

ARTICLES

THE APPELLATE DIVISION'S ADJUDICATION OF CHALLENGES TO POLITICAL PARTY NOMINATIONS IN 2018, AND ITS MEANING FOR BALLOT ACCESS IN NEW YORK

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After generations of authorizing the removal of prospective electoral candidates from the ballot for dubious technical reasons, New York State enacted the Ballot Reform Act in order to alleviate trivial hurdles, as detailed as designating petition cover sheet requirements, that had traditionally compromised opportunities for new candidates to run for office.¹ By allowing certain aspects of the Election Law to “be liberally construed, not inconsistent with substantial compliance thereto and the prevention of fraud,”² the Act sought to achieve the New York State Legislature’s goals of “easing those requirements which govern access to the ballot,”³ and to end the status of “New York’s ballot access laws . . . [as] the laughingstock of the nation.”⁴

Even so, at least two 2018 appellate division decisions that rejected potential candidacies on technical grounds—for which the candidates had no control to ensure compliance—demonstrate that more remains to be done to achieve the promise of equitable ballot access

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¹ See Ballot Access—Designating Petition Rules, ch. 709, 1996 N.Y. Laws 1732, 1733 (codified as amended at N.Y. ELEC. LAW §§ 5-604, 6-130, 6-132, 6-134, 6-140 (McKinney 2019)); New York State Senate Introducer’s Memorandum in Support, S.B. 7856-A, 1996 Leg., 191st Sess. (N.Y. 1996) (B. Jacket), at 16.

² ELEC. § 6-134(10).

³ Letter from Jonathon Burman, Dir. of Legislative Affairs, The Ass’n of the Bar of the City of N.Y., to Hon. George E. Pataki, Governor (July 12, 1996), S.B. 7856-A, 1996 Leg., 191st Sess. (B. Jacket), at 29.

⁴ Letter from Andrew Greenblatt, Exec. Dir., CommonCause/NY, to Hon. George Pataki, Governor (July 12, 1996), S.B. 7856-A, 1996 Leg., 191st Sess. (B. Jacket), at 30.

in New York. In *Matter of Fuentes v. Catalano*,⁵ the Second Department invalidated the nominations of two Democratic candidates for New York State Supreme Court in Richmond County, solely because it concluded that the Chair and the Secretary of the nominating convention had not filed minutes of the convention with the New York City Board of Elections (“NYCBOE”) within seventy-two hours after the convention’s adjournment.⁶ This was so, even though a word-for-word convention transcript notarized by a stenographer—a more complete and detailed record of the convention’s proceedings than mere minutes—was indeed timely filed with the NYCBOE.⁷

Several days later, in *Matter of Cox v. Spoth*,⁸ the Fourth Department rejected the nomination of Francina J. Spoth to seek election on the Democratic line for the position of Town Clerk in the Town of Amherst, New York, solely because the certificate reflecting that nomination had been issued by the Erie County Democratic Party’s Executive Committee that had been constituted in 2016, rather than by a new Executive Committee constituted after the September 2018 primary election.⁹ The New York Court of Appeals had expressly permitted “an outgoing executive committee . . . to file a certificate of nomination if it was ‘effectively impossible to canvass and certify the newly elected committee members, convene an organizational meeting, elect a [new executive committee], and file a proper certificate of nomination’ within the applicable time frame” required by statute.¹⁰ Yet, in this case, the Fourth Department invalidated the certificate of nomination nonetheless, because it concluded that the Erie County Democratic Party could have convened more than forty reorganization meetings, on at least four days’ notice each, to take place in only six days throughout the towns and cities of Erie County to choose a new executive committee to issue the certificate.¹¹

⁵ *Fuentes v. Catalano*, 86 N.Y.S.3d 129 (App. Div. 2018).

⁶ *See id.* at 131, 133, 134.

⁷ *See id.* at 131, 133 (describing that while the transcript was regarded by the Court as the “functional equivalent” of the minutes, this document was not certified by the Convention Chair or Secretary).

⁸ *Cox v. Spoth*, 85 N.Y.S.3d 671 (App. Div. 2018).

⁹ *See id.* at 673–74, 675; *Cox v. Spoth*, No. 2018-000092, 2018 WL 7377025, at *3 (N.Y. Sup. Ct. Oct. 12, 2018).

¹⁰ *See Cox*, 85 N.Y.S.3d at 675 (quoting *Settineri v. DiCarlo*, 605 N.Y.S.2d 95, 97 (App. Div. 1993) (Balletta, J., dissenting), *rev’d*, 624 N.E.2d 683 (N.Y. 1993)) (reversing for the reasons set forth in Justice Balletta’s dissenting opinion).

¹¹ *See Cox*, 85 N.Y.S.3d at 675; *see also* DEMOCRATIC CTY. COMM. OF ERIE CTY., PARTY RULES, art. I § 10, art. II § 1 (2018), <http://ecdems.com/partyrules/> [hereinafter DEMOCRATIC CTY.

The difficult outcomes for prospective candidates in *Fuentes* and *Cox*—denying ballot access for technical reasons over which the candidates had little power to ensure compliance¹²—counsel that further reform is necessary to expand opportunities for New Yorkers to compete for election to public office. Such reform could arise from appropriate action by either the New York State Legislature or the judiciary.¹³ As the Legislature enacted Election Law section 6-134(10) more than twenty years ago to moderate New York’s rules for the petitioning process, so could it amend the Election Law again to apply liberal construction “not inconsistent with substantial compliance thereto and the prevention of fraud,”¹⁴ to New York’s rules that govern ballot access via methods other than the collection and filing of petition signatures. Alternatively, the New York State Courts could choose more often to apply already available common-law precedent that would excuse candidate nomination “procedural defect[s] . . . where . . . the defect alleged did not constitute a ‘substantive deficiency’ implicating the integrity of the electoral process.”¹⁵ Either option would avoid limiting voters’ choices among prospective elected officials for technical reasons bearing no relation to candidates’ merit or ability to follow the rules of political engagement.

I. *MATTER OF FUENTES V. CATALANO*

Each political party chooses its candidate(s) for most New York State and local public offices to be filled at the annual November general election via a closed primary among the party’s registrants in the jurisdiction served by the subject office.¹⁶ A party member may

COMM. OF ERIE CTY.] (requiring four days’ notice to members for reorganizational meetings of the County Executive Committee and that this committee be composed of a representative from each zone within the City of Buffalo and a representative for each city and town outside of the City of Buffalo).

