

Mike v Livingston County Bd. of Elections
2023 NY Slip Op 32874(U)
August 17, 2023
Supreme Court, Livingston County
Docket Number: Index No. 000515-2023
Judge: Daniel J. Doyle
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF LIVINGSTON

JOEL MIKE, Town of Mt. Morris
Republican Committee Chairman,
JOHN PAUER, Livingston County
Republican Committee Chairman,
CHELSEY WOODWORTH, aggrieved candidate,
JOSEPH RAWLEIGH, aggrieved candidate,
NATE GUZZARDI, aggrieved candidate,
LAUREN BURGER, aggrieved voter, and
KAYLEE LEONE, aggrieved voter,

Petitioners,

-v-

LIVINGSTON COUNTY BOARD OF
ELECTIONS,
LIVINGSTON COUNTY DEMOCRATIC
COMMITTEE,
DAVID DIPASQUALE, Presiding Officer, Mt.
Morris Democratic Caucus,
AMANDA CONIGLIO, Secretary, Mt. Morris
Democratic Caucus,
JENNIFER YOUNG, purported Democratic
candidate for Mt. Morris Town Clerk,
SARA YENCER, purported Democratic
candidate for Mt. Morris Town
Councilmember, and
JIM OLVERD, purported Democratic
candidate for Mt. Morris Town
Councilmember,

Respondents.

For an Order, pursuant to Articles 16 and 17
of the Election Law, declaring invalid the

**Decision, Order and
Judgment**

Index No.: 000515-2023

Democratic certificate of nomination for Jennifer Young for Mt. Morris town clerk, Sara Yencer for Mt. Morris town councilmember, and Jim Olverd for Mt. Morris town councilmember for the 2023 General Election; ordering, preventing and/or restraining the Livingston County Board of Elections from placing the names of the Respondent-candidates on the November 7, 2023 General Election ballot as Democratic candidates for public office in the Town of Mt. Morris; and finding that the Respondent-party committee, presiding officer and secretary are in violation of Election Law Sec. 17-212 and imposing all appropriate remedies authorized and/or permitted by law.

Appearances:

Joseph T. Burns, Esq., for Petitioners

John M. Lockhart, Esq., Livingston County Attorney's Office, for Respondent
Livingston County Board of Elections

Brittanylee Penberthy, Esq., Penberthy Law Group. LLP, and Jessica Kuplit, Esq.,
Law Offices of Jessica Kulpit, for Respondents Livingston County Democratic
Committee, David DiPasquale, Amanda Coniglio, Jennifer Young, Sara
Yencer, and Jim Olverd

Daniel J. Doyle, J.,

In this proceeding pursuant to New York Election Law article 16 and article 17
Petitioners Joel Mike, John Pauer, Chelsey Woodworth, Joseph Rawleigh, Nate
Guzzardi, Lauren Burger, and Kaylee Leone (hereinafter "petitioners") seek to
invalidate the certificate of nomination for Jennifer Young for Mount Morris town
clerk, Sara Yencer for Mount Morris town councilmember, and Jim Olverd for

Mount Morris town councilmember for the 2023 General Election, and an order prohibiting the Livingston County Board of Elections (hereinafter “BOE”) from listing their names on the general election ballot. The principal argument advanced by the petitioners is that at the Town of Mount Morris Democratic Caucus (see Election Law § 6-108) to nominate candidates for town council and town clerk the caucus members impermissibly passed a rule allowing votes for only candidates who were enrolled as members of the Democratic Party in violation of Election Law § 6-120(4).

Petitioners initiated the action on July 31, 2023 by filing a verified petition.¹ On August 10, 2023 Respondents Livingston County Democratic Committee, David DiPasquale, Amanda Coniglio, Jennifer Young, Sara Yencer, and Jim Olverd (hereinafter “respondents”) filed a motion for summary judgment seeking to dismiss the petition. The Court, recognizing that “[e]lection Law proceedings are subject to severe time constraints, and they require immediate action (see *Matter of Tenneriello v. Board of Elections in City of N.Y.*, 104 A.D.2d 467, 468, 479 N.Y.S.2d 72)” (*Master v. Pohanka*, 44 A.3d 1050, 1052 [2nd Dept. 2007]) ordered the parties to appear for an appearance on August 14, 2023.

¹ Petitioners filed a concomitant Order to Show Cause, which the Court granted, directing service and an initial hearing on August 8, 2023. Due to the previous assigned Supreme Court Justice’s recusal, the matter was rescheduled to August 14, 2023.

At the August 14th appearance, the Court inquired about a need for a fact-finding hearing and whether the respondents would stipulate to the fact that a rule was passed limiting voting at the caucus to only candidates who were enrolled democrats.² The parties agreed that should the respondent stipulate to that fact, a fact-finding hearing would not be needed.

