

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF RICHMOND

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In the Matter of the Application of JAMES	:	
THOMSON, MEGHAN THOMSON, JAMES	:	
REYES SALAZAR, BRANDON LINKER, and	:	Index No.
JAMES HART,	:	
	:	IAS Part
Petitioners,	:	
	:	Justice
- against -	:	
	:	
DATA AND FIELD SERVICES, INC., DAVID	:	VERIFIED PETITION
THOMAS, as the Treasurer of Debi Rose 4 City	:	
Council, BOARD OF ELECTIONS IN THE CITY	:	
OF NEW YORK, and NEW YORK STATE	:	
BOARD OF ELECTIONS,	:	
	:	
Respondents.	:	
-----x	:	

Petitioners James Thomson, Meghan Thomson, James Reyes Salazar, Brandon Linker and James Hart (“Petitioners”), by and through their attorneys, Gibson, Dunn & Crutcher LLP, as and for their Verified Petition, allege as follows:

NATURE OF THE PROCEEDING

1. This is a case about an audacious scheme to violate the law by using corporate subterfuge to hijack our local election process. It goes to the very heart of our local democracy, and undermines the fairness and integrity of our local elections. And it cries out for immediate relief to compel those involved to comply with their legal obligations and to cease violating the legal limits imposed on them by the New York Election Law before Election Day on November 3.

2. The key facts are these: The Working Families Party (“WFP”) has created a shell for-profit corporation, Data and Field Services, Inc. (“DFS”), to circumvent state election and local campaign finance laws. Here’s how this illegal scheme works: The WFP endorses local candidates (including Debi Rose, the nominee who emerged victorious in the Democratic primary over

incumbent Ken Mitchell for the North Shore City Council seat). Those candidates then use the WFP's for-profit field operation, DFS, to conduct the critical campaign functions of targeting supporters and getting out the vote on election day. The candidates pay DFS a nominal sum well below "fair market value" for these essential and costly campaign services. At the same time, the WFP has covered the true cost of these campaign operations by pouring nearly a million dollars into DFS this year, subsidizing DFS's work on behalf of WFP-backed candidates, and thereby effectively channeling illegal in-kind contributions into these campaigns. The WFP, in turn, receives much of that funding from union supporters, as well as logistical support from the scandal-plagued ACORN.

3. The purpose of this scheme is to launder what would otherwise be excessive and illegal campaign contributions—in the form of subsidized field operation services—to WFP-backed candidates through the WFP's captive corporate shell, enabling the WFP and these unions to do indirectly through this subterfuge what our election laws plainly prohibit them from doing directly.

4. This scam skews the "level playing field" and full disclosure that our election laws seek to ensure. DFS's provision of illegal in-kind contributions worth tens of thousands more than the WFP-backed campaign ever pays violates the contribution restrictions imposed on corporations under both state law (limiting corporate contributions to \$5,000 combined for all political purposes in any given calendar year) and local law (barring corporate contributions altogether). *See* N.Y. Elec. Law § 14-116(2); N.Y. City Admin. Code § 3-703(1)(l) (2008). Moreover, because DFS is a for-profit corporation, it does not disclose either the actual cost of the valuable field services it provides these candidates or the sources of its own funding. Such maneuvering enables the campaigns to exceed the spending and contribution caps imposed on donors (including political parties and unions) by local law. *See* N.Y. City Admin. Code § 3-703(1)(f) (restricting any non-corporate donor from contributing any more than \$4,950 to city-wide candidates and \$2,750 to City Council candidates in any election cycle). What the WFP and its union supporters are doing here is

funneling money through DFS to evade legal limits on contributions. The WFP tries to hide behind a corporate veil, but now, the truth is revealed. Its “shell game” blatantly violates state and local laws designed to prevent the very abuses occurring here.

