

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	:
JAMES HART,	:
	Index No.
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Petitioners,	:
	IAS Part
	:
- against -	:
	Justice
	:
DATA AND FIELD SERVICES, INC., DAVID	:
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.	:
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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

able to establish that “Election Law § 2-126, as applied here, unconstitutionally burdens [respondent’s] First Amendment rights of political expression and association.” *Avella*, 33 A.D.3d at 80, 820 N.Y.S.2d at 335.

### **The WFP Creates Data and Field Services, Inc. to Circumvent State and Local Election Laws**

33. In the wake of the Soares controversy, the WFP devised a deceptively simple scheme to avoid the expenditure, contribution and disclosure requirements that threatened to hamper its ability to exercise the full extent of its power to get its candidates elected in New York City. As noted above, the WFP’s growing ability to flex its union muscles to wrestle elections away from its candidates’ opponents would be weakened if it was forced to adhere to the Campaign Finance Act, which limits the WFP’s expenditures on or contributions to city-wide and City Council races to \$4,950 and \$2,750, respectively. *See* N.Y. City Admin. Code §§ 3-703(1)(f), 3-703(7) . This is nowhere near the \$4 million that the WFP had thrown behind Craig Johnson’s state senate race in just one month of 2007, and no where near the amount the WFP needed to inject into City campaigns to maintain its newfound power and that of its backers.

34. On February 23, 2007, forms were filed with the New York Department of State, Division of Corporations, registering Data and Field Services, Inc. (“DFS”) as a domestic business corporation under New York law. *See* NYS Dep’t of State, Div. of Corps., Registration for Data and Field Services, Inc. (a true and correct copy of which is attached hereto as Exhibit 18). As Kevin Finnegan, the attorney who set-up DFS, conceded, DFS was designed “to avoid potential problems with the campaign finance laws.” Brendan Scott & David Seifman, *GOP Slams Working Families’ ‘Game’ Plan*, N.Y. Post, Apr. 1, 2009, at 2 (a true and correct copy of which is attached hereto as Exhibit 19). One “benefit of incorporating a private, for-profit company is that none of its activities—all of them done on behalf of the WFP and various political candidates—are visible to the same level of detail that would be possible if the WFP or the candidates made the expenditures

themselves.” Edward-Isaac Dove, *City Hall Special Investigative Report: Big Money Slides from WFP to City Campaigns*, City Hall, Aug. 9, 2009, at 1, available at <http://www.cityhallnews.com/newyork/article-828-city-hall-special-investigative-report.html> (a true and correct copy of which is attached hereto as Exhibit 20).

35. The services provided by DFS are virtually identical to those traditionally provided by the WFP to its endorsed candidates, such as “provid[ing] staff members to knock on doors, call potential voters and hand out campaign flyers,” Ex. 5 (Bosman at 28). But while DFS operates out of the WFP’s headquarters and there is “significant overlap between DFS and WFP staff,” its founders maintain that DFS is a “distinct corporate entity which it was filed as with the state Department of Corporations.” Ex. 20 (Dove at 3).

36. This disingenuous distinction was intended to allow the WFP to make individual expenditures and contributions through DFS—treated as nothing more than a “shell corporation”—without disclosing them, as required by the Election Law and the Act. Thus, the WFP began sending large, periodic infusions of cash into DFS coffers totaling an astonishing \$825,809.11 during 2009 alone, but the way in which DFS spent those funds has remained entirely hidden from the public and relevant authorities.<sup>1</sup> N.Y. State Board of Elections, Financial Disclosure Reports, Working Families Party, Inc. (a true and correct copy of which is attached hereto as Exhibit 7).

37. The illegality of this scheme is obvious. For-profit companies charge sufficient sums to cover their costs while making at least a small profit. This is the most logical definition of fair market value. *See* N.Y. Board of Elec. 1979 Op. 10, Nov. 20, 1979 (a true and correct copy of which

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<sup>1</sup> For approximately \$750,000 of its listed expenditures to the WFP this calendar year, the WFP does not reference any specific race for which it is making the expenditure. *See* Ex. 4 (N.Y. State Board of Elections Financial Disclosure Reports, Working Families Party, Inc.).

