

Stevenson v Board of Elections in the City of N.Y.
2020 NY Slip Op 31312(U)
May 7, 2020
Supreme Court, New York County
Docket Number: Index No. 100440/2020
Judge: Carol R. Edmead
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL R. EDMOND PART IAS MOTION 35EFM

Justice

-----X

DYLAN STEVENSON,

Plaintiff,

- v -

BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 100440/2020

MOTION DATE 05/07/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

Upon the foregoing documents, it is

ORDERED that the motion of Bryan Jung to intervene in this proceeding is granted; and it is further

ORDERED ADJUDGED AND DECLARED that the application by Petitioner Dylan Stevenson seeking an order declaring valid the petition designating Stevenson as a candidate for the United States Representative from New York's 10th Congressional District in the Republican Party Primary Election to be held on June 23, 2020 is denied; and it is further

ORDERED ADJUDGED AND DECLARED that the application of Bryan Jung to dismiss this matter as it does not name a necessary party, and was not served upon a necessary party within the Statute of Limitations, pursuant to Election Law §16-102 is granted; and it is further

ORDERED that the petition is dismissed with prejudice.

FINAL DISPOSITION

MEMORANDUM DECISION

Petitioner-Candidate Dylan Stevenson (hereinafter, Stevenson) commenced this proceeding by Order to Show Cause seeking an order declaring valid the petition designating Stevenson as a candidate for the United States Representative from New York's 10th Congressional District in the Republican Party Primary Election to be held on June 23, 2020. In opposition, Respondent Board of Elections in the City of New York (Board of Elections) argues that the petition was properly invalidated as it had a prima facie defect and invalid signatures. Non-party and Proposed Intervenor-Respondent Bryan Jung (hereinafter, Jung) has also moved to: (1) seek dismissal of the within Petition for failure to name Jung as a necessary party pursuant to CPLR §1001(a); (2) to seek intervenor status in this matter for the purpose of seeking dismissal; (3) to dismiss this matter as it does not name a necessary party, and was not served upon a necessary party within the Statute of Limitations, pursuant to Election Law §16-102; and (4) that it fails to provide the requisite specificity as to the reasons Stevenson's Designating Petition, and more specifically, signatures within the Petition, may be restored.

BACKGROUND

On or about March 19, 2020, a Designating Petition purporting to designate Stevenson as a candidate for nomination for election to the public office of Member of the United States House of Representatives for the 10th Congressional District in the June 23, 2020 Republican Primary was filed with the Board of Elections. On March 23, Jung filed General Objections to the Designating Petition, followed by Specifications of Objections on March 30 related to the

validity of signatures (NYSCEF doc No. 10, ¶ 7-8). The Specifications were then reviewed by bipartisan team of Board of Elections clerks, who prepared recommended rulings that were presented to commissioners of the Board. The clerks' findings were also sent to Stevenson on April 8 (*id.* at ¶ 10).

The Board of Elections subsequently sent Stevenson a Notice of Preliminary Finding of Prima Facie Defect on April 15, which included notice to Stevenson to allow him to contest the preliminary finding (*id.* at ¶ 16). On April 19, Stevenson submitted his Notice of Appearance to appear in connection with the Specifications, wherein he agreed to join a hearing held virtually on April 21 (*id.* at ¶ 17). Stevenson also submitted materials to be reviewed regarding the Specifications; however, the material solely consisted of voter registration records (*id.* at ¶ 19). The Board of Elections thus determined that the materials did not constitute a valid submission per Election Law rules, and therefore could not be reviewed.

On April 21, Stevenson virtually participated in the hearing twice: once during the Legal Prima Facie Calendar, and a second time when the Clerks' Report was considered (*id.* at ¶ 24). On the prima facie matter, Stevenson was informed that the Commission determined that by listing "US House of Representatives 10" on his petition, he did not adequately inform potential signers of the office or position for which he sought to be designated a candidate, and therefore the Designating Petition was invalid (*id.* at ¶ 26). Stevenson was brought again into the virtual hearing when the Clerks' Report on the Specifications was read. The report reflected that the Designating Petition lacked a sufficient number of valid signatures as required by law. Stevenson sought to begin a voter-by-voter review of his petition but admitted that he did not submit an exceptions list in the format prescribed by the Board's rules (*id.* at ¶ 27). The Commissioners

then voted to adopt the Clerks' Report as submitted. Stevenson's Designating Petition was declared invalid, and his name was subsequently removed from the ballot.