5. By subsidizing DFS’s operations to the tune of nearly one million dollars this past year, and then having DFS undercharge WFP-backed campaigns for otherwise costly field operation services, thereby effectively channeling illegal in-kind contributions to those candidates, the WFP and its union supporters were able to suddenly dominate the local political landscape in the September primary election.

6. The Rose Campaign provides a perfect example of this phenomenon. In a special election in February 2009, Rose paid DFS \$45,000 for only two-and-a-half weeks of services in a losing cause to Ken Mitchell. *See* N.Y. City Campaign Finance Board, Financial Disclosure Reports, Rose Campaign, 2009 Special Election (a true and correct copy of which is attached hereto as Exhibit 1); *see also* N.Y. State Board of Elections, Financial Disclosure Reports, Rose Campaign, 2009 Special Election (a true and correct copy of which is attached hereto as Exhibit 2). In their rematch in the September primary, though, Rose paid DFS barely \$19,000 over six weeks yet beat the incumbent Mitchell this time, largely because of field operations. *See* N.Y. City Campaign Finance Board, Financial Disclosure Reports, Rose Campaign, 2009 Primary (a true and correct copy of which is attached hereto as Exhibit 3); *see also* N.Y. State Board of Elections, Financial Disclosure Reports, Rose Campaign, 2009 Primary (a true and correct copy of which is attached hereto as Exhibit 4). It comes as no surprise, then, that a political consultant offering his expert opinion on this matter concluded that “the Rose Campaign has drastically underpaid for the field services it received from Data and Field Services, Inc.” Affidavit of Jake Menges ¶ 2.

7. As even WFP Executive Director Dan Cantor acknowledged immediately after the primary: “To say that it has vastly exceeded expectations would be an

understatement.’ . . . ‘Nobody saw this coming.’” Julie Bosman & Kareem Fahim, *Young and Active, the Working Families Party Shows Muscle in the Primaries*, N.Y. Times, Sept. 17, 2009, at 28 (a true and correct copy of which is attached hereto as Exhibit 5). And now these same parties are poised for a repeat performance in the general election in less than two weeks—unless this Court intervenes.

8. The Petitioners—all local registered voters who care about compliance with the law and their right to participate in a fair election—ask this Court to exercise its authority, under Article 16 of the State Election Law, to “compel” DFS and David Thomas, as the Treasurer of Debi Rose 4 City Council (the “Rose Campaign”), “to comply” with their legal obligations by (i) ordering the Rose Campaign to properly and accurately report all contributions and expenditures it received from DFS, and (ii) barring DFS from providing any further field services for the Rose Campaign leading up to and on election day to ensure DFS’s compliance with the laws it so systematically violates. N.Y. Elec. Law § 16-114(3). Petitioners further seek an immediate hearing on these issues and document disclosure by the responding parties.

9. Nothing less than the integrity of our local democracy is at stake here. Our upcoming local elections, in which petitioners intend to participate, are imperiled by a political operation laundering illegal campaign contributions through a shell corporation to skirt the rules. Those involved will try to characterize their activities as bare-knuckled politics. But this isn’t politics as usual. It’s a cynical effort to break the law. Now, this scheme is exposed. And it is within this Court’s power to stop it.

10. This scam has made a mockery of our election laws. While the City’s Campaign Finance Board has already found that “DFS exists as an arm of the Working Families Party” and, therefore, “any activity undertaken by the Working Families Party on behalf of campaigns using DFS as a vendor is non-independent,” that Board audits campaigns after-the-fact and is not likely at this late date to issue any final decisions in this regard until after Election Day on November 3.

Press Release, New York City Campaign Finance Board, Campaign Finance Board Makes Statement, Announces Third Public Funds Payments for 2009 Primary Elections, Sept. 2, 2009 (a true and correct copy of which is attached hereto as Exhibit 6).

11. Therefore, only this Court can now put an end to this illegal scheme and protect Petitioners' rights as voters to participate in a fair local election.

