

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D8529  
E/cf

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Argued - October 12, 2005

ANITA R. FLORIO, J.P.  
HOWARD MILLER  
ROBERT W. SCHMIDT  
THOMAS A. ADAMS, JJ.

2005-09202

DECISION & ORDER

In the Matter of Gary S. Popkin, respondent,  
v Frederic M. Umane, etc., et al., appellants.

(Index No. 700030/05)

In a proceeding pursuant to Election Law § 16-102, inter alia, to validate so much of a petition as nominated Gary S. Popkin as a candidate in the general election to be held on November 8, 2005, for the public office of Brooklyn Borough President, the appeal is from a final order of the Supreme Court, Kings County (Levine, J.), dated September 22, 2005, which granted the petition.

ORDERED that the final order is affirmed, without costs or disbursements.

The Supreme Court properly determined that the independent nominating petition should not have been declared invalid by the New York City Board of Elections (hereinafter the Board). While this court disapproves of the inclusion of out-of-district signatures, we reject the Board's contention that the inclusion of such signatures invalidated the candidate's nominating petition where the record fails to disclose any fraud or deception in the acquisition of those signatures (see *Matter of Hargett v Green*, 186 AD2d 803; *Matter of Garson v Cohen*, 153 AD2d 718). Likewise, the fact that the petition purported to nominate candidates from different political units did not render it invalid (see *Matter of Love v Board of Elections of City of N.Y.*, 74 NY2d 799; see also *Matter of Simpson v Cohen*, 252 App Div 275).

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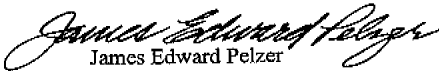
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Discounting the out-of-district signatures, which do not count towards nomination, the nominating petition contained a sufficient number of signatures (*see* Election Law § 6-138[1]).

FLORIO, J.P., H. MILLER, SCHMIDT and ADAMS, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court