On August 15th, respondents stipulated to the following fact:

Members attending and present at the caucus that occurred July 25th in the Town of Mt. Morris created and passed a rule that only registered democrats be nominated for any office. The rule was created and passed upon the voting body of the caucus and only applied for the purpose of this caucus.

For the reasons that follow, the Court denies the motion to dismiss, grants the relief requested in the verified petition to the extent that the certificate of nomination is stricken, and directs that a new Town of Mount Morris Democratic Caucus be held pursuant to Election Law § 16-102(3).

Findings of Fact

In early July of 2023 Amanda Coniglio, as the Town of Mount Morris Democratic Committee Chair, issued a “Notice of Democratic Caucus Town of Mount Morris” which stated that the Caucus of the enrolled Democratic voters in

² The Court also directed that any additional filings be submitted by August 15, 2023, and that oral argument on the motion, and the underlying petition, would be held on August 16, 2023.

the Town of Mount Morris would be held on July 25, 2023 to nominate candidates for town council and town clerk.³

According to the “sign-in” sheets, fifty-nine (59) voters attended the caucus.⁴ At the caucus, David DiPasquale was elected presiding officer of the caucus and Amanda Coniglio was elected secretary.⁵ At the caucus, members attending and present created and passed a rule that only registered democrats be nominated for any office. The rule was created and passed upon the voting body of the caucus and only applied for the purpose of this caucus.

Chelsey Woodworth, Joseph Rawleigh, and Nate Guzzardi attended the caucus intending to seek the nomination as the democratic nominee for town clerk or town council. As they were not enrolled members of the Democratic Party, they were precluded from being nominated as a candidate.⁶ Additionally, at least eleven (11) caucus attendees who were registered in the Democratic Party and who intended to cast votes for Ms. Woodworth and Messrs. Rawleigh and Guzzardi but were prevented from doing so.⁷

³ Answer in Special Proceeding (NYSCEF Docket # 11), Exhibit C.

⁴ Livingston County Board of Elections Voter Sign-in Report (NYSCEF Docket # 20). An inadvertently omitted page which indicated three voters attended was submitted by counsel to the Court.

⁵ Certificate of Nomination (NYSCEF Docket # 11), Exhibit A. See also Livingston County Democratic Party Bylaws (NYSCEF Docket # 17) at Article IV.

⁶ See Affidavits of Candidates (NYSCEF Docket # 24).

⁷ See Affidavits of caucus voters (NYSCEF Docket # 25).

Thereafter, Jennifer Young, Sara Yencer, and Jim Olverd were nominated for the town offices.⁸ Respondents have now submitted the affidavits of thirty (30) caucus attendees who affirm that the nominated candidates received “overwhelming” support and that the nomination was thus a “windfall”.⁹

Conclusions of Law

Respondent’s Summary Judgment Motion is Denied

Respondents now move for summary judgment¹⁰ seeking dismissal of the verified petition, arguing: (1) petitioners failed to join the chairperson of the Town of Mount Morris Democratic Committee as a necessary party; (2) the petitioners failed to state a valid cause of action in their verified petition; and (3) the actions of the caucus attendees in passing the rule at issue herein was permissible.

Each argument will be addressed *seriatim*.

CPLR § 1001 dictates that a necessary party is a “[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action”. (CPLR § 1001[a].) As Election Law § 16-102 allows as possible relief the

⁸ Certificate of Nomination (NYSCEF Docket # 11), attached as Exhibit A to Answer in Special Proceeding.

⁹ Affidavits of Caucus Participants (NYSCEF Docket # 18).

¹⁰ Although denominated a summary judgment motion, the Court will construe the motion as a motion to dismiss pursuant to CPLR Rule 3211(a)(7) and (10) on the affirmative defenses (construed by the Court as objections in point of law as required by CPLR § 404) raised by respondents in their Answer (NYSCEF Docket # 14) and their motion to dismiss.

ordering of a new caucus – the relief provided herein- the chair of the Town of Mount Morris Democratic Party is a necessary party, as that person is the “proper party authorit[y]” (see Election Law § 6-108, Livingston County Democratic Party Bylaws (NYSCEF Docket # 17) at Article IV) to give notice of the new caucus. (*Buckley v. Bd. of Elections of Livingston Cnty.*, 265 AD2d 866, 867 [4th Dept. 1999]: “The chairperson of the Town Republican party is the “proper party authorit[y]” to reconvene the caucus and therefore should have been joined as a necessary party (Election Law § 6-108 [3]; see, *Davis v Piggott*, 144 Misc 2d 420, 423, *affd* 153 AD2d 718).”)

