake.
- 15) I want my vote to count for my party's race. The Board of Elections error should not prevent my ballot for counting for my choice of candidate, Russell Gallo.
- 16) By my vote not counting right now, I feel robbed of my fundamental right to vote. Just because I am enrolled in a third-party or just because the poll worker may not have been aware of my

party's race shouldn't mean that my vote shouldn't count when I took the time to vote in a smaller race.

17) I did everything a voter is supposed to do. My vote should count. I beg the Court to please allow my vote to count for my choice of candidate, Russell C. Gallo, for my party line.

Date: September 23, 2012  
Brooklyn, NY

  
THERESA ALFANO

SWORN TO BEFORE ME  
THIS 23<sup>rd</sup> DAY OF SEPTEMBER, 2012

  
NOTARY PUBLIC

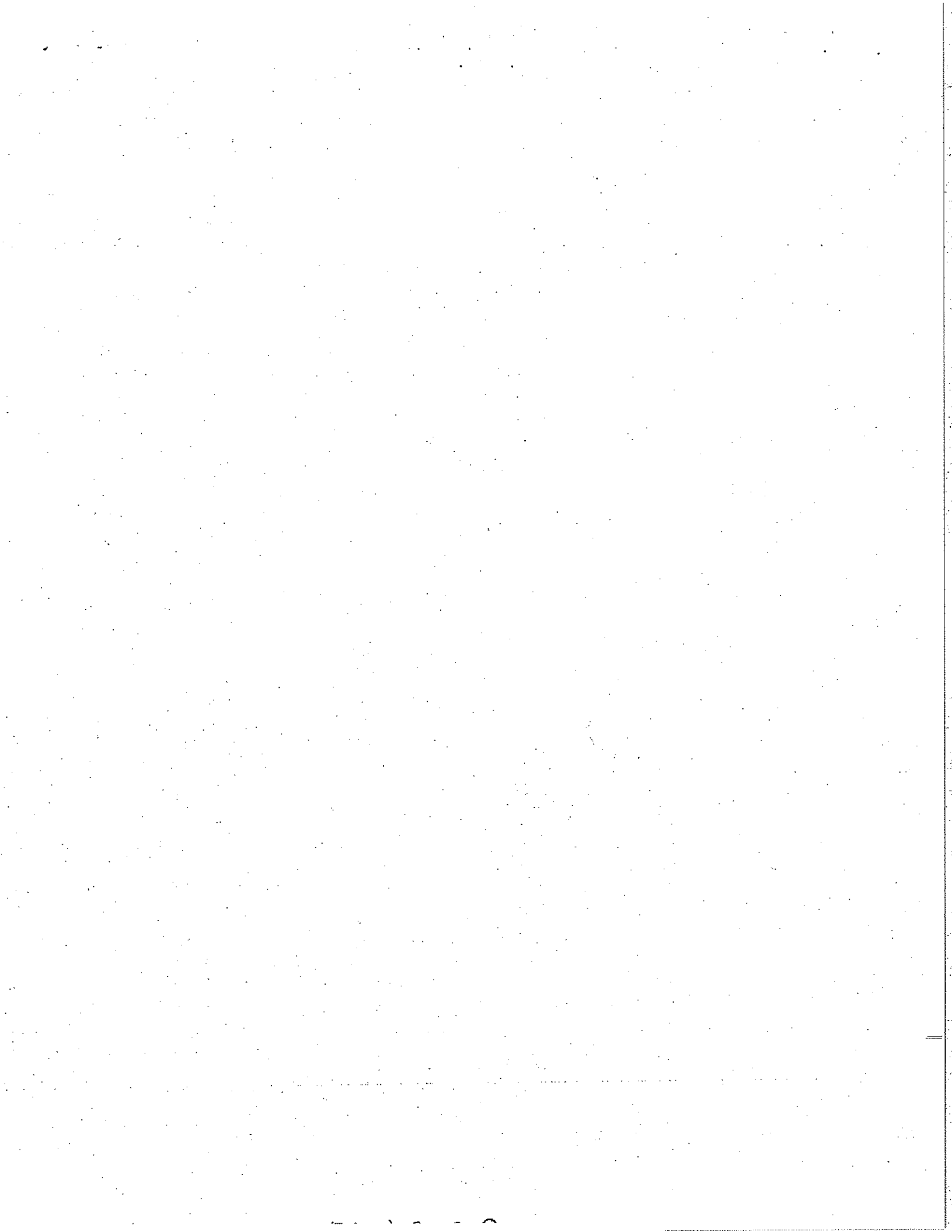
GENE R. BERARDELLI

Notary Public, State of New York

02BE6144093

Qualified in Kings County

My Commission Expires 4/24/2014



## AFFIDAVIT

ANTONIA GUARRACI, having been duly sworn, deposes and states:

