

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SAL F. ALBANESE, as aggrieved ballot-
access candidate for the Public Office of
Mayor of the City of New York, CURTIS
SLIWA, as Chair of the New York State
Reform Party, a ballot-access party as
defined under §1-104(3) of the Election
Law, and FRANK MORANO, as Chair of
the Interim County Organization for
Richmond County, in the City and State of
New York,
Petitioners,

INDEX NO.:

**VERIFIED PETITION UNDER
ARTICLE 78 OF THE CPLR**

-vs.-

THE NEW YORK CITY CAMPAIGN
FINANCE BOARD, THE CITY OF NEW
YORK,
Respondents-State Actors,

-and-

CHARTER COMMUNICATIONS (DE), INC.
d/b/a SPECTRUM NEWS NY1,
SYMPHONY SPACE, MARIST INSTITUTE
FOR PUBLIC OPINION AT MARIST
COLLEGE, QUINNIPIAC UNIVERSITY,
and JOHN DOES 1-10, said names
representing potential respondents
unknown at this time,

Respondents-Quasi-State Actors,

Petitioners, by and through their undersigned attorneys, the Luthmann Law Firm,
PLLC, for their complaint against the above-named Respondents hereby allege as
follows:

PRELIMINARY STATEMENT

1. Central to the meaningful voter choice in any election is the ability for ballot
access political candidates to participate governmentally-sponsored debates, to have

their ideas and political expressions heard, and to allow the voters to make an informed choice without undue influence in favor or against any candidate or group of candidates. That a bureaucratic authority should not be a determinant in our elections was recognized by no less a great New Yorker than Justice Robert H. Jackson:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics..." W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943) (majority opinion).

2. Respondent, The City of New York (the "City"), through its Respondent bureaucratic administrative agency, The New York City Campaign Finance Board (the "CFB"), is, according to its own website: "a nonpartisan, independent city agency that empowers New Yorkers to make a greater impact on their elections." See <http://www.nyccfb.info/about>.¹

¹ The CFB's website continues:

The New York City Campaign Finance Board (CFB) administers one of the strongest, most effective campaign finance systems in the country. NYC's [matching funds program](#) amplifies the voice of average New Yorkers in city elections by matching their small contributions with public funds. By increasing the value of small-dollar contributions, the program reduces the possibility and perception of corruption from large contributions and unlimited campaign spending, and encourages citizens from all walks of life to run for office. Through its rigorous oversight and enforcement efforts, the CFB holds candidates accountable for using public funds responsibly.

The CFB [publishes detailed public information](#) about money raised and spent in city elections by candidates and independent spenders, bringing greater transparency to the democratic process. Its [NYC Votes](#) campaign engages and educates voters through community outreach, the [Voter Guide](#), and [Debate Program](#), empowering New Yorkers to make informed choices at the polls. In addition, the CFB seeks

3. The instant proceeding is about the CFB's NYC Votes campaign and particularly the Debate Program and is being brought by three Petitioners who would seek to keep the CFB honest to the voters of New York City with respect to the 2017 General Election for the Mayor of the City of New York, the Campaign Finance law, the CFB's own Rules and Mandate, and conventionally accepted notions of protected political expression and fair play in the conduct of elections, to wit:

a. SAL F. ALBANESE is a candidate for Mayor of the City of New York on the New York State Reform Party ballot line. Sal Albanese is a former Member of the NYC Council, a former NYC teacher, an attorney, a father, a husband, and is one of NYC's foremost advocates for transportation reform, good government, and the end of the corrupt practice of "PAY-TO-PLAY".

b. CURTIS SLIWA is an American anti-crime activist, founder and CEO of the Guardian Angels, radio talk show host, media personality, State Chair of the New York State Reform Party², and a New York City resident and registered voter.

c. FRANK MORANO, is Staten Island's favorite son and brings the wisdom of a common sense New Yorker, coupled with an encyclopedic knowledge of local politics as a radio talk show host, media personality, Chair of the Interim County Organization of the New York State Reform Party for Richmond County, and a New York City resident and registered voter.

to improve the voter experience by advocating for legislative changes to the registration and voting process.

² The New York State Reform Party operates under the legally-incorporated domestic not-for-profit corporate name of NEW YORK STATE REFORM PARTY, INC., and has no affiliation with the national "Reform Party" or the "Reform Party of New York Corp.", also a legally-incorporated domestic not-for-profit entity.

4. The problem here is simple. NYC Mayoral candidate Sal Albanese and NYS Reform Party Officials Curtis Sliwa and Frank Morano have not been given a straight answer as to whether Sal Albanese can participate in the next NYC Mayoral Debate to be held on Tuesday, October 10, 2017, at 7:00pm, at Symphony Space on the Upper West Side (the "Debate").

