MEMO DECISION, ORDER & JUDGMENT

INDEX No. 621346/2023

SUPREME COURT - STATE OF NEW YORK
IAS PART 33 - SUFFOLK COUNTY

PRESENT:

Hon. THOMAS F. WHELAN
Justice of the Supreme Court

MOTION DATE: 9/6/2023
SUBMIT DATE: 9/6/2023
Mot. Seq. # 001 - MotD
Mot. Seq. # 002 - MotD
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In the matter of

ALVIN W. WHITE, Aggrieved Voter,

Petitioner,

-against-

SIDNEY B. JOYNER, a purported candidate for the Public Office of Suffolk County Legislator, 16th Legislative District, ELIZABETH MANZELLA AND JOHN ALBERTS, COMMISSIONERS CONSTITUTING THE SUFFOLK COUNTY BOARD OF ELECTIONS, THE COUNTY OF SUFFOLK, NEW YORK and THE SUFFOLK COUNTY, NEW YORK LEGISLATURE,

Respondents.

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Upon the following papers numbered as indicated and read on this motion for mandamus (#001) and motion to dismiss (#002); Order to Show Cause (#001) and supporting papers NYSCEF Doc. Nos. 1, 4, 6, 8; Notice of Motion (#002) and supporting papers: NYSCEF Doc. Nos. 18-19; Opposing papers: NYSCEF Doc. No. 21; Reply papers _____; Other NYSCEF Doc. Nos. 22 (Answer in Special Proceeding), 23 (Administrative Return); bench copy of the transcript from the oral argument held September 6, 2023; (~~and after hearing counsel in support and opposed to the motion~~) the Court issues the following Memo Decision, Order & Judgment.

On the merits of this special proceeding, there is no doubt that the respondent, Sidney B. Joyner, could not be a candidate for the public office of Suffolk County Legislator for the 16th Legislative District, pursuant to Section 2-4 of the Suffolk County Charter. The Legislative Intent that supported Local Law No. 40-2020, which was adopted unanimously by all eighteen legislators, is clear, on its face:

> This Legislature hereby finds and determines that individuals elected to serve as members of the Suffolk County Legislature serve in their positions as advocates for the best interests of the constituents residing in their legislative districts.
>
> This Legislature also finds and determines that the SUFFOLK COUNTY CHARTER contains the residency requirements that qualify an individual to be elected as a County Legislator, which includes residency in-district at the time of nomination.
>
> This Legislature further finds and determines that legislators should be deeply familiar with the community that they wish to represent so they may effectively advocate on behalf of their constituents.
>
> This Legislature finds that individuals elected to the Suffolk County Legislature should be required to reside in the legislative district that they represent for at least one year prior to their election.
>
> Therefore, the purpose of this law is to amend the SUFFOLK COUNTY CHARTER to clarify that a legislator must live in the legislative district which he or she represents for at least one year prior to his or her election.

Here, the facts are clear and undisputed. Sidney B. Joyner does not reside in the 16th Legislative District, the address listed on his designating petitions is not within the 16th Legislative District, and the verified answer submitted by the Respondent Suffolk County Board of Elections "admit[s] based on records maintained by the Board that Joyner currently does not

reside in the 16th Legislative District and has not since at least 2020" (par.3, verified answer [NYSCEF Doc. No. 22]).

Yet, the Respondent Suffolk County Board of Elections is soon to certify Mr. Joyner on the General Election ballot as a candidate for the 16th Legislative District.

In light of the above, Election Law § 6-122(3) is implicated. Such states:

> A person shall not be designated or nominated for a public office or party position who ... (2) is ineligible to be elected to such office or position ...

It appears to this Court that Sidney B. Joyner is violating the very Suffolk County Charter that, if elected, his first act would be to swear to uphold.

