

**A RESOLUTION TO BE SUBMITTED BY
LEGISLATORS RATH, HARDWICK & LORIGO**

Re: Opposing Repeal of Election Law §6-120

WHEREAS, Election Law §6-120 is commonly known as the Wilson Pakula Law; and

WHEREAS, the Wilson Pakula Law was enacted in 1947; and

WHEREAS, the law was created to end a practice known as “party raiding,” whereby candidates for office belonging to one political party would force primaries in a party to which they were not a member as a political tactic; and

WHEREAS, the law requires a party’s authorization for a non-party member to appear on a primary ballot; and

WHEREAS, without such authorization, a nonparty member candidate can still seek the party’s line via the write-in process; and

WHEREAS, Governor Cuomo has submitted Program Bill #4, calling for the repeal of the Wilson Pakula Law; and

WHEREAS, the repeal of Wilson Pakula would result in the decreased ability of parties to be represented on the ballot by candidates who represent the ideals of the party, as well as increased political chicanery.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature opposes the repeal of Election Law §6-120, commonly known as the Wilson Pakula Law; and be it further

RESOLVED, that a certified copy of this resolution be forwarded to Governor Andrew Cuomo, Assembly Speaker Sheldon Silver, Senate Majority Leaders Dean Skelos and Jeffrey Klein and the local delegation to the New York State Legislature.

Fiscal Impact: None.

PROGRAM BILL # 4

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

ELECLA
(Relates to board of elections
enforcement counsel and change of
party enrollment provisions; repeal-
er)

Elect. BOE enforcement counsel

AN ACT

to amend the election law, in
relation to the state board of
elections chief enforcement counsel;
and to amend the criminal procedure
law, in relation to the chief
enforcement counsel of the state
board of elections (Part A); to
amend the election law, in relation
to candidates for office who are not
enrolled in a party and repealing
section 6-120 of such law relating
thereto (Part B); and to amend the

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s20 Adams	s17 Felder	s63 Kennedy	s25 Montgomery	s23 Savino
s15 Addabbo	s02 Flanagan	s34 Klein	s54 Nozzolio	s29 Serrano
s11 Avella	s08 Fuschillo	s28 Krueger	s55 O'Brien	s51 Seward
s40 Ball	s59 Gallivan	s24 Lanza	s58 O'Mara	s09 Skelos
s42 Bonacic	s12 Gianaris	s39 Larkin	s21 Parker	s14 Smith
s04 Boyle	s41 Gipson	s37 Latimer	s13 Peralta	s26 Squadron
s44 Breslin	s22 Golden	s01 LaValle	s30 Perkins	s16 Staviaky
s38 Carlucci	s47 Griffio	s52 Libous	s61 Ranzenhofer	s35 Stewart- Cousins
s50 DeFrancisco	s60 Grisanti	s45 Little	s48 Ritohie	s46 Tkaczyk
s32 Diaz	s06 Hannon	s05 Marcellino	s33 Rivera	s53 Valesky
s18 Dilan	s36 Hassell-	s43 Marchione	s56 Robach	s57 Young
s31 Espaillat	Thompson	s07 Martins	s19 Sampson	s03 Zeldin
s49 Farley	s27 Hoylman	s62 Maziarz	s10 Sanders	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a081 Dinowitz	a135 Johns	a039 Moya	a016 Schimel
a092 Abinanti	a147 DiPietro	a113 Jordan	a133 Nojay	a140 Schimminger
a084 Arroyo	a115 Duprey	a094 Katz	a037 Nolan	a087 Sepulveda
a035 Aubry	a004 Englebright	a074 Kavanagh	a130 Oaks	a065 Silver
a120 Barclay	a054 Espinal	a142 Kearns	a069 O'Donnell	a027 Simanowitz
a106 Barrett	a109 Fahy	a076 Kellner	a051 Ortiz	a036 Simotas
a060 Barron	a071 Farrell	a040 Kim	a091 Otis	a104 Skartados
a082 Benedetto	a126 Finch	a131 Kolb	a132 Palmesano	a099 Skoufis
a117 Blankenbush	a008 Fitzpatrick	a105 Lalor	a088 Paulin	a022 Solages
a062 Borelli	a124 Friend	a013 Lavine	a141 Peoples-	a114 Stec
a055 Boyland	a143 Gabryszak	a050 Lentol	Stokes	a110 Steck
a026 Braunstein	a095 Galef	a125 Lifton	a058 Parry	a079 Stevenson
a044 Brennan	a137 Gantt	a102 Lopez, P.	a089 Pretlow	a127 Stirpe
a119 Brindisi	a007 Garbarino	a053 Lopez, V.	a073 Quart	a011 Sweeney
a138 Bronson	a077 Gibson	a123 Lupardo	a019 Ra	a112 Tedisco
a046 Brook-Krasny	a148 Giglio	a010 Lupinacci	a098 Rabbit	a101 Tenney
a093 Buchwald	a080 Gjonaj	a121 Magee	a012 Raia	a001 Thiele
a118 Butler	a066 Glick	a129 Magnarelli	a006 Ramos	a061 Titone
a103 Cahill	a023 Goldfeder	a059 Maisel	a134 Reilich	a031 Titus
a043 Camara	a150 Goodell	a064 Malliotakis	a078 Rivera	a146 Walter
a145 Ceretto	a075 Gottfried	a030 Markey	a128 Roberts	a041 Weinstein
a033 Clark	a005 Graf	a090 Mayer	a056 Robinson	a020 Weisenberg
a047 Colton	a100 Gunther	a108 McDonald	a068 Rodriguez	a024 Weprin
a032 Cook	a139 Hawley	a014 McDonough	a072 Rosa	a070 Wright
a144 Corwin	a083 Heastie	a017 McKeivitt	a067 Rosenthal	a096 Zebrowski
a085 Crespo	a003 Hennessey	a107 McLaughlin	a025 Rozic	a002
a122 Crouch	a028 Hevesi	a038 Miller	a116 Russell	a086
a021 Curran	a048 Hikind	a052 Millman	a149 Ryan	
a063 Cusick	a018 Hooper	a015 Montesano	a009 Saladino	
a045 Cymbrowitz	a042 Jacobs	a136 Morelle	a111 Santabarbara	
a034 DenDekker	a097 Jaffee	a057 Mosley	a029 Scarborough	