5. The fear is that the CFB, a bureaucratic, administrative agency, has arbitrarily and capriciously abdicated its role to determine debate criteria to Debate sponsors who are themselves private sector agents of the CFB. As such, the Debate sponsors / private sector agents, by virtue of both their exercise of governmental power AND their unequivocal indemnification as a matter of law, are held to the same strict scrutiny standards as the CFB in their decision whether to include Sal Albanese on the Debate Stage for NYC Mayor on Tuesday, October 10, 2017, at 7:00pm, at Symphony Space on the Upper West Side.

6. As such, the Petitioners bring this proceeding to:

a. Preliminarily and Temporarily Restrain the CFB, the City, CHARTER COMMUNICATIONS (DE), INC. d/b/a SPECTRUM NEWS NY1 ("Spectrum NY1"), and Symphony Space from conducting, broadcasting, hosting, transmitting, holding, and/or going forward in any way, with the Debate for NYC Mayor on or about Tuesday, October 10, 2017, at 7:00pm, at Symphony Space on the Upper West Side without ballot access candidate for the NYS Reform Party, SAL F. ALBANESE, participating in said Debate on said Debate Stage; and

b. Staying the Hearing of and determination of this Petition until after the administrative determination of the CFB, which is scheduled to be made on Friday, October 6, 2017; and

c. Declaring that the Petition should be granted and that SAL F. ALBANESE, ballot access candidate for the NYS Reform Party, shall be entitled to appear on the Debate Stage and participate in the Debate for NYC Mayor on Tuesday, October 10, 2017, at 7:00pm, at Symphony Space on the Upper West Side; and

d. Granting such other and further relief as the Court shall deem just and equitable.

SUMMARY OF THE FACTS

7. Petitioners repeat, reallege, and reiterate all paragraphs above (inclusive) as if fully stated herein and further state as follows.

8. The Debate is put together by the CFB in coordination with its private-sector agent Spectrum NY1 News. See **EXHIBIT “A”**.

9. The CFB publishes a “Debate Criteria” publication that gives its interpretation of the requirements for candidate participation in the Debate and is branded “the non-partisan, objective, and non-discriminatory criteria that candidates must meet in order to participate in the debates.” See **EXHIBIT “B”**.

10. The actual criteria for Debate participation is found as part of the NYC Administrative Code, § 3-709.5: Mandatory debates. See **EXHIBIT “C”**.³

³ Notably, the private-sector agents of the City and the CFB are indemnified under the Administrative Code:

12. The city of New York shall indemnify each sponsor for any liability of such sponsor arising out of the acts or omissions of the city of New York in connection with the selection of candidates for participation in any debate held pursuant to this section 3-709.5.

11. All outward signs point to the fact that Sal Albanese will not be included on the Debate State on Tuesday, October 10, 2017, at 7:00pm, at Symphony Space. The sponsor / private-sector agent Spectrum NY1 News⁴ is controlling the debate tickets and has already released tickets to the supporters and special interests of candidates Bill de Blasio, Nicole Malliotakis, and Bo Dietl. However, no such release of tickets has been made to Sal Albanese, his campaign, or his supporters of Real Reform.

12. A letter dated September 20, 2017, was sent to the CFB questioning whether trickery was afoot. See **EXHIBIT "D"**.

13. The Response Letter from the CFB was cryptic at best. See **EXHIBIT "E"**.

14. Said Response Letter references a Memorandum of Understanding as between the CFB and NY1 entered in to June 7, 2017 (the "MOU").

15. Moreover, the Response Letter says:

[P]ursuant to the MOU, eligibility for the Debate will be determined based on the last filing statement prior to the Debate, which must be filed by Friday, October 6, 2017. All candidates on the ballot for Mayor will be notified whether they have met the eligibility criteria to participate in the Debate after October 6, 2017. If you need further assistance, please contact your Candidate Services Liaison.⁵

⁴ Notably, Charter / Spectrum NY1 is involved in an over Six (6) Month strike and controversy with its workers because, *inter alia*, Charter / Spectrum NY1 screws their workers out of their pensions and hire SCABS.

See <https://www.nytimes.com/2017/08/25/nyregion/spectrum-workers-strike-approaches-5-month-mark.html>.