¹² See *Cox*, 85 N.Y.S.3d at 675; *Fuentes*, 86 N.Y.S.3d at 134.

¹³ See, e.g., *Marzullo v. DelConte*, 85 N.Y.S.2d 274, 276 (App. Div. 2018) (quoting *Stewart v. Chautauqua Cty. Bd. of Elections*, 924 N.E.2d 812, 820 (N.Y. 2010)); Ballot Access—Designating Petition Rules, ch. 709, 1996 N.Y. Laws 1732 (codified as amended at N.Y. ELEC. LAW §§ 5-604, 6-130, 6-132, 6-134, 6-140 (2019)).

¹⁴ N.Y. ELEC. LAW § 6-134(10) (McKinney 2019).

¹⁵ See *Marzullo*, 85 N.Y.S.2d at 276 (quoting *Stewart*, 924 N.E.2d at 820).

¹⁶ See, e.g., ELEC. § 6-104 (describing elections to statewide offices); *id.* § 6-108 (2019) (describing the selection of candidates for town offices); *id.* § 6-110 (2019) (“All other party nominations of candidates for offices to be filled at a general election, except as provided for herein, shall be made at the primary election.”); see also *Parties and Candidates*, ACE: The Electoral Knowledge Network, http://aceproject.org/ac_e-en/topics/pc/pcb/pcb02/pcb02a/pcb02a1 (last visited Mar. 3, 2019) (describing political parties’ choice of candidates). Some candidates for town offices in counties having a population of 750,000 or fewer may be chosen

participate as a candidate in the party's primary by collecting and filing with the appropriate county board of elections or with the New York State Board of Elections (in the case of offices to be elected in districts that cross county lines) a sufficient number of valid signatures of the jurisdiction's party registrants on so-called "designating petition[s]."¹⁷ Whether a prospective candidate successfully qualifies onto the primary ballot depends principally upon the candidate's and his or her supporters' industry and attention to detail—such as in preparing the petitions, gathering enough signatures from eligible party registrants, and timely submitting the petitions to the proper board of elections—all in compliance with the rules set forth in New York Election Law Article 6.¹⁸

Prospective candidates for election to New York State Supreme Court judgeships, by contrast, cannot petition their way onto the primary ballot.¹⁹ "Party nominations for the office of justice of the [New York State] supreme court shall be made by the judicial district convention."²⁰ In a particular judicial district that must elect one or more state supreme court justices in a given election year, the political party's convention is "constituted by the election at the preceding primary of delegates and alternate delegates, if any, from each [State] assembly district," pursuant to a formula established by New York Election Law section 6-124 and the party's internal rules.²¹ Hence, a potential candidate for a New York State Supreme Court seat cannot depend solely upon self-sufficiency in order to attain ballot access: rather, he or she must rely upon the selection by a sufficient number of delegates at a convention duly assembled and conducted by others in accordance with the New York Election Law's requirements.²²

In *Fuentes*, the petitioners challenged those requirements' satisfaction at the convention by which the Democratic Party had timely nominated Anthony Catalano and Orlando Marrasso, Jr., as its candidates for election on November 6, 2018, to two open seats on

at a caucus of party registrants, rather than at a primary election. *See* N.Y. ELEC. LAW § 6-108(1).

¹⁷ *See generally* ELEC. §§ 6-118, 6-120, 6-122, 6-134, 6-136 (setting out the process for designating petitions).

¹⁸ *See id.* §§ 6-134(2), (10).

¹⁹ *See id.* § 6-106.

²⁰ *Id.*

²¹ *Id.* § 6-124; *see* N.Y. DEMOCRATIC PARTY, BYLAWS AND RULES, art. I § 5 (2019), <https://nydems.org/our-party/#bylaws> (follow "Bylaws" hyperlink).

²² *See* ELEC. § 6-124.

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the New York State Supreme Court bench in the Thirteenth Judicial District, which consists entirely of Staten Island, New York.²³ At the time of the convention on September 20, 2018, Catalano held office as Staten Island's Public Administrator, while Marrazzo was an elected New York City Civil Court Judge serving as an Acting State Supreme Court Justice.²⁴

Pursuant to New York Election Law section 6-158(6),

a certificate of party nomination made at a judicial district convention shall be filed not later than the day after the last day to hold such convention *and the minutes of such convention, duly certified by the chair[] and secretary, shall be filed within seventy-two hours after adjournment of the convention.*²⁵

“On September 24, 2018, a transcript of the convention proceedings, signed only by a stenographer, was filed with the Board of Elections in the City of New York.”²⁶ Because this transcript was not certified by the Chair and the Secretary of the convention that nominated Catalano and Marrazzo, the petitioners argued that their nominations were invalid, even absent any dispute that the separate certificate reflecting their nominations was indeed timely filed with the NYCBOE.²⁷

The trial court disagreed, and initially allowed Catalano's and Marrazzo's candidacies to proceed.²⁸ Recognizing that “judicial convention minutes are entitled to a presumption of regularity,” the trial court noted that appellate aivision precedent “support[ed] viewing the convention minutes in a different light than a certificate

²³ *Fuentes v. Catalano*, 86 N.Y.S.3d 129, 131 (App. Div. 2018); see *New York State – Judicial Districts*, N.Y. UNIFIED CT. SYS. (Apr. 29, 2015), <http://www.nycourts.gov/Attorneys/probono/district-county.shtml>.

²⁴ See Clifford Michel, *Staten Island Democrats' Supreme Court Nominees Will Be Kicked Off Party's Ballot Line*, STATEN ISLAND LIVE (Oct. 25, 2018), <https://www.silive.com/news/2018/10/staten-island-democrats-supreme-court-nominees-will-be-kicked-off-partys-ballot-line.html>.

²⁵ ELEC. § 6-158(6)(a) (emphasis added).

²⁶ *Fuentes*, 86 N.Y.S.3d at 131.

²⁷ See *id.* The petitioners did not contend that the transcript, even if it qualified as appropriate minutes of the convention, was untimely filed, because September 20, 2018 was a Thursday; seventy-two hours after the convention's conclusion fell in the evening on Sunday, September 23, 2018; and “a [seventy-two]-hour period that ends on Sunday advances to Monday, and, by itself, the filing of the convention minutes would satisfy the calendar (and the clock).” *Fuentes v. Catalano*, 86 N.Y.S.3d 402, 404 (Sup. Ct. 2018).