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and 4 copies of memorandum in support (single house);
or 4 signed copies of bill and 8 copies of memorandum
in support (uni-bill).

election law, in relation to change of enrollment; and to repeal subdivision 3 of section 5-304 of such law relating thereto (Part C)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act enacts into law major components of legislation
2 relating to election reforms. Each component is wholly contained within
3 a Part identified as Parts A through C. The effective date for each
4 particular provision contained within such Part is set forth in the last
5 section of such Part. Any provision in any section contained within a
6 Part, including the effective date of the Part, which makes a reference
7 to a section "of this act", when used in connection with that particular
8 component, shall be deemed to mean and refer to the corresponding
9 section of the Part in which it is found. Section four of this act sets
10 forth the general effective date of this act.

11 PART A

12 BOARD OF ELECTIONS ENFORCEMENT COUNSEL

13 Section 1. Subdivision 1 of section 14-126 of the election law, as
14 amended by section 3 of part E of chapter 399 of the laws of 2011, is
15 amended to read as follows:

16 1. Any person who fails to file a statement required to be filed by
17 this article shall be subject to a civil penalty, not in excess of one
18 thousand dollars, to be recoverable in a special proceeding or civil
19 action to be brought by the state board of elections [or other board of
20 elections] chief enforcement counsel pursuant to section 16-114 of this
21 chapter. Any person who, three or more times within a given election
22 cycle for such term of office, fails to file a statement or statements
23 required to be filed by this article, shall be subject to a civil penal-
24 ty, not in excess of ten thousand dollars, to be recoverable as provided
25 for in this subdivision.

1 § 2. Subdivision 3 of section 3-100 of the election law, as amended by
2 chapter 220 of the laws of 2005, is amended to read as follows:

3 3. The commissioners of the state board of elections shall have no
4 other public employment. The commissioners shall receive an annual sala-
5 ry of twenty-five thousand dollars, within the amounts made available
6 therefor by appropriation. The board shall, for the purposes of sections
7 seventy-three and seventy-four of the public officers law, be a "state
8 agency", and such commissioners shall be "officers" of the state board
9 of elections for the purposes of such sections. Within the amounts made
10 available by appropriation therefor, the state board of elections shall
11 appoint two co-executive directors, and such other staff members as are
12 necessary in the exercise of its functions, and may fix their compen-
13 sation. [Anytime after the effective date of the chapter of the laws of
14 two thousand five which amended this subdivision, the] The commissioners
15 or, in the case of a vacancy on the board, the commissioner of each of
16 the major political parties shall appoint one co-executive director.
17 Each co-executive director shall serve a term of four years. ~~The gover-~~
18 nor shall appoint a chief enforcement counsel with the advice and
19 consent of the senate, who shall have a fixed term of four years and
20 shall be removed only for good cause and solely by the governor. Such
21 consent shall be determined by vote of the senate within thirty days of
22 the nomination by the governor. The chief enforcement counsel shall
23 have sole authority over personnel decisions within the enforcement
24 unit. All hiring decisions made by the chief enforcement counsel shall
25 be made without regard to political party affiliation. Any vacancy in
26 the office of co-executive director shall be filled by the commissioners
27 or, in the case of a vacancy on the board, the commissioner of the same

1 major political party as the vacating incumbent for the remaining period
2 of the term of such vacating incumbent.