Respondent Joyner has moved to dismiss the special proceeding on various grounds, including untimeliness. If this proceeding was brought solely pursuant to Election Law § 16-102, the Court would agree, for various reasons. Petitioner here did not file general or specific objections and is not a candidate aggrieved or a chairman of a political party, and therefore would lack standing to bring the proceeding. Additionally, the proceeding was not brought within 14 days of the filing of the designating petitions (*see* Election Law § 16-102[2]; *see also* ***Matter of Auerbach v Suffolk County Committee of the Conservative Party***, 171 AD3d 731 [2d Dept 2019]).

Petitioner argues that this proceeding is brought as a CPLR article 78 proceeding attacking the substantive qualifications of Mr. Joyner, not an examination of the signatures on the designating petition or even the form of the designating petition. Support for this position can be found in ***Matter of Mansfield v Epstein***, 5 NY2d 70 (1958), where the Court of Appeals permitted an article 78 proceeding, as a mandamus to compel ministerial acts, to be brought and to reach the merits. The Court of Appeals held:

> Under the Election Law the Commissioners of Elections' power to examine independent nominating petitions for the purpose of ascertaining whether they are signed by a sufficient number of qualified voters is purely ministerial (citation omitted); as such it is reviewable not only in a proceeding brought under section 330 of the Election Law, but likewise under article 78 of the Civil Practice Act. (citation omitted)

The Court of Appeals noted that the Supreme Court has summary jurisdiction over proceedings brought under the Election Law and in those cases a court may only exercise the

powers granted to it within the framework of the procedures prescribed by the statute. Where there is no such proceeding, the court is powerless to treat the article 78 proceeding as an election law proceeding after the expiration of the 14-day limitation period.

Importantly though, the Court continued, in order to be entitled to an article 78 mandamus, the petitioner had to show a clear legal right to the relief sought. In the ***Mansfield*** case, the petitioner could not show that clear legal right because the nominating petition did not have sufficient signatures.

Thereafter, courts still permitted an article 78 proceeding in the nature of mandamus. It has been held that the remedy provided by the Election Law is not exclusive, particularly where it is shown that public officials have failed in the proper performance of their duties, and the Court can compel the performance of a ministerial duty which election officials have neglected or refused to perform (*see* ***Application of Sanyshyn***, 36 Misc 2d 389 [Sup Ct Tioga County 1962] ["If an Article 78 proceeding is a proper remedy, it seems quite clear that the 14 day limitation does not apply."]; ***Koffler v Weiss***, 48 Misc 2d 1 [Sup Ct Suffolk County 1965], *affd* 24 AD2d 842 [2d Dept 1965] [Article 78 mandamus order is proper vehicle but questions of fact "call for an exercise of judgment and discretion, making the act to be performed by respondents a judicial one (citation omitted)"]; ***Rivera v Northrup***, 26 AD2d 612 [4th Dept 1966], *affd* 17 NY2d 919 [1966] [mandamus relief may be granted but not in a case involving issues of fact and claims of fraud, which must be brought within the time constraints of the Election Law]; ***Van Lengen v Balabanian***, 50 Misc 2d 652 [Sup Ct Onondaga County 1966], *affd* 26 AD2d 622 [4th Dept 1966], *affd* 17 NY2d 920 [1966] [Article 78 proceedings would lie to review ministerial acts but challenge brought against a total of seven candidates should have been brought within confines of Election Law]; ***Novak v Nash***, 40 AD2d 728 [3d Dept 1972], *affd* 31 NY2d 710 [1972] [Article 78 was the proper vehicle but proceeding to place the name of a candidate on the ballot must be brought within time constrains of the Election Law]; ***Murray v Lord***, 46 AD2d 721 [4th Dept 1974], *affd* 35 NY2d 737 [1974] [when seeking an Election Law determination an "Article 78 may not be used as a substitute for Election Law"]; ***Pataki v Hayduk***, 87 Misc 2d 1095 [Sup Ct Westchester County 1976], *affd* 55 AD2d 861 [2d Dept 1976] ["A Board of Elections exercises the ministerial function of examining the face of the petitions to determine their compliance with the requirements of the Election Law" *at* 1096; "Under the circumstances of this case, this proceeding was timely instituted by petitioners" *at* 861]; ***Filiberto v Roosevelt Fire District***, 75 AD2d 572 [2d Dept 1980] ["In an election case, a proceeding pursuant to CPLR article 78 is the proper vehicle when there is no disputed fact question (citation omitted)"]).