is attached hereto as Exhibit 22) (advising that the “fair market value” of the contribution made by an employer when its employees provide services to a candidate is the usual rate paid for such services, which takes into account any bonus or fringe benefits). But Dan Cantor explained that DFS has never made a profit, and he is “not sure it ever will.” Ex. 20 (Dover at 2). To the contrary, the WFP’s plan is to infuse DFS with substantial cash contributions so that DFS is able to remain solvent while providing extensive campaign services to WFP-endorsed candidates at rates well below fair market value. Given that Dan Cantor has “ruled out the idea of DFS being hired by candidates who had not been endorsed by the WFP,” it is obvious that the WFP has illegally contributed as much as \$825,809.11 to the WFP-endorsed candidates for whom DFS has worked during 2009. *Id.*

**Data and Field Services Skewed Key 2009 Primary Elections—And Is Working to Skew Key 2009 General Elections—for Chosen WFP-Endorsed Candidates**

38. As the 2009 primary election cycle began, it quickly became clear that DFS was providing services to a select subset of WFP-nominated candidates for City-wide and City Council offices, “including public advocate hopeful Bill de Blasio and City Council candidates Daniel Dromm, S.J. Jung, Brad Lander, Deborah Rose, Lynn Schulman, James Van Bramer and Jumaane Williams.” Michael Saul & Celeste Katz, *WFP Candidates Warned on Firm*, N.Y. Daily News, Sept. 3, 2009, at 22 (a true and correct copy of which is attached hereto as Exhibit 23).

39. As these campaigns began to file their state and local expenditure reports, many—including other campaigns, the press, and the public—started to see that DFS was charging WFP-endorsed candidates significantly less for comparable services as non-endorsed candidates were paying other vendors for the same services. In particular, the expenditure reports indicate that DFS provided a broad range of campaign services for the Rose Campaign leading up to and on the day of

the primary election in return for unusually small payments totaling \$19,075.20.<sup>2</sup> *See* Menges Aff. ¶¶ 3-7; *see also* Ex. 3 (N.Y. City Campaign Finance Board, Financial Disclosure Reports, Rose Campaign, 2009 Primary); *see also* Ex. 4 (N.Y. State Board of Elections, Financial Disclosure Reports, Rose Campaign, 2009 Primary).<sup>3</sup>

40. As explained in the accompanying affidavit of Jake Menges, a political consultant and expert with more than 25 years of experience advising candidates in city, state and federal elections, including coordinating field operations in many elections for the New York City Council, the financial disclosures filed by the Rose Campaign make clear that the campaign did not pay the full fair market value of the services it received. In Mr. Menges's extensive experience, polling, phone banking, petitioning, pull operation and canvassing are among the most vital aspects of any City Council campaign because they tell you to whom you should address your message, what that message should be, and how to get your voters to the polls. *See* Menges Aff. ¶ 3. Yet the Rose disclosures do not list any payments for these essential services to any of the other vendors listed on these reports. *See* Menges Aff. ¶¶ 5-6; Exs. 3-4. Moreover, each of these additional vendors provided limited, discrete services to the Rose Campaign—such as petitioning, campaign mailings,

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<sup>2</sup> While the financial disclosure reports filed by the Rose Campaign with the City Campaign Finance Board reveal \$19,075.20 in pre-primary expenditures to DFS, the comparable reports filed by the Rose Campaign with the State Board of Election only show that \$11,166.66 was paid to DFS during that time period. *See* Ex. D (N.Y. State Board of Elections, Financial Disclosure Reports, Rose Campaign, 2009 Primary). While it is clear that the larger of the two sums—\$19,075.20—is patently insufficient to cover the fair market value of the services DFS rendered to the Rose Campaign, there is no doubt that the lesser sum would be even less sufficient.

<sup>3</sup> With the general election now less than two weeks away, the Rose Campaign disclosed barely more than \$26,000.00 in expenditures to DFS during the general election campaign. *See* Ex. 3 (N.Y. City Campaign Finance Board, Financial Disclosure Reports, Rose Campaign, 2009 Primary); *see also* Ex. 4 (N.Y. State Board of Elections, Financial Disclosure Reports, Rose Campaign, 2009 Primary).

and campaign literature—unlike DFS, which, in broad terms, is described as providing such services. *See* Menges Aff. ¶¶ 5-6 ; Ex. 3-4. As Mr. Menges attests, such services would typically cost a City Council campaign at least double the amounts paid to DFS by the Rose Campaign, and potentially much more than that. *See* Menges Aff. ¶ 6.

41. Statements by the Rose Campaign’s manager also confirm that DFS provided this broad range of vital services to each campaign. For instance, the Rose Campaign hired DFS for its extensive canvassing operations and field organizing expertise. According to Rose Campaign manager, Vonda McKeithan, “Data and Field Services is great at what they do—engaging with voters one on one to get our message out.” Ex. 20 (Dovere at 6).