On April 24, Stevenson brought the petition presently before this Court by Order to Show Cause seeking to have his candidacy reinstated. However, his application addressed only the prima facie defect of the failure to specify the position he was running for; his papers do not address the issue of whether the Designating Petition's signatures were erroneously invalidated by the Board of Elections (NYSCEF doc No. 15 at 3). The Board of Elections thus argues Stevenson's application should be dismissed as it does not meet the pleading requirements necessary for a validating proceeding. Pursuant to Election Law § 16-102(2), such a proceeding must identify the allegedly erroneous determination(s) made by the Board of Elections and Stevenson's application fails to do so.

In opposition to the Board of Elections, Stevenson argues that his application for a validating proceeding is sufficiently particularized, as Stevenson's papers make clear that he was ruled off the ballot "on account of a lack of clarity around the manner in which [his] petitions were filed, specifically the alleged lack of clarity around how I identified [his] district and office sought" (NYSCEF doc No. 23 at 8). Stevenson also argues that the Board's account of why he was thrown off the ballot is factually inaccurate, as the sole reason for his removal was the prima facie defect and not the invalid signatures (*id.*). Stevenson thus argues that the prima facie defect is the only matter that was addressed at the hearing and is thus the only matter that should properly be before this Court. Stevenson further challenges the Board's factual account of nearly all details of the proceeding, including the validity of the voter identification records he submitted, as well as the number of times he was allowed to participate in the virtual hearing (*id.* at 10-12).

Before addressing the factual issues presented by Stevenson, however, the Court must resolve the matter of whether this proceeding should be dismissed as all parties necessary to this proceeding have not been joined. While Jung filed the objections to Stevenson's Designating Petition, he was not named as a party. Jung has thus moved to intervene for the purpose of dismissal of this matter as it does not name a necessary party, was not served on a necessary party pursuant to the statute of limitations under Election Law §16-102, and that it fails to provide the requisite specificity as to the reasons the Designating Petition was invalidated.

DISCUSSION

Before turning to the legal merits of this proceeding, the Court first addresses Jung's motion to seek intervenor status in this matter.

"Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action" (*Yuppie Puppy Pet Prod, Inc. v. St. Smart Realty, LLC*, 77 A.D.3d 197, 201 [1st Dept 2010]); *see also Wells Fargo Bank, Nat'l Ass'n v. McLean*, 70 A.D.3d 676, 677 [2d Dept 2010] [permitting intervention "where the intervenor has a real and substantial interest in the outcome of the proceedings"]; *Patterson Materials Corp. v. Town of Pawling*, 221 A.D.2d 609, 610 [2d Dept 1995] [same]).

Jung clearly has an obvious bona fide and substantial interest in the central issue in the within proceeding, given that he is the party that filed a timely General Objection and followed by Specifications of Objections to the Designating Petition. Moreover, Jung has moved expeditiously to intervene and there would be no delay if his motion were to be granted. Additionally, and more importantly, no party would be prejudiced if the motion to intervene for

the limited purpose of seeking dismissal for failure to name a proper party were to be granted, while Jung would suffer substantial prejudice if the motion were to be denied.

Jung's motion to intervene is therefore granted, and the Court now turns to the merits of his argument for dismissal based on Stevenson's failure to name a necessary party.

Pursuant to CPLR §1001, to obtain complete relief in an action before the courts, all necessary parties who might be inequitably affected by any judgment in the action must be named or "joined" in the case.

Here, Jung submitted a timely and valid general objection and Specifications of Objections against the Designating Petition, which formed the basis for the Board of Elections' determination to remove Stevenson from the ballot. However, Jung was neither named as a party nor served by Stevenson within the applicable statute of limitations pursuant to Election Law §16-102 (2). Courts have consistently held that where an objection is the basis for a determination of invalidation, the objector who filed the successful objection is a necessary party to the validating proceeding as his or her rights would be affected by an order declaring a petition valid (*Gadsen v Board of Elections*, 57 NY2d 751, 752 [1982]). The Court of Appeals' conclusion in *Gadsen* that a validation proceeding is jurisdictionally defective when a candidate fails to name and serve all objectors is supported by prior case law (see *Wein v Molinari*, 51 NY2d 717, 719 [1980], *Cappellazzi v Toto*, 41 NY2d 1050, 1051, 364 N.E.2d 845 (1977)).