PARTIES

12. Petitioner JAMES THOMSON is a registered voters of the County of Richmond residing at 43 Prospect Avenue, Staten Island, New York 10301.

13. Petitioner MEGHAN THOMSON is a registered voters of the County of Richmond residing at 43 Prospect Avenue, Staten Island, New York 10301.

14. Petitioner JAMES REYES SALAZAR is a registered voters of the County of Richmond residing at 144 Van Pelt Avenue, Staten Island, New York 10303.

15. Petitioner BRANDON LINKER is a registered voters of the County of Richmond residing at 21 Hardin Avenue, Staten Island, New York 10310.

16. Petitioner JAMES HART is a registered voters of the County of Richmond residing at 201 DuBois Avenue, Staten Island, New York 10310.

17. Respondent DATA AND FIELD SERVICES, INC. is a for-profit corporation, duly registered with the Secretary of State, with corporate headquarters located at 612 2nd Street, Brooklyn, New York 11215.

18. Respondent DAVID THOMAS is the Treasurer of Debi Rose 4 City Council, the headquarters of which are located at 259 Van Pelt Avenue, Staten Island, New York 10303.

19. Respondent BOARD OF ELECTIONS IN THE CITY OF NEW YORK is a municipal agency responsible for regulating elections within New York City. Its offices are located at 32 Broadway, 7th Floor, New York, New York 10004-1609.

20. Respondent NEW YORK STATE BOARD OF ELECTIONS is the state agency entrusted with regulating elections within New York State and is a necessary party pursuant to Election Law § 16-114(2). Its offices are located at 40 Steuben Street, Albany, New York 12207-2108.

FACTUAL BACKGROUND

The Working Families Party Represents the Political Interests and Financial Power of Major Labor, Consumer and Grassroots Organizations

21. The Working Families Party (the “WFP”) “was created in 1998 by major labor, consumer and grassroots groups to take advantage of New York’s election laws, which allow one party—if it chooses—to list another party’s candidate on its ballot line and then count all the votes for that candidate together.” David Sirota, *The Uprising* 91 (Crown Publishers 2008) (a true and correct copy of which is attached hereto as Exhibit 7).

22. At its inception, the WFP purported to fight for “a living wage, paid sick days, universal health care and affordable housing,” all interests of its founding members. Ex. 5 (Bosman at A28). The WFP’s purported “goal was simply to build the party’s name recognition” by “cross-endors[ing] Democrats and avoid[ing] running its own stand-alone candidates so as to prevent the Nader phenomenon in which a three-way general election splits the populist/progressive vote and elects corporate-backed Republicans.” Ex. 7 (Sirota at 95). This strategy quickly “demonstrated that [the WFP’s] populist economic brand could help Democrats win both votes and legislative battles among constituencies and in districts Democrats usually had trouble winning.” *Id.*

23. Before long, the WFP became synonymous with “left-wing advocates pushing against corporate interests,” for example, by advocating “an increase in the minimum wage and in rolling back tax breaks for luxury development.” Ed Koch & David Yassky, *The Working Families Threat: The Party’s Ascent Is Bad News for Democrats and New Yorkers*, N.Y. Daily News, Oct. 7, 2009, at 23 (a true and correct copy of which is attached hereto as Exhibit 8). “WFP backing started to

become very valuable in lower-tier primary races, especially in heavily Democratic areas where the primary winner is often the general election winner.” Ex. 7 (Sirota at 95). Harnessing the accumulated wealth and influence of labor organizations and consumer advocacy groups, the WFP forced their way into New York politics by developing what it claimed was “a formidable field operation and sophisticated voter database” that the WFP offered only to those candidates it endorsed. Ex. 6 (Bosman at A28).