²⁸ See *Fuentes*, 86 N.Y.S.3d at 406.

of nomination.”²⁹ For the Democratic Party convention that nominated Catalano and Marrazzo, there was “a 31-page transcript of what transpired, including: placing names in nomination, calling the roll, electing officers and remarks of candidates.”³⁰ This, the Trial Court concluded, effectively satisfied the purpose of the convention’s required minutes to “inform us as to what happened at the convention,” and the transcript’s timely filing of the transcript with the NYCBOE substantially complied with New York Election Law section 6-158(6).³¹

The Second Department disagreed, however, reversed the Trial Court, and ordered Catalano and Marrazzo off the Democratic line in the race for State Supreme Court Justice on Staten Island in the 2018 general election.³² The Second Department acknowledged that, whereas New York “Election Law [section] 1-106(2) renders the failure to file a petition or certificate relating to a designation or nomination a fatal defect[,] [t]hat statute does not speak directly to the minutes of a judicial nominating convention which . . . recite what actions transpired at the convention.”³³ As such, the Appellate Division had previously “held that the failure to file convention minutes was not a fatal defect where [any] delay was brief and did not prejudice the integrity of the electoral process or disrupt the electoral machinery.”³⁴ “[I]nvocation of judicial discretion may be appropriate,” therefore, “to remediate the harsh consequences” of invalidating a prospective candidacy for State Supreme Court, for “both the affected candidates and . . . the public interest in having competitive elections.”³⁵

Yet the Second Department declined to exercise that discretion to save the candidacies of Catalano or Marrazzo on the Democratic Party line, because only a stenographer, but not the convention’s Chair or Secretary, had signed the undisputedly “verbatim transcript” of the convention nominating them.³⁶ That “the accuracy of the transcript was attested to by the stenographer” was immaterial, the Second Department reasoned, because “the

²⁹ *Id.* at 405, 406 (citing *Reda v. Mehile*, 603 N.Y.S.2d 166, 167 (App. Div. 1993)).

³⁰ *Fuentes*, 86 N.Y.S.3d at 406.

³¹ *See id.* at 403, 406 (“[T]he case comes down to whether the failure to have the convention minutes certified by the chairwoman and secretary of the convention is a fatal defect which invalidates the nomination of the two candidates.”).

³² *Fuentes*, 86 N.Y.S.3d at 131.

³³ *Id.* at 132.

³⁴ *Id.* at 133.

³⁵ *Id.*

³⁶ *See id.*

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stenographer,” unlike the Chair or the Secretary, “had no official role at the convention.”³⁷

Although New York Election Law section 6-158(6) indeed required certification of the minutes of the convention by the Chair or the Secretary,³⁸ the practicality of the Second Department’s holding in *Fuentes* was especially dubious, for at least three reasons. First, a transcript of the proceedings describes more accurately and in greater detail how the convention transpired than mere minutes would. Second, unlike the convention’s Chair or Secretary, the stenographer who personally transcribed the convention’s proceedings was the most appropriate person to certify the transcript’s accuracy.

Third, and most important, the Second Department’s refusal to accept the convention transcript as “the functional equivalent of the statutorily required minutes”³⁹ denied the Democratic Party the opportunity to field candidates, and denied citizens the opportunity to vote for Democrats, for the New York State Supreme Court bench in Staten Island in the November 2018 general election.⁴⁰ The consequence was especially harsh for Catalano, whose name would not appear on the general election ballot at all; and for Marrazzo, who could only pursue his candidacy on the Reform Party line.⁴¹ All the planning, fundraising, and advocacy devoted to their campaigns were defeated—through no fault of their own— by the failure of two Democratic Party leaders to certify and file minutes of the Democratic judicial nominating convention on Staten Island with the NYCBOE; and by the Second Department’s rejection of a stenographer’s accurate transcript as an appropriate substitute. Facing no Democratic opposition, Republican and Conservative candidates Marina Cora Mundy and Ralph Porzio handily won election to fourteen-year terms as State Supreme Court Justices on Staten Island on November 6, 2018, even as a Democrat defeated a Republican incumbent to win election as Staten Island’s representative in Congress.⁴²

³⁷ *Id.*

³⁸ See N.Y. ELEC. LAW § 6-158(6)(a) (McKinney 2019).

³⁹ See *Fuentes*, 86 N.Y.S.3d at 133.

⁴⁰ See N.Y. BD. OF ELECTIONS, CERTIFIED RESULTS FROM THE NOVEMBER 6, 2018 GENERAL ELECTION FOR SUPREME COURT 8 (2018), <https://www.elections.ny.gov/NYSBOE/elections/2018/general/2018SupremeCourt.pdf> [hereinafter CERTIFIED RESULTS: SUPREME COURT].

⁴¹ See *id.*

⁴² Compare CERTIFIED RESULTS: SUPREME COURT, *supra* note 40, at 8 (showing that Mundy and Porzio garnered 90,155 and 67,797 votes, respectively, to win election to the New York State Supreme Court on Staten Island, while Marrazzo could muster only 20,171 on the Reform

II. *MATTER OF COX V. SPOTH*

As the Second Department in *Fuentes* effectively ended the candidacies of Democrats for State Supreme Court seats on Staten Island, the Fourth Department in *Cox* denied the endorsed Democrat access to the Democratic line in the race for Town Clerk in Amherst, New York, solely because the Court found fault with the Democratic Party's nomination process for reasons beyond the candidate's control.⁴³

New York requires the governing apparatus of each political party, rather than the party's registrants in a primary, to choose the party's candidate for certain special elections that arise to fill unexpired terms of public office that become vacant after one week before the conclusion of the time for circulating designating petitions in a particular year.⁴⁴ Pursuant to New York Election Law section 6-116,

a party nomination of a candidate for election to fill a vacancy in an elective office required to be filled at the next general election, occurring after seven days before the last day for circulating designating petitions . . . shall be made, after the day of the primary election, . . . by a majority vote of a quorum of the members of a county committee or committees last elected in the political subdivision in which such vacancy is to be filled, *or by a majority of such other committee as the rules of the party may provide*. A certificate of nomination shall be filed as provided for herein.⁴⁵

The factual circumstances underlying *Cox* arose from the unexpected resignation of the Amherst Town Clerk effective September 18, 2018, with more than fifteen months remaining in her term of office.⁴⁶ Under New York law at that time, because the vacancy had arisen after the regularly scheduled primary elections

line alone), *with* N.Y. Bd. OF ELECTIONS, CERTIFIED RESULTS FROM THE NOVEMBER 6, 2018 GENERAL ELECTION FOR U.S. CONGRESS 5 (2018), <http://www.elections.ny.gov/NYSBOE/elections/2018/general/2018Congress.pdf> [hereinafter CERTIFIED RESULTS: U.S. CONGRESS] (showing that Democrat Max Rose defeated incumbent Republican Congressman Daniel Donovan by 1,806 votes in Richmond County, New York).