In more recent cases within the various departments, specific exceptions have been carved out, but there remains no exception to the standard that a successful citizen-objector must be named as a party and that the naming of the Board of Elections alone as a Respondent within an action is insufficient (see *Antoine v Boyland*, 863 NYS2d 358, 360 [Sup. Ct. 2008]. A citizen-objector was deemed not to be necessary party, but only because the Board of Elections

determined that their specific objections were unfounded; the Court maintained that successful objectors must be joined).

In opposition, Stevenson argues that Jung is an “irrelevant objector” and not a necessary party to this proceeding. Stevenson’s basis for this argument is that an objector whose objection is irrelevant to the final outcome before the Board of Elections is not a necessary party (see *Matter of Straniere v Cutolo*, 42 NY2d 984; *Matter of Gartner v Salerno*, 7 AD2d 958, 960 [3rd Dept 1980]). The caselaw advanced by Stevenson, however, is inapplicable to the situation here. The objector in *Straniere* was deemed not a necessary party only because his objections were not reviewed by the Board of Elections and were not the basis for the candidate’s removal. However, as discussed in detail in the factual background section of this decision, here Jung’s General Objection and Specifications of Objections were the impetus for the Clerk’s Report that the Board relied on in its decision to remove Stevenson from the ballot. Stevenson argues that there is “no evidence before this Court” that Jung’s objections were related to the striking of his candidacy, but that is not supported by the evidentiary record before the Court (NYSCEF doc No. 39 at 10).

Stevenson also challenges Jung’s partisan, political interest in this matter, alleging that he is the treasurer for the other Republican candidate in the primary and is thus attempting to influence this proceeding for the benefit of his personal candidate (*id.* at 11). However, this is irrelevant to the Court’s analysis of whether Jung is a necessary party. Stevenson advances no caselaw articulating the notion that a partisan interest in the outcome of a proceeding negates a party’s necessity to said proceeding. The caselaw cited by Stevenson is solely related to the matter of whether an objector’s challenges were relevant to the action taken by the Board of Elections. The Board, however, has affirmed by sworn affidavit that it adopted the Clerk’s

Report on Jung's objections related to the signature issues (NYSCEF doc No. 11 at 5).

Stevenson's argument that the Board of Elections only considered the prima facie issue when it decided to remove him from the ballot is unsupported and cannot be a basis for why Jung is not a necessary party to this proceeding.

Given that Jung, as a valid citizen-objector, successfully challenged the Designating Petition before the Board, and his Specifications of Objections were adopted by the Board, he clearly is a necessary party to any election law proceeding filed by Stevenson under current case law. The Court thus need not reach the merits of Jung and the Board of Elections' contentions that Stevenson's application should be dismissed for failure to properly allege the erroneous findings of the Board, nor must it reach Stevenson's argument that the Board of Elections erred in removing from the ballot. As Stevenson failed to name Jung, a successful objector to his Designating Petition and therefore a necessary party pursuant to both CPLR 1001(a) and Election Law §16-102 (2), this proceeding must be dismissed as a matter of law.

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion of Bryan Jung to intervene in this proceeding is granted; and it is further


ORDERED ADJUDGED AND DECLARED that the application by Petitioner Dylan Stevenson seeking an order declaring valid the petition designating Stevenson as a candidate for the United States Representative from New York's 10th Congressional District in the Republican Party Primary Election to be held on June 23, 2020 is denied; and it is further

ORDERED that the application of Bryan Jung to dismiss this matter as it does not name a

necessary party, and was not served upon a necessary party within the Statute of Limitations, pursuant to Election Law §16-102 is granted; and it is further

ORDERED that the petition is dismissed with prejudice.

This constitutes the decision and order of the Court.

<u>5/7/2020</u> DATE		 HON. CAROL R. EDMED, J.S.C. J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE