

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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DAVID PRICE, as a candidate for the position for Albany County Republican Committeeman from the 14<sup>th</sup> Ward 6<sup>th</sup> District, City of Albany, THE ALBANY COUNTY REPUBLICAN COMMITTEE, MARTHA MCMAHON AND JAMES THORNTON, Absentee Voters

**STIPULATION OF DISMISSAL**

-against- GLS/  
Index No. 06-cv-1083

THE ALBANY COUNTY BOARD OF ELECTIONS, THE NEW YORK  
STATE BOARD OF ELECTIONS,

Defendants.

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Plaintiffs and defendant Albany County Board of Elections (hereinafter "County Board") by and through each of their respective undersigned attorneys, jointly notice, move and stipulate for a dismissal, without prejudice, of all claims against defendant County Board in the above-captioned matter pursuant to Fed. R. Civ. P. 41 (a) (2) and all other applicable rules, subject to the following terms and conditions:

- (1) Defendant County Board shall continue to abide by the terms and provisions of the Order of this Court entered September 11, 2006; and
- (2) Defendant County Board shall abide by the terms and provisions of any and all subsequent orders of this Court with respect to the tallying, canvassing, and/or casting of the absentee ballots of the plaintiff-voters and/or with respect to the certification of a winner of the party position of Albany County Committeeman in the 14<sup>th</sup> Ward, 6<sup>th</sup> District, City of Albany and further agrees that any such order may be specifically directed to the Albany County Board of Elections as if it were a party; and
- (3) The Plaintiffs shall not seek any costs, expenses or attorney's fees against the Defendant County Board in connection with this action; plaintiffs specifically waive any and all claims for costs, expenses and attorney's fees against defendant County Board pursuant to 42 U.S.C. § 1988 and/or any other statute; and
- (4) Dismissal of Plaintiffs' claims shall be without prejudice, provided, however, that any such claims may be renewed by any plaintiff solely for the purpose of seeking an order directing action by the County Board not otherwise provided for herein. In the event of any such renewal, defendant County Board agrees that it shall not take any position with respect to the constitutionality of Election Law §7-122, and Plaintiffs agree that they shall not seek any costs, expenses or attorney's fees against County Board in connection with any such renewed claims and specifically waive any and all claims for costs, expenses and attorney's fees against defendant County Board pursuant to 42 U.S.C. § 1988 and/or any other statute.
- (5) Upon entry of a final judgment in this action, the action against Defendant County Board shall be dismissed with prejudice.

Dated: September 28, 2006

Tom Marcelle

Kristina A. Burns

/sTom Marcelle  
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/s Kristina A. Burns  
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SO ORDERED:

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U.S. District Judge  
Date: