S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. BRADLEY, CAHILL, GALEF, PAULIN, KAVANAGH -- Multi-Sponsored by -- M. of A. BRENNAN, DINOWITZ, GOTTFRIED, LATIMER, MAYERSOHN, PERRY, WEISENBERG -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to court proceedings involving disputed election results

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The election law is amended by adding a new section 16-103 to read as follows:

S 16-103. PROCEEDINGS INVOLVING GENERAL OR SPECIAL ELECTION RESULTS. 1. AN AGGRIEVED CANDIDATE MAY CONTEST ANY SPECIAL OR GENERAL ELECTION IN A PROCEEDING BROUGHT IN THE SUPREME COURT.

2. A PROCEEDING PURSUANT TO THIS SECTION SHALL BE INSTITUTED WITHIN TWENTY DAYS AFTER THE ELECTION TO WHICH IT RELATES. ANY PARTY MAY DEMAND THAT ISSUES OF FACT IN A PROCEEDING PURSUANT TO THIS SECTION BE DETERMINED BY JURY TRIAL. THE COURT SHALL GIVE THE PARTIES AN OPPORTUNITY TO DEMAND A JURY TRIAL. FAILURE TO MAKE SUCH A DEMAND WITHIN THE TIME LIMITED BY THE COURT, OR, IF NO SUCH TIME IS LIMITED, BEFORE THE TRIAL BEGINS, SHALL BE DEEMED A WAIVER OF THE RIGHT TO TRIAL BY JURY.

3. IN A PROCEEDING PURSUANT TO THIS SECTION THE COURT SHALL ORDER A NEW ELECTION IF CLEAR AND CONVINCING EVIDENCE DEMONSTRATES THAT FRAUD, IRREGULARITY OR VOTING MACHINE FAILURE DEPRIVED THE AGGRIEVED CANDIDATE OF A WINNING MARGIN OF VOTES. SUCH NEW ELECTION SHALL INCLUDE ALL DULY ENROLLED VOTERS RESIDING IN THE POLITICAL SUBDIVISION EMBRACING THE OFFICE CONTESTED. SUCH ELECTION SHALL BE HELD ON THE FIFTH TUESDAY AFTER THE COURT'S ORDER IS ISSUED; PROVIDED, HOWEVER, IF THE FIFTH TUESDAY IS A RELIGIOUS, FEDERAL OR STATE HOLIDAY THE NEW ELECTION SHALL BE HELD ON THE NEXT SUCCEEDING TUESDAY THEREAFTER WHICH IS NOT A RELIGIOUS, FEDERAL OR STATE HOLIDAY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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4. ALL CANDIDATES ON THE BALLOT AT THE ORIGINAL ELECTION FOR THE CONTESTED OFFICE SHALL BE ON THE BALLOT AT THE NEW ELECTION; PROVIDED, HOWEVER, IF THE OFFICE CONTESTED IS ONE FOR WHICH A VOTER MAY CAST MULTIPLE VOTES FOR TWO OR MORE CANDIDATES FOR THE SAME OFFICE, ANY CANDIDATE FOR SUCH OFFICE WHOSE WINNING MARGIN AT THE ORIGINAL ELECTION IS NOT BY CLEAR AND CONVINCING EVIDENCE SHOWN TO BE INVALID, SHALL HAVE BEEN DULY ELECTED AT THE ORIGINAL ELECTION, AND THE NUMBER OF POSITIONS TO BE ELECTED AT THE NEW ELECTION SHALL BE REDUCED ACCORDINGLY.

5. THE COURT MAY ISSUE AN INJUNCTION TO PREVENT A CANDIDATE FROM WRONGLY ASSUMING OFFICE UNTIL SUCH TIME AS THE NEW ELECTION SHALL BE HELD. THE PROVISIONS OF SECTION FIVE OF THE PUBLIC OFFICERS LAW SHALL APPLY IN THE INTERIM.

6. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT RIGHTS OR REMEDIES AVAILABLE PURSUANT TO THIS CHAPTER.

S 2. This act shall take effect immediately and shall apply to any election held on or after such effective date.