⁵ As discussed *infra*, the CFB cannot delegate its official duties under the NYC Administrative Code, § 3-709.5, by contract or otherwise. The result of this overreach by the CFB (coupled with indemnification provisions covering sponsor / private-sector agents) the is the MOU is rendered a legal nullity. Moreover, the date of the selected determination (2 business days before the debate) does not allow for meaningful administrative or judicial review of the CFB's determinations, which appears on its face to arbitrarily and capriciously influenced by sponsor / private-sector agents of the CFB. Thus, the offending language in NYC Administrative Code § 3-709.5 (1)(a) should be disregarded.

16. As detailed in the September 20, 2017 Letter, in the Petitioners' opinion, SAL F. ALBANESE has qualified for the Debate Stage:

a. SAL F. ALBANESE is and will be the ballot access candidate of the NYS Reform Party as of the date of the Debate (Admin. Code § 3-709.5(1)(a));

b. SAL F. ALBANESE does now and will meet all other minimum criteria under the Campaign Finance Act ("the Act") as of the day of the Debate (Admin. Code § 3-709.5(5)(b)(i));

c. SAL F. ALBANESE has already and will have raised and spent 2.5% of the expenditure limit for Mayor (\$174,225) in compliance with the Act as reflected in the last filing statement prior to the Debate, which must be filed by Friday, October 6, 2017; AND

d. SAL F. ALBANESE has met the polling requirements with respect to the Act (as discussed *infra.*) as the CFB, by its own Rules and applicable Administrative Regulations.

17. Accordingly, the Petitioners' petition should be granted for the reasons detailed herein.

STANDING, PARTIES AND JURISDICTION

18. CPLR § 103 states:

(a) One form of action. There is only one form of civil action. The distinctions between actions at law and suits in equity, and the forms of those actions and suits, have been abolished.

(b) Action or special proceeding. All civil judicial proceedings shall be prosecuted in the form of an action, except where prosecution in the form of a special proceeding is authorized. Except where otherwise prescribed by law, procedure in special proceedings shall be the same as in actions, and the

provisions of the civil practice law and rules applicable to actions shall be applicable to special proceedings.

(c) Improper form. If a court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution. If the court finds it appropriate in the interests of justice, it may convert a motion into a special proceeding, or vice-versa, upon such terms as may be just, including the payment of fees and costs.

19. To the extent that the injuries in fact asserted by the Petitioners herein are cognizable under numerous provisions of law including but not limited to the Executive Law, the Election Law, the Charter of the City of New York (and in particular § 1052), Title 3, Chapter 7 of the New York City Administrative Code (and in particular § 3-706), the General Obligations law, and other applicable law, it is respectfully requested that, to the extent that relief cannot be granted under Article 78 of the CPLR, that the form of this action be re-cast to so as to afford the Petitioners the opportunity to meaningfully prosecute said action and have an opportunity to be heard on the stated and/or cognizable relief requested herein.

20. Petitioner, SAL F. ALBANESE, is aggrieved as a candidate of the New York State Reform Party for Mayor of the City of New York, whose opportunity to engage in protected political speech as a ballot access candidate for the Mayor of the City of New York at the Debate funded, sponsored, and promoted by the City, the CFB, and its Debate sponsors / private-sector agents, is in jeopardy of being denied on an arbitrary and capricious basis.

21. Petitioner, CURTIS SLIWA, is aggrieved as the New York State Reform Party's State Chair, whereby said Party, under its Party Rules and pursuant to § 6-120 of the Election law, duly authorized SAL F. ALBANESE as its candidate for the Public Office

of the Mayor of the City of New York, and the voters of the NYS Reform Party and unaffiliated voters in the City of New York, in the Primary Elections held on September 12, 2017, designated SAL F. ALBANESE as said party's ballot access candidate, and that the actions of the Respondents are thus improperly, illegally, and harmfully affecting SAL F. ALBANESE's Mayoral candidacy for Mayor of the City of New York, and improperly violating the constitutional rights of SAL F. ALBANESE and the New York State Reform Party, including the right to political participation and uncensored political speech not subject to arbitrary and capricious classification excluding SAL F. ALBANESE from the Debate Stage and participation in the Debate for NYC Mayor on Tuesday, October 10, 2017, at 7:00pm, at Symphony Space on the Upper West Side.

22. Petitioner, FRANK MORANO, is aggrieved as the New York State Reform Party's Chair of the Interim County Organization of Richmond County, the sole County Organization of the five (5) counties comprising the City of New York for the New York State Reform Party, whereby said Party, under its Party Rules and pursuant to § 6-120 of the Election law, duly authorized SAL F. ALBANESE as its candidate for the Public Office of the Mayor of the City of New York in the Primary Elections held on September 12, 2017, designated SAL F. ALBANESE as said party's ballot access candidate, and that the actions of the Respondents are thus improperly, illegally, and harmfully affecting SAL F. ALBANESE's Mayoral candidacy for Mayor of the City of New York, and improperly violating the constitutional rights of SAL F. ALBANESE and the New York State Reform Party, including the right to political participation and uncensored political speech not subject to arbitrary and capricious classification excluding SAL F. ALBANESE from the Debate Stage and participation in the Debate for NYC Mayor on Tuesday, October 10, 2017, at 7:00pm, at Symphony Space on the Upper West Side.