- 1) My name is Antonia Guarraci, and I reside at [REDACTED] in Brooklyn, NY. My residence is located within the 45<sup>th</sup> Assembly District.
- 2) I write this affidavit in support of Russell Gallo's application because I voted for Russell Gallo, but my vote was apparently not counted. My vote must count.
- 3) I am a registered voter enrolled in the Independence Party.
- 4) On Thursday, September 13, 2012, I went to my poll location at Bay Academy – I.S. 98 located at 1401 Emmons Avenue.
- 5) I intended to vote in the Independence Party primary for Member of Assembly. That primary was the only primary I was entitled to vote in on that day.
- 6) When I arrived at my poll site, I went to the appropriate table for my Election District, the 58th.
- 7) When I got to the table, I told the poll workers at the table that I wanted to vote in the Primary.
- 8) The poll workers told me to sign in to their poll book. I looked at the book, found my name and signed in the appropriate place.
- 9) After signing, I was handed a ballot to go vote. I assumed that it was the correct ballot, as I am only entitled to vote in the Independence Primary.
- 10) I wrote in the name "RUSSELL C GALLO" into the write-in section of the ballot. I knew that the Independence Party primary was a write-in primary, so this would be the only way I could vote.
- 11) I then scanned in the ballot into the voting machine and went home.
- 12) I am now being told that there were no Independence Party ballots counted from my Election District. I am also told that there was no Independence Party ballot in the ballot box from my Election District or any other Election District from my poll location. How could this be? I signed in to vote and I voted for Russell Gallo.
- 13) The only thing I can think of is that I was handed the wrong ballot by the poll workers. I recall that there was a Democratic primary taking place for the same office. I must have received that ballot instead of the correct ballot from the poll workers.
- 14) The Board of Elections is responsible for making sure I am able to vote when I am entitled to do so. By handing me the wrong ballot, they made a big mistake.
- 15) I want my vote to count for my party's race. The Board of Elections error should not prevent my ballot for counting for my choice of candidate, Russell Gallo.
- 16) By my vote not counting right now, I feel robbed of my fundamental right to vote. Just because I am enrolled in a third-party or just because the poll worker may not have been aware of my

party's race shouldn't mean that my vote shouldn't count when I took the time to vote in a smaller race.

17) I did everything a voter is supposed to do. My vote should count. I beg the Court to please allow my vote to count for my choice of candidate, Russell C. Gallo, for my party line.