Then, in a case with some similarities to this proceeding, by 3-2 decision, in ***Matter of Scaringe v Ackerman***, 119 AD2d 327 (3d Dept 1986), the Court rejected an article 78 proceeding as untimely in a case where it was alleged that the candidate for NYS Assembly could not meet the constitutional requirements as to the one-year residency qualification, in that, such a proceeding is subject to the 14-day period of limitations provided for in Election Law

§ 16-102(2). The contention was that the candidate did not reside at his current address for the 12-month period required. On its face, the designating petition simply listed his current address, within the assembly district. In essence, factual proof would have to be offered as to the candidate's residency during the 12-month period. The proceeding claimed that it was a challenge to the candidate's substantive qualifications, not the sufficiency of the designation petitions. The majority examined Election Law § 6-122 and held:

> ... it follows that any proceeding to remove a candidate from the ballot for an alleged failure to comply with the requirements of Election Law article 6 must be brought under Election Law §16-102(1) and is subject to the time restrictions of §16-102(2) (citation omitted). Accordingly, we conclude that a proceeding to remove a candidate from the ballot, based upon *allegations* that the candidate does not meet certain constitutional residency requirements to hold office and, therefore, cannot be a candidate pursuant to Election Law § 6-122(3), must be commenced in accordance with the requirements of Election Law § 16-102 (emphasis added).

The dissent argued that the article 78 proceeding was timely and that the "petitioners are not challenging the information on the designating petition but rather are challenging Ackerman's substantive qualifications to sit as a Member of the Assembly ...". The dissent noted that the challenge was not to the address on the petition, which is the candidate's current address, but to the candidate's residency for the 12 months prior thereto. In arguing against the 14-day period set forth under Election Law § 16-102, the dissent acknowledged that "the requisite facts establishing disqualification could be unrelated to any information contained in the petition and may not be manifest until after the expiration of the time limitations imposed." While the majority noted the potential for a challenge, once elected, by the full NYS Assembly, to the substantive qualifications, the dissent stated that "it would be costly and wasteful to allow the election of an unqualified candidate."

The Court of Appeals, 68 NY2d 885 (1986), affirmed the majority opinion and noted that "our decision does not preclude a future challenge to respondent Ackerman's qualifications in the appropriate forum (citation omitted)."

Since that holding, it has been rare to utilize an article 78 proceeding in place of an Election Law § 16-102 proceeding.

Various appellate decisions have rejected attempts to utilize an article 78 proceeding to remove a candidate from the ballot as untimely if it was not commenced within the period prescribed by Election Law § 16-102(2) (*see* ***Matter of Nowinski v New York City Bd. of***

Elections, 164 AD3d 722 [2d Dept 2018] [objections to the sufficiency of a designating petition were filed, but rejected, by the Board of Elections and the subsequently filed article 78 was untimely]; ***Matter of Ciotti v Westchester County Bd. of Elections***, 109 AD3d 988 [2d Dept 2013] [article 78 challenge to the late filing of various designating petitions with the Board of Elections was untimely]; ***Matter of Independence Party of Orange County v New York State Bd. of Elections***, 32 AD3d 804 [2d Dept 2006] [challenge to a Wilson-Pakula must be within the 14-day time period]; ***Matter of Lewis v Garfinkle***, 32 AD3d 548 [2d Dept 2006] [challenge to allegedly illegal Wilson-Pakula certificates must be within the 14-day time period]).

