

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 19

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CHRISTOPHER BURKE, CIARAN CANAVAN, JEAN
CANAVAN, ANTHONY BADILLO, and SHARON
CLEMONS, individually and on behalf of the
approximately 52,000 signers of a Petition filed Pursuant
to Sections 37 and 24 of the New York State Municipal
Home Rule Law,

Petitioners,

Index No.
110779/09

- against -

MICHAEL McSWEENEY as City Clerk of the City of
New York and Clerk of the City Council of New York,
and the BOARD OF ELECTIONS IN THE CITY OF
NEW YORK,

Defendants.

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EDWARD H. LEHNER, J.;

Before the court is an application by petitioners for a judgment rejecting the report and recommendations of Special Referee Louis Crespo (the “Referee”) dated September 25, 2009, and to render judgment in their favor.

The petition in this proceeding, dated August 17, 2009, shows that on June 24, 2009 a petition (the “Petition”) was filed in the office of the City Clerk (the “Clerk”) pursuant to Municipal Home Rule Law (“MHRL”) § 37 seeking to amend the Charter of the City of New York to “create an independent, temporary New York City commission (the “Commission”) to investigate the events of September 11, 2001 (“9/11”), as well as those events leading up to and succeeding 9/11.” By letter dated July 24, 2009, the Clerk wrote to the Speaker of the City Council certifying that the

petition contained not more than 24,644 signatures, and thus there were less than the 30,000 signatures required by MHRL § 37 to place the Petition on the ballot as a proposed local law. In addition, the Clerk set forth several legal reasons as to why the Petition was otherwise invalid.

Petitioners seek a judgment in this special proceeding declaring the “Petition to be sufficient and in compliance with the” MHRL, and directing the Clerk “to certify nunc pro tunc to the Common Council of the City that said Petition is sufficient and valid in all respects.”

By order dated August 3, the issues raised herein were referred to the Referee to hear and report. At the proceedings before the Referee, the Clerk decided not to challenge the claim that there were 30,000 valid signatures to the Petition (tr. pp. 4-5, 8-9), and the matter proceeded before the Referee without a factual hearing and only with respect to the legal challenges. The Referee then issued his report with the recommendation that the petition herein be dismissed. The present motion was brought on by order to show cause issued by Justice Carey dated September 28, and was orally argued on September 29. At that time respondents orally moved to confirm the report (tr. p. 10).

The essence of what petitioners seek is to create by City law a private investigative and prosecutorial body with broad subpoena power to look into all aspects of the events leading up to and succeeding 9/11. Petitioners’ counsel acknowledged that no private body with subpoena power has ever been created by City

law (tr. pp. 49, 70). Although paragraph 10 of the Petition states that the Commission shall be a “law-enforcement agency,” with power to indict in courts “in the City of New York or elsewhere,” and shall have “the same immunities, privileges and prosecutorial discretion granted under law to elected prosecutors” (§ 14), petitioners’ counsel acknowledged that the law enforcement language “is inappropriate” (tr. p. 75).

Upon review of the papers submitted, the court finds that the well researched and reasoned report of the Referee should be confirmed as it correctly shows the legal infirmities in the Petition. While petitioners’ counsel argues that the severability provision of paragraph 20 of the Petition allows the court to strike any provisions thereof that are unconstitutional or invalid, the extent of the impropriety of the proposal, as correctly set forth by the Referee, would result in a substantial evisceration of the Petition and, even if legally permissible, would be inappropriate as inconsistent with the law sought by the signatories to the Petition.

Accordingly, the motion of respondents to confirm the report of the Referee is granted and this proceeding is dismissed.

This decision constitutes the judgment of the court.

Dated: October 8, 2009

J.S.C.