23. Together SAL F. ALBANESE, CURTIS SLIWA, and FRANK MORANO are the “Petitioners”.

24. Respondent THE NEW YORK CITY CAMPAIGN FINANCE BOARD (“CFB”) has acted or has threatened to act in a way which will prejudice the

25. Respondent, THE CITY OF NEW YORK (the “City”) is ultimately responsible for the conduct of the CFB and the payment of indemnification payments and other statutory or other obligations under the Violated Laws, Rules, and Regulations.

26. Respondent, CHARTER COMMUNICATIONS (DE), INC. d/b/a SPECTRUM NEWS NY1 (“Spectrum NY1”), is the exclusive broadcaster and a Debate Sponsor and a private sector agent of the CFB for all relevant purposes herein. Spectrum NY1 is to organize of its own sponsor group for the Debate.

27. Respondent, SYMPHONY SPACE, is the location / venue on Manhattan’s Upper West Side for the Debate for NYC Mayor to be held on Tuesday, October 10, 2017, at 7:00pm.

28. Respondent, MARIST INSTITUTE FOR PUBLIC OPINION AT MARIST COLLEGE, 3399 North Rd., Poughkeepsie, NY 12601, conducts polls as contemplated under the NYC Administrative Code, § 3-709.5.

29. Respondent, QUINNIPIAC UNIVERSITY, 275 Mount Carmel Avenue, Hamden, Connecticut, 06518, conducts polls as contemplated under the NYC Administrative Code, § 3-709.5.

ANY DECISION TO SAL F. ALBANESE’S INCLUSION ON THE DEBATE STAGE BY THE CFB SHOULD BE EXAMINED WITH STRICT SCRUTINY AS TO THE MOTIVES OF THE CFB AND ITS AGENTS

30. The authority to decide whether Sal Albanese should be included on the Debate Stage lies solely with the CFB, a governmental agency and cannot be delegated

to a Debate sponsor / private sector agent without all applicable protections given to the integrity of the elections and the applicable freedom of political expression by the ballot access candidates: anything less would be state-sponsored censorship of political speech.

31. Strict scrutiny should apply here as Sal F. Albanese, as a ballot access candidate for the Public Office of the Mayor of the City of New York, cannot have his political speech stifled in a publicly-sponsored forum.

32. The Court should look no further than the actual motives of the CFB and its agents / Debate sponsors / public actors and see whether the actions of the CFB and/or its agents are arbitrary and capricious with respect to the applicable laws, rules and regulations. See Elena Kagan, *Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine*, 63 U. CHI. L. REV. 413, 414, 428–32 (1996); Jed Rubenfeld, *The First Amendment's Purpose*, 53 STAN. L. REV. 767, 768, 776 (2001) (arguing that First Amendment cases should be decided exclusively on the question of motive).

33. The CFB, in its discharge of NYC Administrative Code, § 3-709.5(1)(a) has offended this basic principle of political open expression, through an arbitrary and capricious agreement with a Debate sponsor / private sector agent, having responsibility for any part of the CFB determination as to a ballot access candidate's inclusion on the Debate Stages:

A participating candidate or limited participating candidate for nomination or election to a city-wide office is eligible to participate in a debate for each election in which he or she is on the ballot if he or she has met such criteria for participation as specified in this section, and as shall be further specified in any agreement between the debate sponsor and the board.

34. Under the NYC Administrative Code, § 3-709.5, there are three types of candidates, to wit: a participating candidate, a limited-participating candidate, and a non-participating candidate. SAL F. ALBANESE cannot be said to be a non-participating candidate. Thus, the ability of a Debate sponsor / private sector agent is very limited under the NYC Administrative Code, § 3-709.5. In fact, that section was written to allow a Debate sponsor / private sector agent to permit MORE candidates on the debate stage and not LESS (non-participating candidate Debate Sponsor exclusion) – and consequentially MORE POLITICAL SPEECH and MORE POLITICAL CHOICE. § 3-709.5 (5)(b)(ii).