⁴³ See *Cox v. Spoth*, 85 N.Y.S.3d 671, 673, 675 (App. Div. 2018).

⁴⁴ See N.Y. ELEC. LAW § 6-116 (2019).

⁴⁵ *Id.* (emphasis added).

⁴⁶ See *Cox*, 85 N.Y.S.3d at 675; Stephen T. Watson, *Familiar Names Vie for Amherst Town Clerk Post in Special Election*, BUFFALO NEWS (Sept. 18, 2018), <https://buffalonews.com/2018/09/18/familiar-names-to-vie-in-special-election-for-amherst-town-clerk-post/>.

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for State and local offices on September 13, 2018, but prior to September 20, 2018, the vacancy needed to be filled at the general election that would take place on November 6, 2018.⁴⁷ Each political party would choose its candidate in accordance with the requirements of Election Law section 6-116 and file an appropriate certificate of nomination with the Erie County Board of Elections by October 2, 2018, or fourteen days after September 18.⁴⁸

The Rules of the Erie County Democratic Party provided that the County Party's "Executive Committee" would have "the power to nominate candidates for election to fill vacancies for public offices," including the office of Amherst Town Clerk, "pursuant to Section . . . 6-116 . . . of the New York State Election Law."⁴⁹ The necessary timing of the nomination of a candidate for Amherst Town Clerk sometime from September 18th through October 2, 2018, was problematic, however.⁵⁰ At the primary on September 13, 2018, new members of the Erie County Democratic Committee—two representing each of Erie County's 837 election districts—were elected to two-year terms.⁵¹ "With the election of a new County Committee in [the] primary election, the old County Committee," and the prior Erie County Democratic Executive Committee that had existed since 2016, became "*functus officio* and no rule of the old county committee could extend the authority of its executive committee to continue to exercise functions in substantial matters after their successors as a county committee had been elected" on

⁴⁷ ELEC. § 6-158(14) (McKinney 2017) (amended 2019). In January 2019, this provision was amended to provide that

[a] vacancy occurring *three months before* the general election in any year in any office authorized to be filled at a general election, except in the offices of governor, lieutenant-governor, or United States senator shall be filled at the general election next held thereafter, unless otherwise provided by the [State] constitution, or unless previously filled at a special election.

2019 N.Y. Laws 5, § 13 (amending the Election Law related to primary elections) (emphasis added).

⁴⁸ ELEC. § 6-158(6) (McKinney 2017). In January 2019, this provision was amended to provide that "a certificate of nomination for an office which becomes vacant after the seventh day preceding [the] primary election shall be filed not later than thirty days after the primary election or ten days after the creation of such vacancy, whichever is later." 2019 N.Y. Laws 5, § 13.

⁴⁹ DEMOCRATIC CTY. COMM. OF ERIE CTY., *supra* note 11, at art. II, § 4.

⁵⁰ *See Cox*, 85 N.Y.S.3d at 675.

⁵¹ DEMOCRATIC CTY. COMM. OF ERIE CTY., *supra* note 11, at art. I § 2; ERIE CTY. BD. OF ELECTIONS, 2018 APPORTIONMENT AND ENROLLMENT 2 (May 10, 2018), <https://www.election.s.erie.gov/wp-content/uploads/2018/05/APPORT-MAY-10-2018.pdf>; *see Cox*, 85 N.Y.S.3d at 675.

September 13, 2018.⁵²

Constituting a new Erie County Democratic Executive Committee after the September primary, however, would be extremely difficult to complete by October 2, 2018, the deadline for the Executive Committee to issue and file a certificate nominating a Democratic candidate for Amherst Town Clerk.⁵³ Pursuant to the Erie County Democratic Party Rules, the Executive Committee was to consist of, among other individuals appointed by the Party Chair, “a representative, to be elected by the Members therein from each [z]one in the City of Buffalo, . . . [plus] a representative to be elected from each City and Town outside the City of Buffalo in the County of Erie, who shall be the respective City or Town Chair.”⁵⁴ Hence, a total of forty-eight local “reorganization” meetings needed to take place—one in each zone in the City of Buffalo, and one in each of Erie County’s twenty-nine other cities and towns spread across more than 1,000 square miles—to choose a new Executive Committee after the 2018 primary.⁵⁵

None of these meetings could take place until the duly elected members of the Erie County Democratic Committee met on Saturday, September 22, 2018—one day after those “newly elected committee members had been canvassed and certified” by the Erie County Board of Elections upon its review of the primary results—to select the Erie County Democratic Party’s Chair for the next two years.⁵⁶ Each of those meetings, moreover, “could be held only . . . on four days’ written notice,” i.e., “no earlier than September 26, 2018,” only five days before a newly constituted Executive Committee’s last day to conduct its own duly noticed meeting to nominate a candidate for Amherst Town Clerk and to file a certificate of nomination with the Erie County Board of Elections.⁵⁷ Simply put, the available time for forty-eight new Erie County Democratic Executive Committee representatives to be elected at separate meetings, and then to gather pursuant to proper notice to issue certificates of nomination, was negligible at best.

In recognition of this circumstance and the need to satisfy the Election Law’s strict deadline, “the outgoing [Erie County]

⁵² *Cox*, 85 N.Y.S.3d at 675 (quoting *Mazur v. Kelly*, 566 N.Y.S.2d 180, 181 (App. Div. 1991)).

⁵³ *But see Cox*, 85 N.Y.S.3d at 675.

⁵⁴ DEMOCRATIC CTY. COMM. OF ERIE CTY., *supra* note 11, at art. II, § 1.

⁵⁵ *See id.*; Record on Appeal at 27, *Cox*, 85 N.Y.S.3d 671 (App. Div. 2018) (No. 2018000092); *QuickFacts: Erie County, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/eriecountynewyork> (last visited Mar. 20, 2019).

⁵⁶ *Cox*, 85 N.Y.S.3d at 675.