42. The surprising results of this year’s primary elections proved that the WFP’s illegal actions, rendered through DFS, were politically effective. The WFP-nominated and DFS-supported candidates won several key primary races throughout the City, including Bill de Blasio, a city councilman from Brooklyn who came from behind in the race for public advocate to force Mark Green into a run-off on September 29, and three of the four City Council candidates who defeated entrenched incumbents in their respective primary contests. *See* Ex. 5 (Bosman at 28). These victories were such a surprise that even Dan Cantor, the WFP’s Executive Director, noted of the primary results that “[t]o say that it has vastly exceeded expectations would be an understatement, . . . ‘[n]obody saw this coming.’” *Id.*

43. Rose’s victory in the primary race came as a complete shock. Rose’s opponent, Ken Mitchell, had every other conceivable advantage: incumbency, greater name recognition, and the prized endorsement of the Democratic County Committee. *See* Tom Wroblewski, *Dynamics Differ in North Shore Council Race*, Staten Island Advance, Aug. 3, 2009, at A3 (a true and correct copy of which is attached hereto as Exhibit 24). Despite her opponent’s advantages—and the fact that Mitchell had defeated her as recently as the February 2009 Special Election for the very same seat—

Rose pulled off a “stunning upset.” Tom Wroblewski & Judy Randall, *A Step Closer to History*, Staten Island Advance, Sept. 16, 2009, at A1 (a true and correct copy of which is attached hereto as Exhibit 25).

44. This victory was merely one in a “series of surprises” in elections involving WFP-endorsed candidates. Lisa Colangelo, *Call It The Surprise Party*, N.Y. Daily News, Sept. 17, 2009, at 45 (a true and correct copy of which is attached hereto as Exhibit 26). Another example is that of James Van Bramer, another WFP-backed City Council candidate who hired DFS. As with the Rose Campaign, the Van Bramer Campaign’s financial disclosures show that DFS was the only vendor providing the costly field operation services essential in any successful City Council race, and that those services were provided for the suspiciously low price of \$23,000.00.<sup>4</sup> N.Y. City Campaign Finance Board, Financial Disclosure Reports, Van Bramer Campaign (a true and correct copy of which is attached hereto as Exhibit 27); N.Y. State Board of Elections, Financial Disclosure Reports, Van Bramer Campaign (a true and correct copy of which is attached hereto as Exhibit 28). Despite paying such a low price for a wide-range of essential field operation services, Van Bramer upset his opponent, Deidre Feerick, a candidate endorsed by the Democratic party leadership. *Change Has Come: New Faces, Minority Contestants Made Primary Night A Queens Win*, Queens Tribune, Sept. 17, 2009, available at <http://www.queenstribune.com/feature/ChangeHasComeNewFacesMinor.html> (a true and correct copy of which is attached hereto as Exhibit 29).

45. Some of the best evidence of DFS’s blatant undercharging of the Rose Campaign comes from a comparison of the amount DFS charged Debi Rose’s failed special election campaign

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<sup>4</sup> Similarly, the Van Bramer Campaign recently disclosed that it has given DFS a little more than \$9,000.00 for its work on the general election campaign. See Ex. 27 (N.Y. City Campaign Finance Board, Financial Disclosure Reports, Van Bramer Campaign); Ex. 28 (N.Y. State Board of Elections, Financial Disclosure Reports, Van Bramer Campaign).

in February 2009 to the \$19,075.20 DFS charged the Rose Campaign for work leading up to the primary election. Ex. 3 (N.Y. City Campaign Finance Board, Financial Disclosure Reports, Rose Campaign, 2009 Primary); *see also* Ex. 4 (N.Y. State Board of Elections, Financial Disclosure Reports, Rose Campaign, 2009 Primary). “[S]hortly after Debi Rose was endorsed by the WFP on Feb. 5 in her run for the Council seat vacated by now Rep. Michael McMahon,” Debi Rose’s special election campaign paid DFS \$45,000—at most—for just two and a half weeks of work.<sup>5</sup> Ex. 20 (Dovere at 6). Yet, despite spending nearly a third of the funds available to the special election campaign on DFS’s services, Debi Rose lost the special election to Ken Mitchell by a narrow margin of 341 votes. *See id.*; Board of Elections in the City of New York, Statement and Return Report for Certification, Special Election, 02/24/2009, Richmond County, 49th District (a true and correct copy of which is attached hereto as Exhibit 30). Just seven months later in the recent Democratic primary, however, Debi Rose handily defeated incumbent Council Member Ken Mitchell by a stunning 1,362 voters while paying DFS only \$19,075.20 for many more weeks of its services. *See* Ex. 3 (N.Y. City Campaign Finance Board, Financial Disclosure Reports, Rose Campaign, 2009 Primary); Ex. 4 (N.Y. State Board of Elections, Financial Disclosure Reports, Rose Campaign, 2009 Primary); Board of Elections in the City of New York, Statement and Return Report for Certification, Primary Election 09/15/2009, Democratic Party, 49th District (a true and correct copy of which is attached hereto as Exhibit 31). Given the primary contest was so important—because Rose had to defeat the incumbent to win the Democratic primary in a predominantly Democratic District—it is difficult to