POLLING IS NOT A NECESSARY ELEMENT TO DEBATE INCLUSION BUT STRICTLY AND INORDINATELY HIGH MONETARY REQUIREMENTS ARE ARBITRARY AND CAPRICIOUS AND STIFLE POLITICAL SPEECH OF BALLOT ACCESS CANDIDATES

35. The word “poll” is not defined in Admin. Code § 3-702. Moreover, the recent Marist Poll did not include all of the ballot access candidates in the poll. The Marist Poll from September 19, 2017, is a Defective Poll for measurement purposes under the CFB rules.

36. Additionally, Sal Albanese had been included in previous Marist and Quinnipiac Polls. Why he was now suddenly and inexplicably dropped reeks of political trickery. The voters of the City of New York have a right to hear the views of the candidates, and it seems someone or something wants to muzzle and stifle Sal Albanese’ message of Reform and the end of “Pay-To-Play”.

37. If there is no Valid Poll from Marist or Quinnipiac, then the only criteria as per the 2017 CFB Rules is fundraising and spending. However, the NYC Administrative Code contains no such limiting language as to polls. In fact, the word “Poll” does not appear anywhere within NYC Administrative Code, § 3-709.5.

38. Moreover, such a reading of the 2017 CFB rules is arbitrary and capricious and stifles and creates GOVERNMENT-SPONSORED chilling effect on the protected political speech of ballot access candidates for NYC Mayor in a GOVERNMENT-SPONSORED forum.

THE POLLING WAS DEFECTIVE, BUT SAL ALBANESE IS NOT TO BLAME

39. On September 20, 2017, Lee Miringoff, the director of Respondent Marist's polling operation spoke to Petitioner Curtis Sliwa. See Affidavit of Curtis Sliwa attached hereto as **EXHIBIT "G"**.

40. Lee Miringoff admitted that Sal Albanese was not included in the Marist polling that was published on September 19, 2017 (Ex. F hereto). Sal Albanese is a ballot access candidate and this was a mistake on Respondent Marists' part.

41. Accordingly, Petitioners should not be penalized for the inadvertent mistakes of pollsters.

CONCLUSION

42. For the foregoing reasons, Petitioners respectfully request that the Court should grant the Petition.

43. **No previous request for the relief herein has been made.**

44. **The Petitioners are at jeopardy of immediate and irreparable harm for which monetary damages cannot adequately compensate.**

WHEREFORE, Petitioners respectfully request for the Court to grant an Order:

a. Preliminarily and Temporarily Restrain the CFB, the City, CHARTER COMMUNICATIONS (DE), INC. d/b/a SPECTRUM NEWS NY1 ("Spectrum NY1"), and Symphony Space from conducting, broadcasting, hosting, transmitting, holding, and/or going forward in any way, with the Debate for NYC Mayor on or

about Tuesday, October 10, 2017, at 7:00pm, at Symphony Space on the Upper West Side without ballot access candidate for the NYS Reform Party, SAL F. ALBANESE, participating in said Debate on said Debate Stage; and

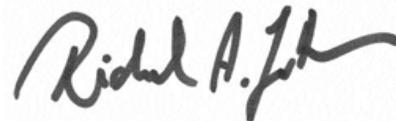
b. Staying the Hearing of and determination of this Petition until after the administrative determination of the CFB, which is scheduled to be made on Friday, October 6, 2017; and

c. Declaring that the Petition should be granted and that SAL F. ALBANESE, ballot access candidate for the NYS Reform Party, shall be entitled to appear on the Debate Stage and participate in the Debate for NYC Mayor on Tuesday, October 10, 2017, at 7:00pm, at Symphony Space on the Upper West Side; and

d. Granting such other and further relief as the Court shall deem just and equitable.

DATED: Staten Island, New York
October 2, 2017

Respectfully submitted,
THE LUTHMANN LAW FIRM, PLLC



By: _____

Richard A. Luthmann

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VERIFICATION

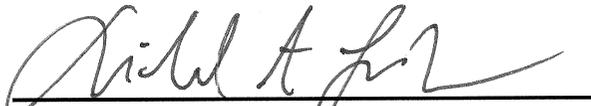
State of New York

County of Richmond ss.:

SAL F. ALBANESE, being duly sworn, deposes and says: I am the Petitioner in this matter and I am the Candidate of the New York State Reform Party for the Public Office of Mayor of the City of New York. I have read the foregoing pleadings to be submitted to the Court and know the contents to be true to my own knowledge, except for those matters alleged to be on information and belief, and as to those matters, I believe them to be true.


SAL F. ALBANESE

Sworn to before me this 2nd day
of October, 2017.


NOTARY PUBLIC

RICHARD A LUTHMANN
NOTARY PUBLIC
STATE OF NEW YORK
REG. NO: 02LU6235872
COMM. EXP: FEB. 14, 2019