⁵⁷ *Id.*

Democratic Party Executive Committee”—constituted pursuant to reorganization meetings that followed the 2016 primary—met to choose Francina J. Spoth as the Democratic candidate for Amherst Town Clerk and “filed the certificate of nomination on September 19, 2018.”⁵⁸ It did so in reliance upon *Matter of Settineri v. DiCarlo*, in which the New York Court of Appeals affirmed that “an outgoing executive committee has the authority to file a certificate of nomination if it was ‘effectively impossible to canvass and certify the newly elected committee members, convene an organizational meeting, elect a [new executive committee], and file a proper certificate of nomination’ within the applicable time frame” set by New York Election Law section 6-158(6)(b).⁵⁹

Even so, the New York State Republican Chairman and Spoth’s Republican opponent in the race for Amherst Town Clerk challenged the validity of Spoth’s Democratic nomination, “because the outgoing Democratic Party Executive Committee . . . , rather than the ‘last elected’ incoming Executive Committee, [had] issued the certificate of nomination.”⁶⁰ Both the Trial Court and the Fourth Department agreed with the petitioners, notwithstanding the Court of Appeals precedent in *Settineri* and the less than one week available for the Erie County Democratic Party “to convene its incoming Executive Committee,” to notice and conduct a meeting of that Executive Committee, and to “file a proper certificate of nomination” of its candidate for Amherst Town Clerk.⁶¹ Reasoning that this time limit, though tight, “was not ‘effectively impossible’” for the Erie County Democratic Party to satisfy, the Fourth Department affirmed the Trial Court’s invalidation of Spoth’s nomination, and thereby left the Democratic line empty in the race for Amherst Town Clerk on November 6, 2018.⁶²

Like the Second Department’s holding in *Fuentes*, this conclusion disregarded its limited practicality. Attempting to rationalize its perception of the adequacy of the severely compressed timeframe in which a new Erie County Democratic Executive Committee could be constituted after the 2018 primary and nominate a candidate for

⁵⁸ *Id.* at 673, 675.

⁵⁹ *Id.* at 675 (quoting *Settineri v. DiCarlo*, 605 N.Y.S.2d 95, 97 (App. Div. 1993) (Balletta, J., dissenting), *rev’d*, 624 N.E.2d 683 (N.Y. 1993)).

⁶⁰ *Cox*, 85 N.Y.S.3d at 673–74; see *Edward F. Cox*, N.Y. REPUBLICAN PARTY, <https://nygop.org/member/edward-f-cox/> (last visited Mar. 20, 2019); Stephen T. Watson, *Zeplovitz Wins Amherst Town Clerk Race*, BUFF. NEWS (Nov. 7, 2018), <https://buffalonews.com/2018/11/06/zeplovitz-ahead-in-amherst-town-clerk-race/>.

⁶¹ *Cox*, 85 N.Y.S.3d at 675.

⁶² *Id.*

Amherst Town Clerk, the Fourth Department commented,

[T]he Democratic Party could have held its organizational meeting on September 14, 2018, the day after the primary election, as the Republican and Conservative parties did. Although the outgoing [Amherst] Town Clerk publicly announced in August 2018 that she would be resigning effective September 18, 2018, the [Erie County] Democratic Party waited until September 22 to hold its organizational meeting, thereby shortening by eight days the time within which it could file a proper certificate of nomination.⁶³

In actuality, however, the Erie County Democratic Party could not have conducted its organizational meeting on September 14, 2018, because the Erie County Board of Elections needed to canvass and certify the outcome of 122 primary elections throughout the County to choose various election districts' representatives thereto.⁶⁴ The Erie County Republican and Conservative Parties, however, together experienced only three primaries countywide to select their own election district representatives; the remaining prospective district representatives to those parties' governing committees ran unopposed.⁶⁵ Because of this relative absence of primary competition, with all but a small handful of election district representatives known before the September 13th primary,⁶⁶ the Erie County Republican and Conservative Parties could easily conduct their organizational meetings the following day. Needing to wait for confirmation of the primary results to verify hundreds of election district representatives, by contrast, the Erie County Democratic Party also needed to wait several additional days to hold its own organizational meeting—*viz.*, the prerequisite for subsequently noticing and conducting forty-eight additional meetings countywide to elect members of its Executive Committee.⁶⁷ This circumstance alone explained Erie County Democrats' "shortening by eight days the time within which it could file a proper certificate of nomination."⁶⁸

⁶³ *Id.*

⁶⁴ Telephone Interview with Justin Rooney, Democratic Office Manager, Erie Cty. Bd. of Elections (Feb. 1, 2019) (on file with author).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*; see *Cox*, 85 N.Y.S.3d at 675; Record on Appeal, *supra* note 55, at 27.

⁶⁸ *Cox*, 85 N.Y.S.3d at 675.

Overlooking that justification also implicitly endorsed a disincentive for political parties to entrust a large and diverse group of democratically elected individuals with nominating special election candidates, rather than limit decision-making in the hands of a single party chair or a small group of hand-picked supporters. “[T]he Democratic Party, because it’s their way, tends to be very broad and inclusive in the participation in their executive committee,” noted Spoth’s counsel at oral argument before the Trial Court, which is why the Erie County Democratic Party’s Rules, as authorized by New York Election Law section 6-116, provide for the Executive Committee to consist of “people from all of the towns, the . . . cities, . . . plus the City of Buffalo, with forty-eight elected members,” among other appointees of the County Chair.⁶⁹

The conclusion that only six days were sufficient for the Erie County Democratic Party to choose Executive Committee members, and then to notice and convene another meeting of those newly selected members to issue certificates of nomination, penalized Erie County Democrats for the relative temporal inefficiency of their “broad and inclusive,” yet time-consuming process of electing a geographically diverse Executive Committee at forty-eight separate meetings involving more than 1,600 district representatives.⁷⁰

The outcome was especially difficult for Amherst Town Clerk candidate, Francina J. Spoth.⁷¹ Despite running a spirited campaign in which she garnered an impressive 15,556 votes on the Conservative line alone, Spoth could not prevail against her Republican opponent, even as Democratic challengers outpolled Republican incumbents in Amherst in races for New York State Assembly, State Senate, and Erie County Clerk.⁷² Through no fault of her own or her campaign supporters’ efforts, Spoth had lost the Democratic line, and potentially the entire election, after the Fourth

⁶⁹ Record on Appeal, *supra* note 55, at 27; see DEMOCRATIC CTY. COMM. OF ERIE CTY., *supra* note 11, at art. II, § 1.