24. But as the WFP’s power grew, its scruples diminished. “WFP leaders . . . shed some of their youthful purity for the more calculating and cutthroat tactics required of New York party bosses.” Ex. 7 (Sirota at 101). As Dan Cantor, the Executive Director of the WFP, explained: “I’m not in this to do fools’ errands—I’m in this to exercise real power for our movement.” *Id.*

25. With this growing notoriety came increased scrutiny, especially because the WFP is “allied closely with powerful labor unions” and other organizations by which it was founded. Ex. 5 (Bosman at A28). The WFP receives tremendous support from “giant” labor unions, such as the Service Employees International Union’s health-care Local 1199, which is one of the WFP’s “most important board members and financial backers.” Ex. 7 (Sirota at 107). As seasoned politicians former New York City Mayor Ed Koch and City Council Member David Yassky recently warned, “[t]he problem is that the WFP is driven . . . by the very specific interests of its component parts—namely, the city’s largest labor unions,” which “have a very direct financial stake in the state and city budgets, an interest that is often at odds with the public interest.” Ex. 8 (Koch at 23).

26. Another organization that helped found and remains closely allied with the WFP is the Association of Community Organizations for Reform Now, commonly known as ACORN. *See* Ex. 7 (Sirota at 114). ACORN not only shares office space with the WFP, *see* Robert Gearty & Benjamin Lesser, *ACORN’s Roots Go Deep with City Pols*, N.Y. Daily News, Sept. 20, 2009, at 13 (a true and correct copy of which is attached hereto as Exhibit 9); but Bertha Lewis, “the executive

director of New York ACORN,” is also “a state cochair of the WFP.” Ex. 7 (Sirota at 114). And, tellingly, “most of those who prefer to keep ACORN’s money flowing regularly enjoy the support of its close affiliate—the union-backed Working Families Party.” Editorial, *ACORN’s Enablers*, N.Y. Post, Sept. 19, 2009, at 20 (a true and correct copy of which is attached hereto as Exhibit 10).

27. The WFP has remained closely allied with ACORN despite the fact that ACORN has been the target of an increasing number of state and local investigations over the years, ranging from embezzlement to voter fraud. Earlier in this decade, the brother of ACORN’s founder, Wade Rathke, was caught internally embezzling nearly \$1 million dollars and yet was kept on the ACORN payroll to avoid disclosure of the event. See Stephanie Strom, *Funds Misappropriated at 2 Nonprofit Groups*, N.Y. Times, July 9, 2008, at A21 (a true and correct copy of which is attached hereto as Exhibit 11). In the 2008 presidential election, national attention focused on ACORN for what the McCain campaign alleged to be massive “voter fraud” including the submission of fraudulent voter forms to pad Democratic enrollment. See Bob Drogin & David Savage, *Campaign '08: McCain Calls For 'Voter Fraud' Inquiry*, L.A. Times, Oct. 15, 2008, at A8 (a true and correct copy of which is attached hereto as Exhibit 12). Inquiries into allegations of voter registration fraud have led to charges being filed against ACORN and its employees in Nevada and Washington. See John Fund, Opinion, *More Acorn Voter Fraud Comes to Light*, The Wall Street Journal Online, available at <http://online.wsj.com/article/SB124182750646102435.html> (a true and correct copy of which is attached hereto as Exhibit 13). Most recently, criminal probes were launched by New York Attorney General Andrew Cuomo and Brooklyn District Attorney Charles Hynes after “hidden cameras caught [ACORN’s] counselors advising a phony pimp and call girl how to buy a home and evade detection from the government.” David Seifman, *Liu: I’ll Cut Off Seed \$\$ for ACORN*, N.Y. Post, Sept. 24, 2009, at 4 (a true and correct copy of which is attached hereto as Exhibit 14); Robert McCarthy, *ACORN Case Elicits Strong Reactions*, Buffalo News, Sept. 20, 2009, at C1 (a true

and correct copy of which is attached hereto as Exhibit 15); Ex. 10 (*ACORN's Enablers*); *ACORN Workers Caught on Tape Allegedly Advising on Prostitution*, available at <http://www.cnn.com/2009/POLITICS/09/10/acorn.prostitution> (a true and correct copy of which is attached hereto as Exhibit 16); Jeremy Olshan, *'Pimp & Hooker' Crack NY ACORN—Catch B'klyn Staffers Giving Out Brothel Biz Advice*, N.Y. Post, Sept. 14, 2009, at 4 (a true and correct copy of which is attached hereto as Exhibit 17).

