

**STATE OF NEW YORK  
SUPREME COURT : COUNTY OF OSWEGO**

**CRYSTAL MYERS and TIMOTHY THAYER,**

**Petitioners,**

**v.**

**RICHLAND FIRE DISTRICT,**

**Respondent.**

**JUDGMENT**

**Index No.: EFC-2025-0283**

**HON. GREGORY R. GILBERT, JSC**

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Petitioners circulated elector signature petitions which were then filed with the Richland Town Clerk seeking to dissolve the Richland Fire District. It is claimed that the Clerk delivered a “certificate of validity” on September 19, 2024. Petitioners assert that a referendum was not set within 30 days of the “certification”. This proceeding seeks an Order to direct the referendum. Respondent has filed a motion to dismiss with objections in law. Petitioner files opposition to the motion to which there is a reply. The Article 78 proceeding has many deficiencies.

The proceeding is against the Fire District. A Fire District, unlike a Fire Protection District, is a distinct political subdivision of the state and a district corporation within the meaning of section three of the general corporation law in its own right under Town Law §174(7). Matter of Waite v. Town of Champion, 148 AD3d 1634 (4<sup>th</sup> Dept 2017) affirmed 31 NY3d 586 (2018). A fire district is wholly independent of the Town. Nelson v. Garcia, 152 AD2d 22 (4<sup>th</sup> Dept 1989). Suggestions by respondent to the contrary have no merit.

GML §786(1) requires that five electors bring the petition. This Article 78 petition is brought by two claimed electors. Petitioners assert that GML §786 has no application to this matter. Matter of Waite v. Town of Champion, 148 AD3d 1634 (4<sup>th</sup> Dept 2017) affirmed 31 NY3d 586 (2018) directly holds to the contrary and requires the petition be dismissed. The statute makes no distinction between a Fire District and a Fire Protection District as to the number of electors required to bring the proceeding.

Respondent claims that Crystal Myers is not a resident of the Fire District. Petitioner acknowledges non-residence in the Fire District and agrees that Myers is not a proper petitioner [DKT # 25 ¶ 3]. An elector is defined at General Municipal Law §750(7) to mean a registered

voter of this state registered to vote in the local government entity subject to consolidation or dissolution proceedings. Ownership of non-residential property does not make an individual an elector who may properly sign a petition. The parties agree that this requires dismissal of the petition.

The Court notes, as does respondent, that numerous elector signatures submitted by petitioners are from non-resident persons not registered to vote within the entity (Fire District) subject to the proposed dissolution. Had this matter gone forward to further consideration, such signatures would have been disregarded. This would not have required dismissal but would certainly affect whether petitioner met the statutory threshold required for referendum.

Petitioners need the signatures of at least 10% of electors unless there are 500 or fewer electors where 20% of the electors are needed to sign dissolution petitions under General Municipal Law §779(2). The issue is not addressed by the petition in any respect. This requires the petition to be dismissed. Crawford v. Kelly, 124 AD2d 1018 (4<sup>th</sup> Dept 1986).

Petitioners suggest that the burden should be on the Fire District to certify the elector signatures and presumably determine who is an elector residing within the Fire District. The statute makes no provision for this and leaves this matter to petitioners in the first instance. The pleading burden belongs to petitioners and is not met. This requires the petition to be dismissed. Matter of Town of Riverhead v. New York State Department of Environmental Conservation, 50 AD3d 811 (2<sup>nd</sup> Dept 2008); Reden v. Nassau County Civil Service Commission, 133 AD3d 694 (2<sup>nd</sup> Dept 1987); Jahn v. Town of Patterson, 23 AD2d 688 (2<sup>nd</sup> Dept 1965).

Petitioners suggest that the Town Clerk certified the petition for dissolution of the Fire District but this is not shown under General Municipal Law §779(6). The Town Clerk (and this Court) could only work with what was presented by petitioners and the submission was entirely deficient. A bunch of signature pages provided with no measuring stick under General Municipal Law §779(2) is worthless. This requires the petition to be dismissed.

Elector signature pages have to be filed with the Town Clerk in which the greater portion of the entity's territory is located under General Municipal Law §779(1). This is not stated by the petition but would reasonably be inferred. The Court would not dismiss solely for this defect.

There is nothing before the Court to suggest that the Fire District lies wholly within the Town of Richland. This seems to be what petitioner and respondent infer but leave unstated. The inference is reasonable and the Court would not dismiss solely for this defect.