⁷⁰ *Cox*, 85 N.Y.S.3d at 675; Transcript of Oral Argument at 9, *Cox v. Spoth*, 62 Misc. 3d 1220(A) (N.Y. Sup. Ct. Oct. 12, 2018) (No. 000092/2018); DEMOCRATIC CTY. COMM. OF ERIE CTY., *supra* note 11, at art. II, § 1.

⁷¹ See *Cox*, 85 N.Y.S.3d at 675; *Official General Election 2018 Results*, ERIE COUNTY N.Y. BOARD ELECTIONS (2018), <https://www.elections.erie.gov/wp-content/uploads/2019/01/2018-General-Election-Canvass-Book-Web.pdf> [hereinafter *General Election 2018 Results*].

⁷² See *General Election 2018 Results*, *supra* note 71. While Francina J. Spoth lost to her Republican opponent, Democrat Karen McMahon outpolled Republican incumbent Raymond Walter by 7,283 votes in Amherst in a race for State Assembly, Democrat Joan Elizabeth Seamans outpolled Republican incumbent Michael Ranzenhofer by 4,261 votes in Amherst in a race for State Senate, and Democrat Angela Marinucci outpolled Michael Kearns, a Democrat running on the Republican line, in Amherst by 5,540 votes in the race for Erie County Clerk. *Id.*

Department declined to invoke its prerogative under available Court of Appeals precedent in *Settineri* to uphold the nominating process conducted by Erie County Democratic officials on account of the exigency of time.⁷³

III. LEGISLATIVE AND JUDICIAL OPTIONS FOR EXPANDING BALLOT ACCESS AFTER *FUENTES* AND *COX*

Since New York's adoption of the Ballot Reform Act in 1996, the Appellate Division has routinely overlooked "narrow violation[s]" of Election Law requirements in the petitioning process, when "resort[ing] to strict construction" of the statute "would lead to injustice in the electoral process or the public perception of it," particularly in the absence of "the possibility or inference of fraud."⁷⁴ In contrast to this trend of moderation, last fall's decisions in *Fuentes* and *Cox* suggest some measure of continued insistence among New York appellate courts upon strict compliance with Election Law requirements in order to validate a party's nomination of a prospective candidate by means other than the collection of petition signatures.⁷⁵ The time is ripe to end this inconsistency in the Election Law's enforcement with respect to ballot access disputes, as an appropriate supplement to New York's enactment of reforms in January 2019 to "modernize and strengthen [its] voting system."⁷⁶

⁷³ See *Cox*, 85 N.Y.S.3d at 675; *Settineri v. DiCarlo*, 605 N.Y.S.2d 95, 96–97 (App. Div. 1993) (Balletta, J., dissenting) *rev'd*, 624 N.E.2d 683, 683 (1993) (reversing for the reasons set forth in Justice Balletta's dissenting opinion); *General Election 2018 Results*, *supra* note 71.

⁷⁴ Ballot Access—Designating Petition Rules, ch. 709, 1996 N.Y. Laws 1732 (codified as amended at N.Y. ELEC. LAW §§ 5-604, 6-130, 6-132, 6-134, 6-140 (McKinney 2019)); *Curley v. Zacek*, 803 N.Y.S.2d 221, 224 (App. Div. 2005) (quoting *Pulver v. Allen*, 661 N.Y.S.2d 836, 838 (App. Div. 1997)); *accord Flacks v. Bd. of Elections*, 970 N.Y.S.2d 763, 763 (App. Div. 2013) (overlooking a "scrivener's error" that misidentified several volumes of designating petitions filed in support of the prospective candidacies of State Supreme Court judicial nominating convention delegates and alternates); *Rancourt v. Kennedy*, 928 N.Y.S.2d 736, 738 (App. Div. 2011) (validating petitions that overstated the totals of the signatures provided therein); *Arcuri v. Hojnacki*, 820 N.Y.S.2d 189, 191 (App. Div. 2006) (validating petitions witnessed by one who mistakenly provided inaccurate information regarding the correct city or town of the witness' residence in the subscribing the witness statement); *Toporek v. Beckwith*, 821 N.Y.S.2d 685, 686–87 (App. Div. 2006) (excusing a candidate's purportedly incorrect residence address on the cover sheet of a designating petition).

⁷⁵ Compare *Fuentes v. Catalano*, 86 N.Y.S.3d 129, 134 (App. Div. 2018), and *Cox*, 85 N.Y.S.3d at 675 (applying the strictest standards to the nomination process and invalidating the nominations), with *Curley*, 803 N.Y.S.2d at 224 (finding that the minor error in *Curley* did not constitute a fatal defect).

⁷⁶ *Governor Cuomo Signs Landmark Legislation Modernizing New York's Voting Laws*, N.Y. OFF. GOVERNOR (Jan. 24, 2019), <https://www.governor.ny.gov/news/governor-cuomo-sign-landmark-legislation-modernizing-new-yorks-voting-laws>. This legislation, enacted as Chapters 2 through 6 of the New York Laws of 2019, implemented reforms that included: (1) subjecting limited liability companies to campaign finance contribution limits that govern

Like its rules pertaining to the petitioning process, New York Election Law requirements governing the mechanics of party nominations by conventions or committees—over whose conduct and deliberations prospective candidates exercise little or no control—also should be liberally construed in the absence of credible allegations of fraud, in order to expand voter choice and opportunities for citizens to seek elective office. At least two alternatives exist for achieving this outcome.

The first would be the enactment of appropriate remedial legislation. This has already taken place to limit the future precedential effect of the result in *Cox*.⁷⁷ Chapter 5 of the New York Laws of 2019, in pertinent part, (1) fixed New York’s annual primary day on the fourth Tuesday in June;⁷⁸ (2) required a vacancy in a local public office to arise at least three months before the November general election, rather than by September 20, in order to be filled at that year’s general election, instead of in the November general election the following year;⁷⁹ and (3) permitted “a certificate of nomination for an office which becomes vacant after the seventh day preceding [the] primary election [to] be filed” as late as “thirty days after the primary election or ten days after the creation of such vacancy, whichever is later.”⁸⁰

Were these amendments in effect when the office of Amherst Town Clerk became vacant on September 18, 2018, an election to fill that office would have awaited the general election on November 5, 2019—*viz.*, more than thirteen months later—to determine who would hold a new four-year term. No special election would have taken place as it did on November 6, 2018, only forty-nine days after the vacancy arose. Also, should the office of Amherst Town Clerk unexpectedly become vacant after the seventh day before the June primary election, but before three months prior to the November general election—such as in July, for example—in a future even-numbered year when new election-district representatives are elected to each party’s governing committee on primary day, the amendments would

traditional corporations; (2) allowing teenagers to pre-register to vote as soon as they turn 16 years old; (3) providing for the portability of a voter’s registration when the voter changes his or her residence across county lines in New York; and (4) authorizing early voting, beginning with the general election in the fall of 2019. *Id.*; see Assemb. B. 774, 242d Leg. Sess. (N.Y. 2019); Assemb. B. 775, 242d Leg. Sess. (N.Y. 2019); Assemb. B. 776, 242d Leg. Sess. (N.Y. 2019); S.B. 1102, 242d Leg. Sess. (N.Y. 2019).