However, the chair of the Town of Mount Morris Democratic Party, Amanda Coniglio, is named as a respondent herein, albeit as a caucus officer. Respondents argue that this is a fatal defect as she is not noticed as a respondent as the chair of the town democratic party (although they cite no caselaw in support of this proposition). The Court does not agree. Respondent Amanda Coniglio, who is the chair of the Town of Mount Morris Democratic Party, is a named respondent herein and she can adequately represent the interests of the Town of Mount Morris Democratic Party. (*Marafito v. McDonough*, 153 AD3d 1123 [3rd Dept. 2017].)

Thus, the motion to dismiss due to lack of joining a necessary party is denied.

Respondents also argue that the Petitioner failed to state a cause of action as the initial verified petition did not contain evidentiary submissions that warranted the granting of relief. However, the Court granted to the petitioner the right to “submit upon the return date of the Order to Show Cause and any adjournments thereof, and the argument thereof, such additional evidence, testimony, documents, exhibits, records, affidavits, affirmations, and/or other proof as may be necessary.” Subsequent to the filing of the respondents’ motion to dismiss, petitioner submitted affidavits from the aggrieved candidates and aggrieved voters (and additional voters) which contained averments supporting the evidentiary allegations in the complaint.

Furthermore, those allegations are sufficient to support a cause of action against the respondents for violating Election Law § 6-120(4).

Thus, the motion to dismiss for failure to state a cause of action is denied.

Finally, respondents move to dismiss the petition arguing that the caucus was authorized to pass internal rules and that the particular rule at issue herein – restricting voting to candidates who were enrolled members of the Democratic Party – was authorized.

Although the Election Law allows parties to set internal rules that govern party committees, those rules cannot conflict with the Election Law. “It is, of course,

the rule that by-laws of political parties may not be inconsistent with the Election Law (Election Law, s 15, subd. 2; cf. *Blaikie v. Knott*, 277 App.Div. 461, 100 N.Y.S.2d 665; *Matter of Daniel*, 149 App.Div. 777, 134 N.Y.S. 254).” (*Rosenthal v. Harwood*, 43 AD2d 558, 559^{2nd} Dept. 1973], *aff’d*, 35 NY2d 469 [1974]. See also *Master v. Pohanka*, 10 NY3d 620, 624 [2008]; *Grancio v. Coveney*, 60 NY2d 608 [1983].)

The rule passed by the caucus clearly conflicts with Election Law § 6-120(4). “Under the Election Law, a person designated or nominated as a candidate for public office must be an enrolled member of the political party that so designates or nominates that candidate (see Election Law § 6-120[1], [2]).” (*Master v. Pohanka*, *supra*.) However, the law has three exceptions contained in Election Law § 6-120(4): “[t]his section shall not apply to a political party designating or nominating candidates for the first time, **to candidates nominated by party caucus**, nor to candidates for judicial offices.” (*Id.*, emphasis added.) The clear language of the statute exempts nominations at party caucuses – what occurred in the case herein – from the requirement that candidates be members of the political party conducting the caucus.

As the Fourth Department held in *Burkwit v. Olson* (87 AD3d 1264 [4th Dept. 2011]), a caucus rule that conflicts with Election Law § 6-120(4) is invalid. “We agree with petitioner that the caucus rule passed by respondents, which mandated that

only registered Republicans could be nominated for office at the caucus, violates Election Law § 6-120(4) and is therefore invalid (*see Matter of Grancio v. Coveney*, 96 A.D.2d 917, 466 N.Y.S.2d 102, *affd.* 60 N.Y.2d 603, 467 N.Y.S.2d 194, 454 N.E.2d 534; *see generally Matter of Rosenthal v. Harwood*, 35 N.Y.2d 469, 475, 363 N.Y.S.2d 937, 323 N.E.2d 179).” (*Id.*)

Thus, the respondents’ motion to dismiss on this ground is denied.

Petitioners are Entitled to Relief

Since the rule passed by the caucus limited the voting to only candidates who were enrolled in the Democratic Party was in contravention of Election Law § 6-120, the remaining issue is whether relief is warranted.

Election Law § 16-102(3) states that “the court may direct reassembling of any convention or the holding of a new primary election, or caucus where it finds there has been such fraud or irregularity as to render impossible a determination as to who rightfully was nominated or elected.” The Court determines that the improper rule herein undoubtedly falls into the category of an “irregularity” that renders it impossible to determine who was rightfully nominated at the caucus. (*Burkwit v. Olson, supra.*)

Respondents’ attempts to argue that because they have submitted thirty (30) affidavits from caucus attendees which purport to indicate that the respondent

candidates received “overwhelming” support are unavailing.¹¹ As the only candidates eligible to receive votes due to the improper rule, obviously they would receive “overwhelming” support. The improper rule undoubtedly infected the entire voting process rendering a determination as to who was rightfully nominated impossible.