3 § 3. Subdivision 3, paragraph (c) of subdivision 9-A and subdivision
4 17 of section 3-102 of the election law, subdivisions 3 and 17 as
5 amended by chapter 9 of the laws of 1978, paragraph (c) of subdivision
6 9-A as added by chapter 430 of the laws of 1997 and subdivision 17 as
7 renumbered by chapter 23 of the laws of 2005, are amended to read as
8 follows:

9 3. conduct any investigation necessary to carry out the provisions of
10 this chapter, provided, however, that the state board of elections chief
11 enforcement counsel, established pursuant to section 3-100 of this arti-
12 cle, shall conduct any investigation necessary to enforce the provisions
13 of this chapter on behalf of the board of elections;

14 (c) establish [a] an educational and training program on all reporting
15 requirements including but not limited to the electronic reporting proc-
16 ess and make it easily and readily available to any such candidate or
17 committee;

18 17. hear and vote upon the recommendations of the state board of
19 elections chief enforcement counsel regarding the enforcement of
20 violations of this chapter;

21 18. perform such other acts as may be necessary to carry out the
22 purposes of this chapter.

23 § 4. Section 3-104 of the election law, subdivisions 1, 3, 4 and 5 as
24 redesignated and subdivision 2 as amended by chapter 9 of the laws of
25 1978, is amended to read as follows:

26 § 3-104. State board of elections; enforcement powers.

1 1. (a) There shall be a unit known as the state board of elections
2 enforcement unit established within the state board of elections. The
3 head of such unit shall be the chief enforcement counsel.

4 (b) The state board of elections shall have jurisdiction of, and be
5 responsible for, the execution and enforcement of the provisions of
6 article fourteen of this chapter and other statutes governing campaigns,
7 elections and related procedures; provided however that the chief
8 enforcement counsel shall have authority within the state board of
9 elections to investigate on his or her own initiative or upon complaint
10 alleged violations of such statutes and all complaints alleging
11 violations shall be forwarded to the enforcement unit.

12 2. (a) Whenever [the state board of elections or other] a local board
13 of elections shall determine, on its own initiative or upon complaint,
14 or otherwise, that there is substantial reason to believe a violation of
15 this chapter or any code or regulation promulgated thereunder has
16 [occurred] been committed by a candidate or political committee or other
17 person or entity that files statements required by article fourteen of
18 this chapter solely with such local board, it shall expeditiously make
19 an investigation which shall also include investigation of reports and
20 statements made or failed to be made by the complainant and any poli-
21 tical committee supporting his candidacy if the complainant is a candi-
22 date or, if the complaint was made by an officer or member of a poli-
23 tical committee, of reports and statements made or failed to be made by
24 such political committee and any candidates supported by it. [The state
25 board of elections, in lieu of making such an investigation, may direct
26 the appropriate board of elections to make an investigation.] The local
27 board shall report the results of its investigation to the state board
28 of elections chief enforcement counsel within ninety days of the start

1 of such investigation. The state board of elections chief enforcement
2 counsel may direct the local board of elections at any time to suspend
3 its investigation so that the state board of elections enforcement unit
4 can investigate the matter.

5 (b) The state board of elections or the chief enforcement counsel may
6 request, and shall receive, the assistance of the state police in any
7 investigation it shall conduct.

8 [3. If, after an investigation, the state or other board of elections
9 finds reasonable cause to believe that a violation warranting criminal
10 prosecution has taken place, it shall forthwith refer the matter to the
11 district attorney of the appropriate county and shall make available to
12 such district attorney all relevant papers, documents, testimony and
13 findings relevant to its investigation.

14 4. The state or other board of elections may, where appropriate,
15 commence a judicial proceeding with respect to the filing or failure to
16 file any statement of receipts, expenditures, or contributions, under
17 the provisions of this chapter, and the state board of elections may
18 direct the appropriate other board of elections to commence such
19 proceeding.