⁷⁷ See Assemb. B. 779 § 13, 242d Leg. Sess. (N.Y. 2019).

⁷⁸ *Id.* § 14(a).

⁷⁹ *Id.* § 13(14).

⁸⁰ *Id.* § 13(6)(A).

afford the Erie County Democratic Committee at least several weeks, rather than the only six days acknowledged by the Fourth Department in *Cox*,⁸¹ to conduct reorganization meetings to choose new Executive Committee members from the County's cities and towns. Hence, thanks to New York's enactment of Chapter 5 of its Laws of 2019, the severe constraint described in *Cox* on the Erie County Democratic Committee's time under its Rules to undertake the post-primary reconstitution of its Executive Committee as a condition precedent to nominating candidates in special elections to fill vacant public offices,⁸² is unlikely to recur.

Even so, the Legislature can still do more to prevent future limits on ballot access as a consequence of the stringent Election Law application seen in *Fuentes* and *Cox*—whether by evaluating and amending particular statutory provisions as appropriate, or by codifying authority for greater leniency and discretion in the Election Law's interpretation generally. For example, New York has expressly established by statute that its “rules” with respect to gathering designating petitions “shall be liberally construed, not inconsistent with substantial compliance thereto and the prevention of fraud.”⁸³ New York could legislate a similar standard of substantial compliance to satisfy the Election Law's requirements governing the conduct of judicial conventions, committees, and others engaged in nominating a party's candidates for public office by means other than petitioning.⁸⁴ In so doing, New York would rightfully limit the circumstances under which a prospective candidate could be denied the opportunity to represent a party on the ballot because of alleged technical defects that arise from the errors of others administering the party's nomination process.

Second, New York Courts could achieve this objective even in the absence of further legislative amendments, by more consistently applying available common-law precedent, unapplied by *Fuentes* and never mentioned in *Cox*, permitting “depart[ure] from the literal

⁸¹ See *Cox v. Spoth*, 85 N.Y.S.3d 671, 675 (App. Div. 2018).

⁸² See *id.* at 675; Assemb. B. 799, 242d Leg. Sess. (N.Y. 2019).

⁸³ N.Y. ELEC. LAW § 6-134 (McKinney 2019).

⁸⁴ See *id.* Such a standard of substantial compliance, like that set forth in New York Election Law section 6-134(10) with respect to rules for collecting designating petitions, need not replace, and may coexist with and be subject to, New York Election Law section 1-106(2), which sets an appropriate bright-line imperative that the “failure to file any petition or certificate relating to the designation or nomination of a candidate for party position or public office . . . within the time prescribed by the provisions of [the Election Law] shall be a fatal defect.” ELEC. § 1-106(2) (2019). Neither the *Fuentes* nor the *Cox* petitioners contended that the filing of any candidate's certificate of nomination with the appropriate Board of Elections was untimely. See *Cox*, 85 N.Y.S.3d at 673; *Fuentes v. Catalano*, 86 N.Y.S.3d 129, 132–33 (App. Div. 2018).

words of [an election] statute to comply with the legislative intent” in order “to avoid an unreasonable result” in the absence of “prejudice [to] the integrity of the electoral process or disrupt[ion] [of] the electoral machinery.”⁸⁵ *Matter of Marzullo v. DelConte*⁸⁶ and *Matter of Limpert v. Brandt*,⁸⁷ both decided by the Appellate Division, Third Department, on October 19, 2018—*viz.*, one day after the Second Department’s ruling in *Fuentes* and six days before the Fourth Department’s ruling in *Cox*—demonstrate this precedent’s appropriate application.⁸⁸

Marzullo contested the Conservative Party’s nomination of candidates for the election on November 6, 2018, to fill four vacancies on the New York State Supreme Court bench in the Fifth Judicial District, encompassing Herkimer, Jefferson, Lewis, Oneida, Onondaga, and Oswego Counties.⁸⁹ This challenge arose solely because the Conservative Party’s nominating convention “convenor”—*viz.*, the person charged with “call[ing] the convention of elected delegates to order, personally call[ing] the official roll of delegates and alternate delegates as provided by the State Board [of Elections] and duly record[ing] each delegate’s attendance or absence,” and declaring “a quorum of elected delegates was present to conduct the business of the nominating convention”—was then elected also “to serve as the temporary and then permanent chair of the convention,” contrary to the Election Law’s mandate “requir[ing] the delegates to select someone else to serve as chair.”⁹⁰

Reversing the Trial Court’s invalidation of the four Conservative candidates’ nomination, the Third Department reasoned that the New York Court of Appeals “ha[d] recognized that a procedural defect need not be fatal where, as here, the defect alleged did not constitute a ‘substantive deficiency’ implicating the integrity of the electoral process.”⁹¹ Pursuant to this standard, the Conservative Party

⁸⁵ *Murphy v. Acito*, 409 N.Y.S.2d 562, 563 (App. Div. 1978) (citing *Pell v. Coveney*, 336 N.E.2d 421, 422 (N.Y. 1975)).

⁸⁶ *Marzullo v. DelConte*, 85 N.Y.S.3d 274 (App. Div. 2018).

⁸⁷ *Limpert v. Brandt*, 85 N.Y.S.3d 277 (App. Div. 2018).

⁸⁸ *Compare Marzullo*, 85 N.Y.S.3d at 274, 277 (reversing the invalidation of the subject candidacies), and *Limpert*, 85 N.Y.S.3d at 280 (same), with *Cox*, 85 N.Y.S.3d at 675 (upholding the invalidation of the subject candidacy), and *Fuentes*, 85 N.Y.S.3d at 134 (finding the subject nomination ineffectual).

⁸⁹ See *Marzullo*, 85 N.Y.S.3d at 274, 277; *New York State—Judicial Districts*, N.Y. UNIFIED CT. SYS. <http://www.nycourts.gov/Attorneys/probono/district-county.shtml> (last visited Mar. 29, 2019).