Thus, the Court will order the certificate of nomination to be declared a nullity.

Petitioners argue that because the time period to hold a town caucus has expired (see Election Law §§ 6-108, 6-158[6]), the only relief that can be ordered is declaring the certificate of nomination a nullity. Petitioners are inferentially arguing that the application of Election Law § 16-102(3) is thereby limited to ordering a new caucus only if the Court’s determination of irregularity occurs within the time period of holding town caucuses. The Court rejects that argument. Election Law § 16-102(3) contains no temporal limitation.¹² Furthermore, there is sufficient time to conduct a new caucus and not interfere with the certification of the general election ballot. (See Election Law § 4-114.)

Thus, the Court will order that a new caucus be conducted.

¹¹ Notably absent from these affidavits are any statements from the affiants that their vote was unaffected by the impermissible rule.

¹² Petitioners’ argument, if accepted, would operate to render Election Law § 16-102(3) a nullity unless the caucus were held early enough in the authorized time period to allow for judicial review. Petitioner cites no caselaw in support of this argument.

Finally, the petitioners' request for relief under article 17 of the election law must be dismissed. Petitioners did not provide any evidentiary support for their claims under Election Law § 17-212.

Article 17, Title 2, John R. Lewis Voting Rights Act of New York, was passed in June of 2022 (becoming effective July 1, 2020) and was designed to further enhance the protections afforded to voters under both the US and New York Constitutions, especially those classes of voters who have historically faced voter suppression or disenfranchisement efforts. Election Law § 17-212 expressly prohibits persons from engaging in "acts of intimidation, deception, or obstruction that affects the right of voters to access the elective franchise". To establish a violation of the act, the statute outlines the following impermissible acts: (1) violence, threats of violence, or intimidation to prevent someone from voting or registering to vote (§ 17-212[1][b][i]); (2) using any deceptive or fraudulent device, contrivance or communication, that impedes, prevents or otherwise interferes with voting or registering to vote (§ 17-212[1][b][ii]; or (3) obstructing, impeding, or otherwise interfering with access to a polling place or tabulation of votes (§ 17-212[1][b][iii]).

The actions of the caucus members in passing the rule at issue herein do not fall within the intent of this statute. Petitioners' proof is devoid of any factual support establishing the caucus attendees, or officers, attempted through

intimidation, or use of force, or fraudulent communication to restrict the voting of caucus attendees.

Thus, this claim in the verified petition must be dismissed.

Based upon the forgoing, upon the papers herein¹³, and on oral argument on the motion to dismiss and the underlying petition conducted on August 16, 2023, it is hereby

ORDERED that the respondents' motion for summary judgement is DENIED; and it is further

ORDERED, ADJUDGED AND DECREED that the petitioners' request for relief under Article 17 of the Election Law is dismissed; and it is further

ORDERED, ADJUDGED AND DECREED that the petition to the extent is sought to declare invalid the Democratic certificate of nomination for Jennifer Young for Mt. Morris town clerk, Sara Yencer for Mt. Morris town councilmember, and Jim Olverd for Mt. Morris town councilmember for the 2023 General Election, is GRANTED; and it is further

¹³ Petition (NYSCEF Docket # 1); Order to Show Cause and supporting affirmation and exhibits (NYSCEF Docket #s 2-5); Answer in Special Proceeding (NYSCEF Docket # 11); Answer in Special Proceeding (NYSCEF Docket # 14); Notice of Motion (NYSCEF Docket # 15); Affirmation in Support with exhibits (NYSCEF Docket # 16-20); Memorandum of Law in Support of Motion (NYSCEF Docket # 21); Statement of Material Facts (NYSCEF Docket # 22); Affirmation in Reply with exhibits (NYSCEF Docket # 23-25).


ORDERED that the certificate of nomination for Jennifer Young for Mt. Morris town clerk, Sara Yencer for Mt. Morris town councilmember, and Jim Olverd for Mt. Morris town councilmember for the 2023 General Election is declared a nullity; and it is further

ORDERED that the Town of Mount Morris Democratic Party shall conduct a new caucus to nominate candidates for town council and town clerk pursuant to Election Law § 6-108; and it is further

ORDERED that the new caucus shall be conducted no later than September 5, 2023; and it is further

ORDERED that new certificate of nomination shall be filed with the Livingston County Board of Elections no later than September 6, 2023.

Dated: August 17, 2023


Honorable Daniel J. Doyle, JSC