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<sup>5</sup> Once again, the Rose Campaign’s financial disclosure reports filed with the City Campaign Finance Board and the State Election Board are wildly inconsistent. Those filed by the Rose Campaign with the City Campaign Finance Board reveal \$45,000.00 in special election expenditures to DFS, while those filed with the State Board of Election only show \$6,000.00 in such expenditures. *See* Ex. 2 (N.Y. State Board of Elections, Financial Disclosure Reports, Rose Campaign, 2009 Special Election).

imagine how the Rose Campaign spent less than half as much money on DFS's services in the September primary as was spent in her failed special election campaign, yet this time defeated her opponent by a huge margin despite his heightened advantages. It just doesn't add up.

46. One fact is apparent: without extensive illegal assistance from DFS, which provided the Rose Campaign with all of its field operations—the single most important service to any City Council campaign—this upstart candidate would not have won. Ex. 20 (Dovere at 6-8).

**Bombarded with Complaints, the New York City Campaign Finance Board Declared that DFS “Exists as an Arm of the Working Families Party”**

47. Even the New York City Campaign Finance Board (“CFB”) has indicated that it is investigating DFS's undercharging for services offered to WFP-endorsed candidates. On September 2, 2009, the CFB issued a statement in which it recognized that “[t]here has been much attention surrounding potential violations of the New York City Campaign Finance Act and Board Rules by campaigns that have hired Data and Field Services, Inc.,” and that such “potential violations are twofold: (1) that campaigns are not paying full market value for services; and (2) the potential for non-independent expenditures due to DFS' close affiliation with the Working Families Party and its affiliates.” Ex. 6 (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). While the “Board ma[de] no determination regarding violations at this time,” the CFB advised that:

it is the Board's understanding that DFS exists as an arm of the Working Families Party. Both organizations are located in the same space and share employees; DFS was created by Working Families Party staff; and there are no apparent firewalls between them. In light of the close affiliation, the Board presumes that any activity undertaken by the Working Families Party on behalf of campaigns using DFS as a vendor is non-independent. Therefore, these activities must be reported and accounted for by campaigns as either an in-kind contribution from the Working Families Party or an expenditure.

*Id.* Despite this clear indication that the WFP and DFS have circumvented the law, the CFB has not yet taken formal action. Meanwhile, DFS has continued to operate as it always has: by expending more money and resources in support of its clients' campaigns than its receipts from those campaigns could possibly cover. With the general election rapidly approaching, there is no indication whatsoever that the CFB will take action against DFS or the WFP in time to protect the integrity of those elections.

**With the General Election Rapidly Approaching, Ten Voters Commenced This Special Proceeding to Prevent Irreparable Harm to Their Interests and the Electoral Process Overall**

48. While it is clear that DFS, acting on behalf of the WFP, has flaunted the City Campaign Finance Act by excessively funding city-wide and City Council elections, the City Campaign Finance Act does not provide any private right of action by which concerned voters can take action to protect the integrity of the electoral process and the fairness of their vote. The responsibility and authority to enforce the provisions of the City Campaign Finance Act rests with the Campaign Finance Board, but, as noted earlier, it does not appear that the Board will take action against the WFP and DFS in time to protect these voters' rights.

49. Fortunately, the State Election Law provides a private right of action permitting concerned citizens to ask this Court to protect the electoral process by preventing any elections from being unfairly and illegally dominated by candidates benefiting from the WFP's and DFS's illegal scheme. Thus, this special proceeding is being commenced by five voters—each registered to vote in the City Council district in which WFP-endorsed and DFS-backed candidate Debi Rose is running for City Council (“Petitioners”)—pursuant to Article 16 of the Election Law to seek relief from this Court, their last hope for a fair and legal election.

