

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50S

-----X
In the Matter of the Application of :
Dilsia Pena, Noreen Connell, Hazel N. Dukes :
Leonie Haimson and Randi Wiengarten, individually :
and on behalf of the approximately 71,135 signers :
of a Petition Filed Pursuant to Section 37 of the :
Municipal Home Rule Law, :
 :
Petitioner, : DECISION AND
 : ORDER
-and- :
COUNCILMAN ROBERT JACKSON and THE : Index Number
HISPANIC FEDERATION, : 111177/05
 :
Petitioners-Intervenors, :
 :
-against- :
 :
VICTOR ROBLES, as City Clerk of the City :
of New York and THE BOARD OF ELECTIONS :
IN THE CITY OF NEW YORK, :
 :
Respondents, :
 :
JOEL KLEIN, Chancellor, New York City Department :
of Education, :
 :
Respondent-Intervenor, :
-----X

Hon. Lewis Bart Stone, J

This proceeding was commenced by Order to Show Cause dated August 11, 2005, by Petitioner Dilsia Pena, on her own behalf, and on behalf of other signers (collectively the "Proponents") of a voter's petition (the "Petition") to

amend the New York City Charter (the "Charter"), pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR"), to review a decision (the "Initial Ruling") of Respondent Victor Robles, the Clerk of the City of New York (the "City Clerk"), dated August 5, 2005, certifying to the New York City Council ("City Council") that the proposed amendment (the "Amendment") could not be submitted to voters of the City of New York (the "City") either at the 2005 or the 2006 general elections.

New York Municipal Home Rule Law ("MHRL §37") authorizes the voters of a city to amend the charter of their city through a petition process. Under MHRL §37(5), such petitions must be submitted to the clerk of such city who makes an initial determination whether there are sufficient valid signatures of eligible electors and whether the petition "complies or does not comply with all the requirements of law," and issues his certificate to the local legislative body setting forth such determination. Thereafter, if such legislative body fails to adopt the proposed amendment on its own by local law,¹ the proponents of such change may require the proposed change to be submitted to the voters of the city by collecting and filing sufficient additional signatures of qualified electors who did not sign the first petition. The Supreme Court is expressly given jurisdiction under such section to review a "finding by the City Clerk that a petition does not comply with all of the requirements of law." This procedure was followed by the Proponents and the City Clerk, and this proceeding was initially commenced to review the Initial Ruling in which the City Clerk certified his finding that the Petition did not comply with all requirements of law.

¹ The procedure is somewhat different for those charter changes subject to the mandatory referendum provisions of the MHRL. As the Amendment is not subject to such mandatory referendum provisions, such alternate procedure is not relevant to this proceeding.

