

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

----- x Index No. 20860/07

F. WARREN BENTON, MICHAEL P. WEINER, JANICE:  
A. RING, FRANCES P. O'CONNOR, ANTHONY C. :  
PAVIN, NORA J. CARLSON, and JOHN TROY :

Petitioners, :

-against- :

ELIZABETH N. FELD, Mayor, MARLENE KOLBERT, :  
Trustee, ANNE McANDREWS, Trustee, JIM :  
MILLSTEIN, Trustee, RICHARD WARD, Trustee, :  
constituting the Village of Larchmont Board of Trustees, :  
and EILEEN A. FINN, Clerk of the Village of Larchmont, :

Respondents. :

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**REPLY  
AFFIRMATION**

**KATHERINE ZALANTIS** an attorney duly licensed to practice law in the State  
of New York affirms under penalty of perjury as follows:

1. I am a member of the firm of Silverberg Zalantis LLP attorneys for the  
petitioners F. WARREN BENTON, MICHAEL P. WEINER, JANICE A. RING,  
FRANCES P. O'CONNOR, ANTHONY C. PAVIN, NORA J. CARLSON, and JOHN  
TROY (collectively "Petitioners") herein and make this affirmation, upon information  
and belief, based upon a review of the files maintained in my office.

2. I submit this reply affirmation in further support of Petitioners'  
application, in accordance with Election Law section 16-116, Articles 9 and 10 of the  
Village Law and Article 78 of the CPLR, for an order against respondents ELIZABETH  
N. FELD, Mayor, MARLENE KOLBERT, Trustee, ANNE McANDREWS, Trustee, JIM  
MILLSTEIN, Trustee, RICHARD WARD, Trustee, constituting the Village of  
Larchmont Board of Trustees ("Village Board"), and EILEEN A. FINN, Clerk of the

Village of Larchmont (“Village Clerk”) (the Village Board and the Village Clerk are collectively referred to as “Respondents”) directing that: (1) the Respondents set an election on referenda for the purpose of presenting the issues raised in the two sets of petitions filed with the Larchmont Village Clerk on June 13, 2007 and June 15, 2007 (the “Petitions”) objecting to and seeking an election on referenda on two resolutions adopted on May 16, 2007 (“Resolutions”) by the Respondent members of the Village Board of the Village of Larchmont concerning the Village of Larchmont Fire Department; (2) such election shall be conducted in the manner proscribed by law; and (3) the Respondents shall be bound by the results of such election in the governance of the Village of Larchmont Fire Department.

3. This proceeding is about the right of voters to a referendum on issues relating to their own safety as authorized by the State Legislature, not about the appropriateness of the Board’s action in creating a new form of governance for the Fire Department or whether the Fire Department is better off with a volunteer chief or a paid chief. Those are issues for the voters at referendum to decide. Approximately 850 voters (representing more than the required 20% of registered voters) signed Petitions seeking to exercise their statutorily granted right to referendum, Petitions which, except for general denials in the Answer are nowhere challenged by Respondents as to authenticity, voting qualifications of the signers, or the signatures.

4. The trigger for right to a referendum set by the Legislature in Village Law § 10-1020 is the abolition “in whole **or in part**” of a fire department. Here there are two bases for a finding of abolition “in part.”

5. First, the Village Board has fashioned a new governing body for the Larchmont Fire Department. The two Resolutions in question have eliminated the volunteer Chief elected by the members of the Department and also rendered the Fire Council –what was the Larchmont Fire Department’s governing body – a mere figurehead, surviving in name only. The two Resolutions strip the Fire Council of its statutory grant of authority and turn it over to the paid Fire Chief appointed by the Village board.

6. Second, the Village of Larchmont’s residents are not safer under the Village Board’s newly created regime for the Fire Department. As detailed in the Reply Affidavit of F. Warren Benton, sworn to November 12, 2007, the pool of eligible interior volunteer firefighters was at around 29 or so volunteers and three (or four) paid staff on duty and has been reduced to the paid staff on duty plus approximately 7 interior firefighters with an average of 1.5 volunteers per call. Contrary to the assertions in Paragraph 3 of the affidavit of Richard Heine, sworn to November 6, 2007, and submitted by Respondents in Opposition to the Petition, from the perspective of petitioners as residents of the Village the response of a full and adequate team to fight fires has been “abolished” in effect. (*See* dangers of reduced firefighting capability outlined in the affidavit of nationally recognized authority Glenn P. Corbett, sworn to June 7, 2007, annexed hereto as Exhibit “A”.)

7. Despite Respondents’ simplistic claims that, “everything is great,” the Larchmont Village Board has stripped the Fire Council of its statutory grant of authority and divided up the authority of the Fire Council at the whim of the Village Board and its appointed paid Chief at the same time jeopardizing residents safety.

8. Respondents' heavy reliance on the preliminary injunction decision of Hon. Orazio Bellantoni in *Sweeney v. Feld* ("*Sweeney Action*") is misplaced, first and foremost, as a matter of law. That decision, on an application for a preliminary injunction against the two Resolutions is neither law of the case, nor collateral estoppel. Moreover, the issues and parties in this proceeding are different: (i) the *Sweeney Action* seeking an injunction was commenced before any of the Petitions were even filed; (ii) the claim in this proceeding did not even arise until 60 days after the Petitions were filed on June 13 and June 15, 2007 (or approximately 55 days after the issuance of the preliminary injunction decision in the *Sweeney Action*); and (iii) the Petitioners here are residents, electors and signers of the referendum petitions in the Village of Larchmont (although Petitioners Benton and Wiener were plaintiffs in the *Sweeney Action* as prior members of the Fire Department); and (iv) the Village Clerk was not a named defendant in the *Sweeney Action*, but is a necessary party in this action as the Village Clerk has certain obligations under Village Law § 9-902 in connection with a permissive referendum.

9. While Respondents' counsel attempts to make much of the fact that in the *Sweeney Action* plaintiffs advised the Court of the subsequent filings of the Petitions, the Court's preliminary injunction decision specifically *did not* rely upon counsel's letter (of June 13, 2007) which referenced the filing of petitions, after the action had commenced. Rather, in reciting the documents relied upon, the June 13, 2007 letter is not included.

10. As the Resolutions strip the Fire Council of its statutory grant of authority and appoint a paid chief to replace a volunteer chief who was elected in accordance with the statutory procedure, there has been, as a matter of law, an abolition "in part" of the

Fire Department triggering the requirement for a permissive referendum upon the filing of the required number of signatures on a petition, as is the case herein. Accordingly, this Court should direct such a referendum so that the village residents are given the opportunity to exercise their statutory right to vote at referendum.

WHEREFORE, it is respectfully requested that the Court grant the relief requested by the Petitioners, along with such other and further relief as may be deemed just and proper.

Dated: White Plains, New York  
November 14, 2007

  
Katherine Zalantis