Date: September 23, 2012  
Brooklyn, NY

  
ANTONIA GUARRACI

SWORN TO BEFORE ME  
THIS 23<sup>rd</sup> DAY OF SEPTEMBER, 2012



NOTARY PUBLIC

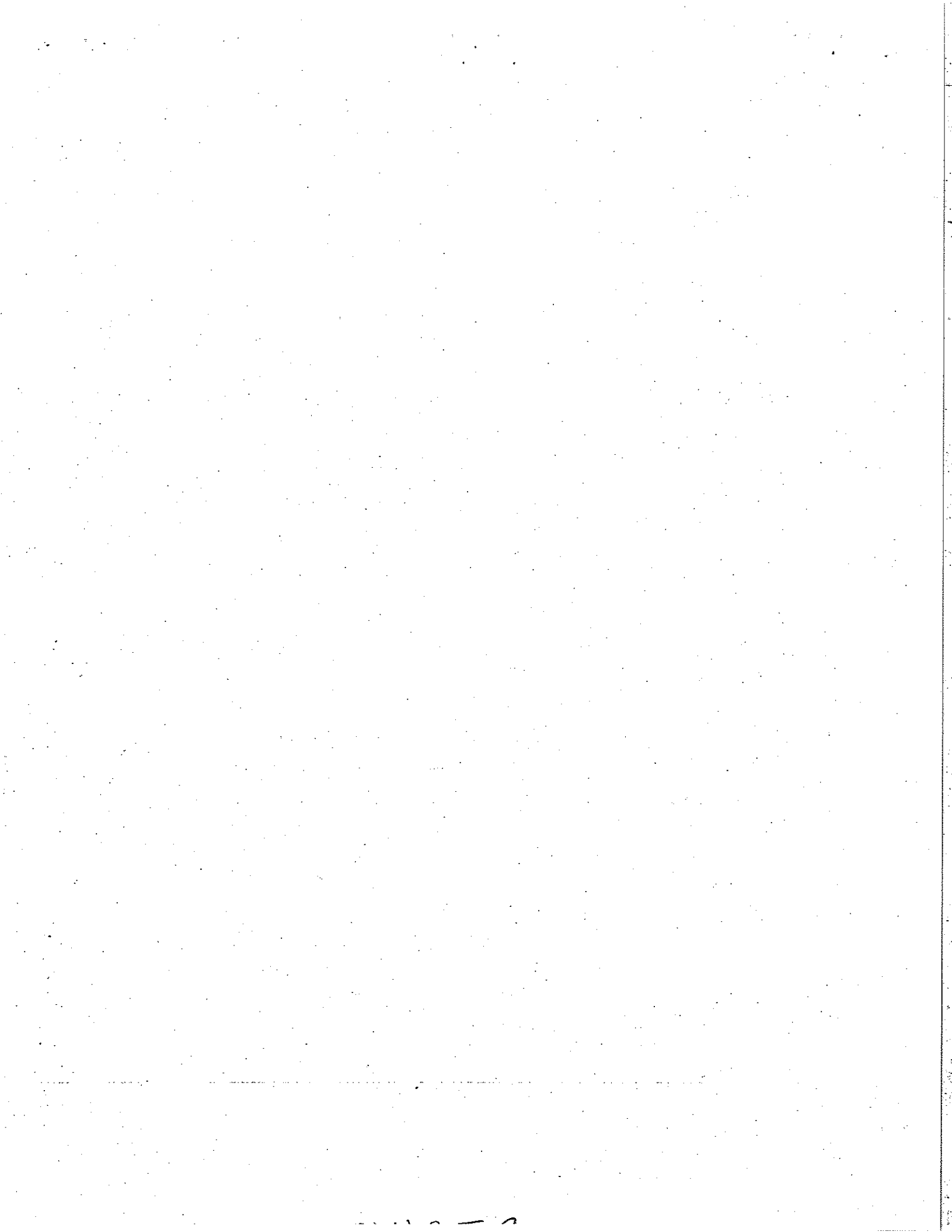
GENE R. BERARDELLI

Notary Public, State of New York

01BE6144093

Qualified in Kings County

My Commission Expires 4/24/2014



## AFFIDAVIT

FRANK REDA, having been duly sworn, deposes and states:

- 1) My name is Frank Reda, and I reside at [REDACTED] in Brooklyn, NY. My apartment is located within the 45<sup>th</sup> Assembly District.
- 2) I write this affidavit in support of Russell Gallo's application because I voted for Russell Gallo, but my vote was apparently not counted. My vote must count.
- 3) I am a registered voter enrolled in the Independence Party.
- 4) On Thursday, September 13, 2012, I went to my poll location at P.S. 209 located at 2609 East 7<sup>th</sup> Street.
- 5) I intended to vote in the Independence Party primary for Member of Assembly. That primary was the only primary I was entitled to vote in on that day.
- 6) When I arrived at my poll site, I went to the appropriate table for my Election District, the 81<sup>st</sup>.
- 7) When I got to the table, I told the poll workers at the table that I wanted to vote in the Primary.
- 8) The poll workers told me to sign in to their poll book. I looked at the book, found my name and signed in the appropriate place.
- 9) After signing, I was handed a ballot to go vote. I assumed that it was the correct ballot, as I am only entitled to vote in the Independence Primary.
- 10) I wrote in the name "RUSSELL C GALLO" into the write-in section of the ballot. I knew that the Independence Party primary was a write-in primary, so this would be the only way I could vote.
- 11) I then scanned in the ballot into the voting machine and went home.
- 12) I am now being told that there were no Independence Party ballots counted from my Election District. I am also told that there was no Independence Party ballot in the ballot box from my Election District or any other Election District from my poll location. How could this be? I signed into vote and I voted for Russell Gallo.
- 13) The only thing I can think of is that I was handed the wrong ballot by the poll workers. I recall that there was a Democratic primary taking place for the same office. I must have received that ballot instead of the correct ballot from the poll workers.
- 14) The Board of Elections is responsible for making sure I am able to vote when I am entitled to do so. By handing me the wrong ballot, they made a big mistake.
- 15) I want my vote to count for my party's race. The Board of Elections error should not prevent my ballot for counting for my choice of candidate, Russell Gallo.
- 16) By my vote not counting right now, I feel robbed of my fundamental right to vote. Just because I am enrolled in a third-party or just because the poll worker may not have been aware of my

party's race shouldn't mean that my vote shouldn't count when I took the time to vote in a smaller race.