20 5.] 3. Upon receipt of a complaint and supporting information alleging
21 any other violation of this chapter, the chief enforcement counsel shall
22 analyze the complaint to determine if an investigation should be under-
23 taken. The chief enforcement counsel shall, if necessary, obtain addi-
24 tional information from the complainant or from other sources to assist
25 such counsel in making this determination. Such analysis shall include
26 the following: first, whether the allegations, if true, would constitute
27 a violation of this chapter and, second, whether the allegations are
28 supported by credible evidence.

1 4. If the chief enforcement counsel determines that the allegations,
2 if true, would not constitute a violation of this chapter or that the
3 allegations are not supported by credible evidence, he or she shall
4 issue a letter to the complainant dismissing the complaint.

5 5. If the chief enforcement counsel determines that the allegations,
6 if true, would constitute a violation of this chapter and that the alle-
7 gations appear to be supported by credible evidence, he or she shall
8 notify the state board of elections of (a) his or her intent to resolve
9 the matter extra-judicially due to the de minimis nature of the
10 violation; or (b) his or her intent to commence a full investigation, no
11 later than the board's next regularly scheduled meeting. Notification
12 shall summarize the relevant facts and the applicable law and shall
13 protect from public disclosure the identity of the complainant and the
14 individual subject to the complaint. The state board shall not have the
15 authority to require the chief enforcement counsel to refrain from such
16 investigation.

17 6. The chief enforcement counsel shall have the power to fully inves-
18 tigate violations of this chapter, including the power to issue subpoe-
19 nas and to apply for search warrants pursuant to article six hundred
20 ninety of the criminal procedure law, and, except in exigent circum-
21 stances, shall give prior notice of the application to the district
22 attorney of the county in which such a warrant is to be executed, and in
23 such exigent circumstances shall give such notice as soon thereafter as
24 is practicable; provided, however that the failure to give notice of a
25 search warrant application to a district attorney shall not be a ground
26 to suppress the evidence seized in executing the warrant. The chief
27 enforcement counsel shall be further authorized to use the full investi-

1 gative powers of the state board of elections, as provided for in subdi-
2 visions four, five and six of section 3-102 of this title.

3 7. The chief enforcement counsel may, after consultation with the
4 district attorney as to the time and place of such attendance or appear-
5 ance, attend in person any term of the county court or supreme court
6 having appropriate jurisdiction, including an extraordinary special or
7 trial term of the supreme court when one is appointed pursuant to
8 section one hundred forty-nine of the judiciary law, or appear before
9 the grand jury thereof, for the purpose of managing and conducting in
10 such court or before such jury a criminal action or proceeding concerned
11 with a criminal violation of this chapter. In such case, such chief
12 enforcement counsel or his or her assistant so attending may exercise
13 all the powers and perform all the duties in respect of such actions or
14 proceedings which the district attorney would otherwise be authorized or
15 required to exercise or perform.

16 8. At the conclusion of its investigation, the chief enforcement coun-
17 sel shall provide the state board of elections with a written recommen-
18 dation as to: (a) whether substantial reason exists to believe a
19 violation of this chapter has occurred and, if so, the nature of the
20 violation and any applicable penalty, based on the nature of the
21 violation; (b) whether the matter should be resolved extra-judicially;
22 (c) whether a special proceeding should be commenced in the supreme
23 court to recover a civil penalty; and (d) whether a criminal indictment
24 or information should be sought in consultation with a district attorney
25 pursuant to subdivision ten of this section because reasonable cause
26 exists to believe a violation warranting criminal prosecution has taken
27 place.

1 9. The state board of elections shall accept, modify, or reject the
2 chief enforcement counsel's recommendation no later than ninety days
3 after receipt of such recommendation by majority vote. In making its
4 determination, the board shall consider not only the evidence of a
5 violation but also: (a) whether the complaint alleges a de minimis
6 violation; (b) whether the subject of the complaint has made a good
7 faith effort to correct the violation; and (c) whether the subject of
8 the complaint has a history of similar violations. All such determi-
9 nations shall be made on a fair and equitable basis, without regard to
10 the status, identity, or position of the subject of the complaint.

11 10. (a) If the state board of elections determines, as provided in
12 subdivision nine of this section, that substantial reason exists to
13 believe that a person, acting as or on behalf of a candidate or poli-
14 tical committee under circumstances evincing an intent to violate such
15 law, has unlawfully accepted a contribution in excess of a contribution
16 limitation established in article fourteen of this chapter or has unlaw-
17 fully violated any provision of this chapter, the board shall direct the
18 commencement of a special proceeding in the supreme court pursuant to
19 section 16-120 of this chapter.