The Court has no way to tell which signatures were validated and which were not based on the petition. The failure to submit the Clerk's notice and proper validation of elector signatures under General Municipal Law §779(6) is not addressed by petitioners. This would require the petition to be dismissed.

Respondent attaches 24 elector signature pages reviewed by the Clerk [DKT # 12] while

only 14 pages are attached to the moving papers [DKT # 2]. The difference is noted. Petitioners do not address this issue and the full petition as submitted to the Town Clerk should have been submitted with the Article 78 petition to the Court. This would require the petition to be dismissed.

Respondent spots 171 “accepted” signatures on [DKT # 12] but 104 elector signatures are attached to the petition [DKT # 2]. The difference is noted. Petitioners do not address this issue. Petitioners had an obligation to provide the Court with complete information. This would require the petition to be dismissed. Matter of DiBattista v. McDonough, 80 AD3d 936 (3<sup>rd</sup> Dept 2011); Oliver v. Donovan, 32 AD2d 1036 (2<sup>nd</sup> Dept 1969).

Respondent opines that the Clerk did not properly certify the signatures shown on [DKT # 12]. All that the Clerk attempted to do was to ascertain if the signatures being offered even owned property within the Fire District. There is no certification (final determination) by the Clerk under General Municipal Law §779(6) presented and this is the result of the Clerk not being provided with sufficient information by petitioners. This would require the petition to be dismissed

Respondent points to [DKT # 2] titled “Petition for Local Government” while [DKT # 12] from the Clerk adds the word “Dissolution” altering the pages after signature. The difference is noted. Petitioners do not address this issue. This would require the petition to be dismissed. Matter of Abraham v. Ward, 43 AD3d 1271 (4<sup>th</sup> Dept 2007).

Respondent observes that each page on [DKT # 2] has a witness signature not matching the witness identified on any page. The difference is noted. Petitioners do not explain why a non-witness signed as witness to the elector signatures in the first instance. This would require the petition to be dismissed. Matter of Quinn v. Erie County Board of Elections, 120 AD3d 992 (4<sup>th</sup> Dept 2014) leave denied 23 NY3d 908.

Respondent shows that [DKT # 12] has an added witness signatures after elector signatures were collected to match the witness identified by each page. The difference is noted. Petitioners do not reveal when the witness signatures were added but affirmatively state that the added witness was the person actually carrying the elector petitions and witnessed the elector signatures. This confusion surrounding the witness signatures is sufficient for the petition to be dismissed. Quinlin v. Pierce, 254 AD2d 690 (4<sup>th</sup> Dept 1998)

Respondent states that [DKT # 2 pg. 12] a page of five elector signatures dated August 19, 2024 submitted with the petition is not as part of [DKT # 12]. The difference is noted. Petitioners do not address this issue. Any page of signatures not provided to the Town Clerk for review should not be presented to the Court and would be disregarded.

Petitioners had the statutory burden of collecting appropriate elector signatures in the first instance. This required some effort by petitioners even before collecting signatures and no such effort was undertaken at that time or even now. Petitioners now attach a listing of property within the Fire District prepared by the Town Assessor and a voter registration list for the Town of

Richland. Petitioner should have obtained this information even before attempting to collect elector signatures and failed to do so. This would require the petition to be dismissed.

Respondent suggests that since the lists were not compiled on the day the elector signatures were collected, the lists cannot be used. This view has no merit and would only present questions for a hearing had the matter proceeded in that fashion. Respondent also asserts that it would be a simple matter to cross check the assessor's property list with the voter registration list. The Court notes that respondent made no such attempt. Such an effort may be difficult and time consuming but under the statute the initial obligation belongs to and was not met by petitioners.

Lastly, the proceeding is one plainly seeking mandamus. The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act, and only where there exists a clear legal right to the relief sought. Matter of Barhite v. Town of DeWitt, 144 AD3d 1645 (4<sup>th</sup> Dept 2016) leave to appeal denied 29 NY3d 902; Matter of Legal Aid Society of Sullivan County v Scheinman, 53 NY2d 12 (1981). Petitioner has failed to demonstrate or even plead a clear legal right to the relief sought.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED**, that that the petition is **DISMISSED**.

**IT IS SO ORDERED.**

ENTER

**Dated: May 22, 2025**  
**Oswego, New York**

  
**HON. GREGORY R. GILBERT**  
**SUPREME COURT JUSTICE**