## **FIRST CAUSE OF ACTION**

### **DATA AND FIELD SERVICES VIOLATED ELECTION LAW § 14-116 BY EXCEEDING THE LIMITATIONS ON CORPORATE CONTRIBUTIONS**

50. Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 1–48 hereof.

51. Pursuant to section 14-116(2) of the New York Election Laws, corporations may not make contributions “for political purposes” that exceed “five thousand dollars in the aggregate in any calendar year.”

52. When corporations charge less than the fair market value of their services, the difference between the fair market value and what was charged constitutes a contribution to the campaign.

53. Public disclosure forms filed by the Rose Campaign listing expenditures indicate they paid \$19,075.20—at most—to DFS for services performed prior to the 2009 primary election.

54. Applying “a reasonable estimate of fair market value,” it is clear that DFS has charged the Rose Campaign far less than the fair market value of its services. The Rose Campaign’s disclosure reports indicate—and public statements by the campaign’s managers confirm—that DFS provided a broad range of essential services to those campaign, including polling, phone banking, petitioning, pull operation and canvassing. *See Menges Aff.* ¶ 6. Yet the amounts that the Rose Campaign paid DFS in return for these services is far too low to cover the fair market value of those services, especially for services of the large quantity and high quality necessary to win an election, as Debi Rose did. *See Menges Aff.* ¶¶ 6–7.

55. These contributions caused DFS to contribute in excess of “five thousand dollars in the aggregate in [this] calendar year,” in violation of section 14-116(2) of the Election Law, and this Court should grant the relief, pursuant to sections 16-114(2)–(3), requested below.

## **SECOND CAUSE OF ACTION**

### **THE ROSE CAMPAIGN FAILED TO TRUTHFULLY DISCLOSE CORPORATE IN-KIND CONTRIBUTIONS PURSUANT TO ELECTION LAW § 14-104(1)**

56. Petitioners repeat and reallege, as if set forth fully herein, the allegations contained in Paragraphs 1–54 hereof.

57. Pursuant to section 14-104(1), “any candidate for election to public office, or for nomination for public office at a contested primary election . . . shall file statements [listing] . . . all moneys or other valuable things, paid, given, expended or promised by him to aid his own nomination or election.”

58. David Thomas, as the Treasurer of Debi Rose 4 City Council, maintained the responsibility for filing the campaign’s disclosures, but failed to properly list the contributions given by DFS to Debi Rose 4 City Council.

59. The failure to disclose this amount undermines the very purpose of disclosure laws: to provide the public with truthful information about who supports candidates for public office, to deter corruption and to allow the appropriate agencies to enforce campaign finance laws.

60. For these reasons, David Thomas, the Treasurer of Debi Rose 4 City Council, submitted false disclosure forms contrary to the requirements of section 14-104(1) and the Court should grant the relief, pursuant to sections 16-114(2)–(3), requested below.

### **NO PRIOR APPLICATION**

61. No prior application for this or any similar relief has been made in this Court.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Petitioners pray for a Judgment pursuant to Article 16 of the New York Election Law:

- (1) declaring that Respondent Data and Field Services, Inc. exceeded its annual limitation on corporate political expenditures and contributions by charging less than fair market value for services rendered to Debi Rose 4 City Council during 2009 by an amount to be summarily determined by this Court, in violation of Article 14 of the Election Law;
- (2) prohibiting Respondent Data and Field Services, Inc. from providing any additional services or making any additional contributions to or expenditures on behalf of or for the benefit of Debi Rose 4 City Council;
- (3) directing and requiring Respondent David Thomas, as the Treasurer of Debi Rose 4 City Council, to refund and return to Respondent Data and Field Services, Inc. the fair market value of the services rendered for and for expenses incurred on behalf of and for the benefit of Debi Rose 4 City Council in excess of \$5,000;
- (4) declaring that Respondent David Thomas, as the Treasurer of Debi Rose 4 City Council, violated Article 14 of the Election Law by failing to report all in-kind contributions made by Respondent Data and Field Services, Inc. and received by Debi Rose 4 City Council;
- (5) directing Respondent David Thomas, as the Treasurer of Debi Rose 4 City Council, to report all in-kind contributions made by Respondent Data and Field Services, Inc. and received by the Debi Rose 4 City Council within five days after notice of the Order; and
- (6) granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
October 23, 2009

Respectfully submitted,

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