⁹⁰ *Marzullo*, 85 N.Y.S.3d at 276.

⁹¹ *Id.* at 276 (quoting *Stewart v. Chatauqua Cty. Bd. of Elections*, 924 N.E.2d 812, 820 (N.Y. 2010)).

nominating convention's error in electing the convenor as the temporary and permanent chair, without more, "[did] not, under the particular facts of this case, warrant invalidation of the certificate of nomination," particularly absent "any evidence of fraud, mistake, overreaching or any other substantive infirmity impairing or otherwise prejudicing the conduct of the convention, the nomination process itself or the results obtained thereat, such as the lack of a quorum or disproportional representation."⁹² "[R]ecognizing [also] that the four respondent candidates nominated to fill the four vacancies were unanimously selected by the delegates," the Third Department "discern[ed] no substantive defect warranting invalidation of the certificate of nomination naming [them] as the Conservative Party candidates for the public office of Justice of the Supreme Court for the Fifth Judicial District in the November 6, 2018 general election."⁹³

Limpert challenged the Republican Party's nomination of four candidates—three of whom the Conservative Party had also nominated—for the same election to fill the same four vacancies on the New York State Supreme Court bench in the Fifth Judicial District.⁹⁴ The Third Department identified two errors in the Republican Party's conduct of its nominating convention.⁹⁵ First, "the convenor, for the convention[] was required to call the roll of delegates, which he did not do"; according to the convention minutes, the convention's permanent secretary called the roll instead, contrary to the requirement of New York Election Law section 6-126(1).⁹⁶ Second, after the names of four candidates were placed in nomination at the convention, a motion was made and seconded to nominate all four by "voice vote, and the ayes were unanimous."⁹⁷ Rather, New York Election Law [section] 6-126(2) required a roll-call vote, because "more than one candidate [had been] placed in nomination."⁹⁸

As in *Marzullo*, the Third Department excused these defects in the procedures of the convention, reversed the Trial Court, and validated the Republican State Supreme Court candidates' certificate of nomination.⁹⁹ Although the Election Law required the convention's convenor, rather than its permanent secretary, to call the roll of

⁹² *Marzullo*, 85 N.Y.S.3d at 276–77.

⁹³ *Id.* at 277.

⁹⁴ *See Limpert v. Brandt*, 85 N.Y.S.3d 277, 278 (App. Div. 2018).

⁹⁵ *See id.*

⁹⁶ *Id.* at 278, 279, 280.

⁹⁷ *Id.* at 279.

⁹⁸ *Id.*

⁹⁹ *See id.* at 280.

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delegates, the convenor “was present, [had] requested the assistance of others, the roll of delegates was then called and no objection thereto was rendered.”¹⁰⁰ This circumstance, the Third Department held, was no “substantive defect warranting invalidation of the certificate of nomination.”¹⁰¹

The Third Department likewise absolved the absence of a roll-call vote on the convention’s proposed nominations, noting,

[T]here [was] no question . . . as to the number of positions to be filled at the convention, the identity of the nominees and/or the actual number of votes cast in favor of respondent candidates, and it [was] apparent from reading the convention minutes that the intention of the delegates was fully and accurately expressed.¹⁰²

“[I]n the absence of any indication that, had a roll call vote occurred, the results obtained would have been any different,” the Third Department held “invalidation of the certificate of nomination [was] not warranted upon this ground”¹⁰³

For the Third Department, this outcome, notwithstanding the Republican Fifth Judicial District nominating convention’s apparent violations of the letter of New York Election Law section 6-126, satisfied public policy.¹⁰⁴ “[T]he principal objective of the Election Law,” the court reasoned, “is to give the electorate a full and fair opportunity to express its choice among the candidates presented”¹⁰⁵ Confronted only with procedural imperfections in the convention’s conduct, the Third Department was “hard pressed to discern how invalidating the entire slate of Republican Party candidates for the public office of Justice of the Supreme Court for the Fifth Judicial District would accomplish that objective.”¹⁰⁶

Unlike the Second Department in *Fuentes* and the Fourth Department in *Cox*, therefore, the Third Department concluded that political party officials’ deviations from the Election Law’s procedural requirements for nominating meetings and conventions would not justify the harshness of a nominated candidate’s disqualification from the ballot, absent “fraud, mistake, overreaching or any other

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 279–80.

¹⁰³ *Id.* at 280.

¹⁰⁴ *See id.*

¹⁰⁵ *Id.* at 279 (quoting *Reda v. Mehile*, 603 N.Y.S.2d 166, 166–67 (App. Div. 1993)).

¹⁰⁶ *Limpert*, 85 N.Y.S.3d at 279.

substantive infirmity” that would otherwise undermine the validity of a nomination vote.¹⁰⁷ To deny a place on the ballot to the prospective candidate solely because of a party nominating convention’s technical errors needlessly penalizes the candidate for others’ inattention to detail, and limits the choice of the voters on Election Day. A robust future application of the precedent offered by *Marzullo* and *Limpert* would avoid such circumstances, even without further amendments to the Election Law.

Whether the remaining departments of New York’s appellate division follow the lead of the Third Department remains to be seen in future challenges to certificates of nomination. Until then, as reflected by a single week of jurisprudence in October 2018, a dichotomy exists between the Second Department’s and the Fourth Department’s strict application of rules for nominating meetings and conventions in *Fuentes* and *Cox*, versus the Third Department’s more forgiving review exemplified by *Marzullo* and *Limpert*. Absent future reconciliation of these disparate philosophies by the appellate division or the enactment of remedial legislation, the New York Court of Appeals should intervene to announce, as advocated in a dissent by Judge Rowan Wilson on August 29, 2018, “a clear directive” applicable to future nominating meetings and conventions—whose conduct lies entirely outside prospective candidates’ control—“that absent a serious concern with fraud, persons wishing to run for office should not be shut out of elections by court-sanctioned strict adherence to technical requirements.”¹⁰⁸ Such would be a necessary component of limiting future “example[s] of candidates being removed from the ballot for trivial errors,” and alleviating New York’s “obstacles that only those well versed in the technicalities of the law can overcome.”¹⁰⁹

¹⁰⁷ *Marzullo v. DelConte*, 85 N.Y.S.3d 274, 276 (App. Div. 2018).

¹⁰⁸ *Mintz v. Bd. of Elections*, 112 N.E.3d 848, 851 (N.Y. 2018) (Wilson, J., dissenting).

¹⁰⁹ *Id.*