17) I did everything a voter is supposed to do. My vote should count. I beg the Court to please allow my vote to count for my choice of candidate, Russell C. Gallo, for my party line.

Date: September 23, 2012  
Brooklyn, NY

  
FRANK REDA

SWORN TO BEFORE ME  
THIS 23<sup>rd</sup> DAY OF SEPTEMBER, 2012

  
NOTARY PUBLIC

GENE R. BERARDELLI

Notary Public, State of New York

02BE6144093

Qualified in Kings County

My Commission Expires 4/24/2014





## AFFIDAVIT

ETHEL ARODZERO- REDA, having been duly sworn, deposes and states:

- 1) My name is Ethel Arodzero-Reda, and I reside at [REDACTED] in Brooklyn, NY. My apartment is located within the 45<sup>th</sup> Assembly District.
- 2) I write this affidavit in support of Russell Gallo's application because I voted for Russell Gallo, but my vote was apparently not counted. My vote must count.
- 3) I am a registered voter enrolled in the Independence Party.
- 4) On Thursday, September 13, 2012, I went to my poll location at P.S. 209 located at 2609 East 7<sup>th</sup> Street.
- 5) I intended to vote in the Independence Party primary for Member of Assembly. That primary was the only primary I was entitled to vote in on that day.
- 6) When I arrived at my poll site, I went to the appropriate table for my Election District, the 81<sup>st</sup>.
- 7) When I got to the table, I told the poll workers at the table that I wanted to vote in the Primary.
- 8) The poll workers told me to sign in to their poll book. I looked at the book, found my name and signed in the appropriate place.
- 9) After signing, I was handed a ballot to go vote. I assumed that it was the correct ballot, as I am only entitled to vote in the Independence Primary.
- 10) I wrote in the name "RUSSELL C GALLO" into the write-in section of the ballot. I knew that the Independence Party primary was a write-in primary, so this would be the only way I could vote.
- 11) I then scanned in the ballot into the voting machine and went home.
- 12) I am now being told that there were no Independence Party ballots counted from my Election District. I am also told that there was no Independence Party ballot in the ballot box from my Election District or any other Election District from my poll location. How could this be? I signed into vote and I voted for Russell Gallo.
- 13) The only thing I can think of is that I was handed the wrong ballot by the poll workers. I recall that there was a Democratic primary taking place for the same office. I must have received that ballot instead of the correct ballot from the poll workers.
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- 16) By my vote not counting right now, I feel robbed of my fundamental right to vote. Just because I am enrolled in a third-party or just because the poll worker may not have been aware of my

party's race shouldn't mean that my vote shouldn't count when I took the time to vote in a smaller race.

17) I did everything a voter is supposed to do. My vote should count. I beg the Court to please allow my vote to count for my choice of candidate, Russell C. Gallo, for my party line.

Date: September 23, 2012  
Brooklyn, NY

Ethel Arodzero-Reda  
ETHEL ARODZERO-REDA

SWORN TO BEFORE ME  
THIS 23<sup>rd</sup> DAY OF SEPTEMBER, 2012

Gene R. Berardelli  
NOTARY PUBLIC

GENE R. BERARDELLI

Notary Public, State of New York

02BEG144093

Qualified in Kings County

My Commission Expires 4/24/2014

Index No.: \_\_\_\_\_  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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In the Matter of the Application of  
RUSSELL C. GALLO,

*Petitioner,*

- against -

BEN AKSELROD

- and -

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

*Respondents,*

For an Order Pursuant to Sections 16-106, 16-112 and 16-113 of the Election Law, Directing the preservation of all ballots cast in the Independence Party Primary Election held on September 13, 2012 for the Public Office of Member of Assembly from the 45<sup>th</sup> Assembly District, in the County of Kings and directing the examinations of all ballots cast in said election by Petitioner's counsel and agents; invoking the court's jurisdiction to rule on the casting or canvassing, or refusal to cast or canvass, any ballot as set forth in Election Law Section 116-106(1); preserving Petitioner's rights under Section 9-209(4)(d) of the Election Law and Section 16-113 of the Election Law, and related sections of law; declaring Petitioner the lawfully elected candidate in this election.

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## ORDER TO SHOW CAUSE & PETITION WITH EXHIBITS

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**GENE R. BERARDELLI**  
*Attorney for Petitioner*  
RUSSELL C. GALLO  
299 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007  
(212) 233-6686

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ATTORNEY'S CERTIFICATION. Pursuant to 22 NYCRR 130-1.1, upon reasonable inquiry under the circumstances, I certify that the presentation of these papers or contentions therein is not frivolous.

Dated: September 23, 2012



Gene Berardelli, Esq.

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