Substantive qualifications have been challenged in Election Law § 16-102 proceedings (*see* ***Matter of Hoerger v Spota***, 109 AD3d 564 [2d Dept 2013], *affd* 21 NY3d 549 [2013] [rejection of term limits for a District Attorney]; *see also* ***Adamczyk v Mohr***, 87 AD3d 833 [4th Dept 2011, *motion for lv to appeal denied* 17 NY3d 706 [2011]). In that case, at a fact hearing before the Board of Elections, a candidate's designating petition was declared invalid due to the one-year residency requirement of the Charter of the City of Buffalo. An article 78 proceeding by the candidate to be reinstated to the ballot was dismissed by the appellate court, holding:

> ... the Board's invalidation of petitioner's designating petitions in this case was a ministerial act because it was based upon petitioner's *concession of facts* establishing his failure to satisfy the residency requirement as a matter of law (citation omitted) (italics added).

Here, contrary to Respondent Joyner's assertion, the petitioner has standing to bring this article 78 proceeding since any citizen or resident of the 16th Legislative District is capable of presenting to the Court a petition for the enforcement by public officials of their mandatory duties — that is, compel the performance of a ministerial duty. Of course, as noted earlier, the petitioner has no standing under Election Law § 16-102.

Additionally, contrary to the claim at oral argument by Respondent Joyner's counsel, the residency requirement is supported by a rational basis and is constitutional as applied to the respondent candidate (*see* ***Adamczyk v Mohr***, *supra*, 87 AD3d at 834).

This is not a case where the Board of Elections would be asked to ascertain if the proposed candidate resided within the confines of a district for the one year prior, which would involve questions of fact. Here, the Board has acknowledged, by a review of its own records, that on the face of the petition, the candidate does not currently reside in the district he is seeking public office. The disqualification of the candidate based upon his residency does not require a factual inquiry. It is obvious upon the face of the designation petitions. The action the Board was required to perform, under the unique facts of this case, was purely ministerial.

Here, the petitioner has shown a clear legal right to the relief sought and has shown that public officials have failed in the proper performance of their duties. Petitioner has shown that the election officials have neglected or refused to perform their ministerial duty, which they acknowledged in their verified answer to this article 78 proceeding. There are no questions of fact that "call for an exercise of judgment and discretion."

Years of judicial drift should not diminish a long-standing judicial remedy. If an article 78 mandamus proceeding is to survive as a proper vehicle for relief, to couple it with the 14-day time limitation of Election Law § 16-102, under the circumstances of this case, would render it a hollow remedy, in the face of an obvious failure to perform by election officials. The article 78 proceeding is not being used as a substitute for an Election Law proceeding, but rather to fulfill a ministerial act. There is no disputed fact on the face of the petition. These are not simple allegations as to the Respondent's residency, but a concession of fact that only implicates this Court's review as a matter of law.

Pursuant to Election Law § 4-114, the certification of nominations for the general election ballot must be set by September 14, 2023. Therefore, based on the facts as set forth above, it is

ORDERED, ADJUDICATED and DECREED that the motion (#002) to dismiss is granted to the limited extent that the branch of the special proceeding which is brought under the provisions of Election Law § 16-102 is dismissed, but in all other respects the motion is denied, in its entirety; and it is further

ORDERED, ADJUDICATED and DECREED that the article 78 proceeding (#001) is granted in part to prohibit and enjoin the Respondent Suffolk County Board of Elections, and the Commissioners thereof, from placing the name of Sidney B. Joyner on the ballot for the 2023 General Election as a candidate of the Public Office of Suffolk County Legislator, 16th Legislative District, and to bar Sidney B. Joyner's name from appearing on the ballot in the 2023 General Election on any line as a candidate for the Public Office of Suffolk County Legislature, 16th Legislative District; and it is further

ORDERED, ADJUDICATED and DECREED that the portion of the petition (#001) seeking to prohibit and enjoin Respondents County of Suffolk and the Suffolk County Legislature from seating Sidney B. Joyner as a Member of the Suffolk County Legislature, l6th Legislative District, is denied.

This constitutes the decision, order and judgment of the Court.

DATED: 9/8/23

THOMAS F. WHELAN, J.S.C.