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Ballot Access and Voter Choice: Alternatives Required

By [Jerry H. Goldfeder](#)



Voters would be surprised how many candidates are bounced by the Board because of picayune errors—irrespective of how many valid signatures they submitted or the harmless nature of their errors.

Jessica Simmons ran unsuccessfully for the City Council from Brooklyn this year. In the Democratic Party primary election, [she made it through three rounds of ranked-choice voting before being eliminated, having received 1,577 first place votes out of approximately 36,000 votes](#). But this column is not about whether she won or lost.

I don't know Ms. Simmons. I learned about her by reading a [Kings County Supreme Court decision](#). She, like too many other candidates in New York, had to file a lawsuit to get on the ballot after the Board of Elections disqualified her. Why? Because, although she submitted well over the required number of voters' signatures on her designating petitions, her "cover sheet" was not in proper form.

A [cover sheet](#), which must accompany the candidate's petitions, is a one-page statement indicating the Board of Elections "identification number" on the petitions. Simmons mistakenly put the wrong ID number on the cover sheet—it was off by one digit. The Board's rules permit candidates one chance to correct a mistake by allowing them to submit an "Amended Cover Sheet." Unfortunately, though, her amended cover sheet also did not follow the Board's rules—she didn't attach the first cover sheet, and it lacked the word "Amended." So she was off the ballot.

Voters would be surprised how many candidates are bounced by the Board because of picayune errors such as these—irrespective of how many valid signatures they submitted or the harmless nature of their errors. Usually it's the neophytes who fail to navigate these byzantine rules. But not always. In 2009, when Bill de Blasio was a City Council member running for Public Advocate, he also filed a defective cover sheet and amended cover sheet, and the [Board disqualified him](#). The attorney he then retained was able to persuade the Board Commissioners to reverse their decision. Ms. Simmons, like most insurgents, did not fare as well.

So, like so many others—at least those who can afford to—Simmons had to go to court. Fortunately, she was able to persuade the court that her mistakes were inconsequential, and that the Board's notice to her was sufficiently confusing as to render it defective. The judge in her case was extremely well-versed in the election law and Board rules, and over the years usually finds a way to resuscitate candidacies when no law or case prohibits him from doing so.

Of course, it is not just cover sheet defects that can doom a candidate. Assembly Member Rebecca Seawright (D-Man.) was thrown off the Democratic Party primary election ballot in 2020 by the Board of Elections although she filed a perfectly good cover sheet—but did so thirteen days late in the height of the pandemic. The Supreme Court and Appellate Division both ruled that health conditions constituted sufficiently exigent circumstances that excused her insignificant tardiness, but the [Court of Appeals reversed](#), and strictly construed the deadline that Seawright missed. Should the fact that she complied with this technical requirement two weeks late during the worst health crisis in 100 years have forced her off the ballot?

Seawright was able to run on an independent line and win back her seat. And Jessica Simmons was lucky that her victory in Supreme Court was not appealed. But neither should have had to go through this ordeal. In fact, Simmons wrote about her experience, penning an article in the *Bklyner* entitled "[Running for Office Should Not Be This Hard.](#)" In it, she lamented the "traps" and "gotchas" of Board rules which resulted in her disqualification. An educator for some 20 years, a founder of a school, and a mother, Simmons said that she "did her homework" and barraged the Board with question after question to make sure she got the process right. She still ran afoul of the rules. "I was lucky to be able to afford a lawyer," she wrote, "but what about other candidates who don't have the support I have?" After detailing her story, she concluded that "it's time for us to reform the [Board of Elections] process."

I concur. For close to 40 years, [I have urged reform of our ballot access process](#). Some states allow candidates to [pay a filing fee to get on the ballot](#) without having to go through anything like New York’s arcane petition process. This option should be tried here, with an opportunity to petition by those with limited financial resources (although the petitioning effort is itself costly).

Another alternative is to piggy-back onto the process by which a candidate in New York City qualifies for public matching funds. In this procedure the [NYC Campaign Finance Board verifies the number of donors](#) contributing a threshold amount from residents in the district a candidate hopes to represent. (New York State’s new [Public Campaign Finance Board](#) will start doing the same for state candidates after the 2022 elections.) The very same process can be used to also qualify a candidate to get on the ballot—requiring a minimum number of contributors from the district rather than a number of signatures on a petition. After all, the stated rationale of petitioning is to demonstrate a level of popular support, and there is no reason this cannot be done by showing a certain number of contributors from the district. No doubt, a donation is a better measure of support than a random signature from a voter rushing to the subway.

Such alternatives would prevent the disqualification of candidates based upon hyper-technical cover sheet rules such as Simmons and Seawright faced. And I have not even mentioned the many ways opponents routinely challenge the petition signatures!

The concern here is not just about making it less difficult to run for office. As articulated by the [U.S. Supreme Court](#) many times, ballot access directly impacts voters’ First Amendment’s associational rights. Simply stated, for every candidate knocked off the ballot, the voter’s choices are reduced. So, although there is no question that [other states are enacting more restrictive voting laws](#), New York’s retrograde ballot access laws can be improved.

I look forward to Albany addressing this head-on.

Jerry H. Goldfeder, special counsel at *Stroock & Stroock & Lavan*, teaches *Election Law and American Democracy* at *Fordham Law School*, and is the author of *Goldfeder’s Modern Election Law* (NY Legal Pub. Corp. 6th Ed. 2022). He serves as Chair of the *New York State Bar Association’s Task Force on Voting Rights and Democracy*, and on the *Rule of Law Task Force of the New York City Bar Association*.

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