20 (b) If the state board of elections determines, as provided in subdi-
21 vision nine of this section, that reasonable cause exists to believe a
22 violation warranting criminal prosecution has taken place, the chief
23 enforcement counsel shall commence a criminal action as such term is
24 defined in the criminal procedure law.

25 11. If the state board of elections does not accept, modify, or reject
26 the chief enforcement counsel's recommendations within ninety days,
27 either because it took no action or because it could not reach a majori-

1 ty vote, the chief enforcement counsel shall proceed as if the state
2 board of elections had approved such recommendations.

3 12. Upon notification that a special proceeding has been commenced by
4 a party other than the state board of elections, pursuant to section
5 16-114 of this chapter, the state board of elections shall direct the
6 chief enforcement counsel to investigate the alleged violations unless
7 otherwise directed by the court.

8 13. The chief enforcement counsel shall prepare a report, to be
9 included in the annual report to the governor and legislature, summariz-
10 ing the activities of the unit during the previous year. Such report
11 shall include: (a) the number of complaints or referrals received; (b)
12 the number of complaints and referrals that were found to need investi-
13 gation and the nature of each complaint; and (c) the number of matters
14 that have been resolved. The report shall not contain any information
15 for which disclosure is not permitted.

16 14. The state board of elections may promulgate rules and regulations
17 consistent with law to effectuate the provisions of this section.

18 § 5. Subdivision 32 of section 1.20 of the criminal procedure law, as
19 amended by section 4 of part A of chapter 501 of the laws of 2012, is
20 amended to read as follows:

21 32. "District attorney" means a district attorney, an assistant
22 district attorney or a special district attorney, and, where appropri-
23 ate, the attorney general, an assistant attorney general, a deputy
24 attorney general, a special deputy attorney general, [or] the special
25 prosecutor and inspector general for the protection of people with
26 special needs or his or her assistants when acting pursuant to their
27 duties in matters arising under article twenty of the executive law, or
28 the chief enforcement counsel of the state board of elections when

1 acting pursuant to his or her duties in matters arising under the
2 election law.

3 § 6. This act shall take effect on the ninetieth day after it shall
4 have become a law; provided, however, that if the amendments made to
5 subdivision 32 of section 1.20 of the criminal procedure law by section
6 4 of part A of chapter 501 of the laws of 2012 have not yet taken effect
7 on such date, then section five of this act shall take effect on the
8 same date as section 4 of part A of such chapter takes effect.

9

PART B

10

WILSON PAKULA

11 Section 1. Section 6-120 of the election law is REPEALED and a new
12 section 6-120 is added to read as follows:

13 § 6-120. Designation and nomination; nonparty members. A person who is
14 a candidate for any office who is not enrolled as a member of such poli-
15 tical party as provided in this section may be designated or nominated
16 for such office by filing designating petitions pursuant to section
17 6-136 of this article.

18 § 2. This act shall take effect on the ninetieth day after it shall
19 have become a law.

20

PART C

21

CHANGE OF ENROLLMENT

22 Section 1. Subdivision 2 of section 5-302 of the election law, as
23 amended by chapter 164 of the laws of 1985, is amended to read as
24 follows:

1 2. If the application form is for a voter who has changed his enroll-
2 ment or a voter who has previously registered and not enrolled, then the
3 board of elections shall compare the information and the signature
4 appearing on each application form received with that on the registra-
5 tion poll record of the applicant and if found to correspond in all
6 particulars shall, [not earlier than the Tuesday following the next
7 general election and not later than the thirtieth day preceding the last
8 day for publishing enrollment lists,] proceed in the manner specified in
9 subdivision one [hereof] of this section to enter such enrollment on
10 such voter's registration poll card ninety days after receipt.

11 § 2. Subdivision 3 of section 5-304 of the election law is REPEALED.

12 § 3. This act shall take effect on the ninetieth day after it shall
13 have become a law.

14 § 2. Severability. If any clause, sentence, subdivision, paragraph,
15 section, subpart or part of this act be adjudged by any court of compe-
16 tent jurisdiction to be invalid, such judgment shall not affect, impair
17 or invalidate the remainder thereof, but shall be confined in its opera-
18 tion to the clause, sentence, subdivision, paragraph, section, subpart
19 or part thereof directly involved in the controversy in which such judg-
20 ment shall have been rendered. It is hereby declared to be the intent of
21 the legislature that this act would have been enacted even if such
22 invalid provisions had not been included herein.

23 § 3. This act shall take effect immediately, provided, however, that
24 the applicable effective dates of Parts A through C of this act shall be
25 as specifically set forth in the last section of such Parts.