The WFP Uses Labor Money to Skew Elections in Its Candidates' Favor

28. The WFP's use of its considerable funding from powerful labor and other organizations to secure electoral victories for the candidates it endorsed belies its true purpose. As former Mayor Ed Koch and City Council Member David Yassky pointed out, "the WFP effectively allows unions to spend far more on campaigns of candidates they favor than campaign finance laws would otherwise allow" by accepting substantial contributions from those unions and, in turn, expending those funds to ensure its endorsed candidates' election. Ex. 8 (Koch at 23).

29. Years of perpetrating this scheme has allowed the WFP to overwhelm any opposition to its candidates. Ex. 7 (Sirota at 109). For example, the WFP "pour[ed] seventy canvassers and another ten organizers into" the 2007 Craig Johnson state senate race, spending \$4 million on the campaign in a single month. *Id.* After 75 field canvassers "knocked on 45,000 doors for Johnson, . . . roughly half of the 3,600 votes that provided Johnson his margin of victory cast on the WFP's ballot line." *Id.* at 113. Thus, by endorsing chosen candidates and employing its extensive and well-funding campaign operations to ensure their election, the WFP expanded its power and influence, along with that of its financial and organizational supporters.

The New York Election Law and New York City Campaign Finance Laws Limit the WFP's Ability to Guarantee Its Candidates' Elections

30. While the New York Election Law ("Election Law") places some limits on the WFP's exercise of its union-backed power, the greatest threat to the WFP's ability to dominate

elections is the New York City Campaign Finance Act (the “Act”). The Act strictly limits the contributions candidates can receive both directly from labor organizations, as well as from the WFP itself, in addition to the expenditures the WFP had been making to overwhelm its candidates’ opponents. *See* N.Y. City Admin. Code § 3-703(1)(f). Specifically, unions and political parties are limited to contributing \$4,950 to candidates for city-wide office and \$2,750 to candidates for City Council, per calendar year. *See id.* §§ 3-703(1)(f), 3-703(7). The Act and Election Law also require disclosure of each and every expenditure made by the WFP on behalf of or for the benefit of the candidates it represents. *See* N.Y. Elec. Law § 14-104(1); N.Y. City Admin. Code § 3-703(6).

31. Those expenditure and contribution restrictions—if obeyed—would undermine the WFP’s entire operation by placing it—and, consequently, its candidates—on an even playing field with their competitors. The disclosure requirements, in turn, would almost guarantee that the WFP and its candidates’ campaign could not hide excessive expenditures and contributions that the WFP would otherwise use to muscle out competition. In short, the WFP’s power was limited to the extent it—and its candidates—observed the strict proscriptions of the Act and Election Law.

32. One example of the growing conflict between the WFP’s tactics and these election laws is highlighted by the 2004 controversy that erupted when the WFP poured massive amounts of money behind overwhelming field and direct-mail operations in support of David Soares, a candidate for district attorney in Albany. The Democratic Party sued the WFP, alleging that the WFP’s tactics “represented illegal meddling in another party’s primary.” Ex. 7 (Sirota at 91). The WFP had been caught violating those provisions of the New York prohibiting the expenditure of any party funds “in aid of the designation or nomination of any person to be voted for at a primary election either as a candidate for nomination for public office, or for any party position.” N.Y. Elec. Law § 2-126; *see also Avella v. Batt*, 33 A.D.3d 77, 80, 820 N.Y.S.2d 332, 335 (3d Dep’t 2006).

Despite the court finding that the WFP violated legal limits, it escaped liability merely because it was

