

Matter of White v Sanin

2023 NY Slip Op 33453(U)

September 22, 2023

Supreme Court, Suffolk County

Docket Number: Index No. 623097/2023

Judge: Thomas F. Whelan

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MEMO DECISION, ORDER & JUDGMENT

INDEX No. 623097/2023

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

PRESENT:

Hon. THOMAS F. WHELAN
Justice of the Supreme Court

MOTION DATE: 9/22/2023
SUBMIT DATE: 9/22/2023
Mot. Seq. # 001 - MD
Mot. Seq. # 002 - MG
CDISP Y X N

In the matter of

ALVIN W. WHITE, Aggrieved Voter,

Petitioner,

-against-

REBECCA L. SANIN, 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, RICHARD H.
SCHAFFER and DEBORAH B. MONACO,
Presiding Officer and Secretary, respectively, of a
meeting of the Suffolk County Democratic Committee
Executive Committee,

Respondents.

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Upon the following papers numbered as indicated and read on this motion for injunctive relief and cross motion (#002) to dismiss; Order to Show Cause (#001) and supporting papers: NYSCEF Doc. Nos. 1-2, 6; Amended Notice of Motion to Dismiss (#002) and supporting papers: NYSCEF Doc. Nos. 16, 17; Opposing papers: NYSCEF Doc. Nos. 10, 14-15; Reply papers _____; Other Administrative Return (NYSCEF Doc. No. 18); and the oral argument held September 22, 2023; the Court issues the following Memo Decision, Order & Judgment.

Petitioner Alvin W. White brings the instant action pursuant to Article 16 of the Election Law, Article 78 of the CPLR, and CPLR 3100 seeking to prohibit a substitute candidate for the Suffolk County Legislature's 16th Legislative District from appearing on the ballot for the 2023 General Election. The petitioner herein is the same petitioner in the related action of *Matter of White v Joyner*, Suffolk County Index No. 621346/2023, at 2023 NY Slip Op. 23280. In that action, this Court (Whelan, J.), on September 8, 2023, granted the portion of the petitioner's CPLR article 78 proceeding seeking to prohibit the Suffolk County Board of Elections from putting the initial candidate, Sidney B. Joyner, who does not live in the 16th Legislative District, on the ballot, finding that election officials neglected or refused to perform their ministerial duty of ascertaining whether he resided within the district in which he was seeking office, a requirement of the Suffolk County Charter.

Shortly after the Court rendered its decision in *White v Joyner*, a Certificate of Substitution of Party Committee nominating Rebecca L. Sanin as the substitute candidate for the office of Suffolk County Legislator of the 16th Legislative District was signed by Respondents Richard H. Schaffer and Deborah B. Monaco, as the Presiding Officer and Secretary, respectively, of a meeting of the Suffolk County Democratic Committee Executive Committee. The certificate was filed at the Suffolk County Board of Elections on September 15, 2023.

Now, in the instant action, the petitioner moves by Order to Show Cause (#001) seeking an order pursuant to Article 16 of the Election Law, Article 78 of the CPLR, and CPLR 3100 prohibiting and enjoining the Respondent Suffolk County Board of Elections from placing the name of Rebecca L. Sanin on the ballot as a candidate for the 16th Legislative District; barring Rebecca L. Sanin's name from appearing on the ballot on any line as a candidate for the 16th Legislative District; and declaring invalid, null and void the Certificate of Substitution by Party Committee filed on September 15, 2023 nominating Rebecca L. Sanin as a candidate for the 16th Legislative District. Respondent Rebecca L. Sanin, through counsel, filed a motion (#002) seeking dismissal of the proceeding.

The crux of the petitioner's argument is that, given this Court's Order dated September 8, 2023 in *White v Joyner*, the designating petition seeking to designate Sidney B. Joyner as a candidate for the 16th Legislative District was invalid upon its filing with the Suffolk County Board of Elections because he did not live in the district. The petitioner avers that a valid designating petition is a prerequisite to the creation of a vacancy, and, therefore, no substitution

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of a candidate may be made here. In response, Respondent Rebecca L Sanin argues that a disqualification of a candidate for public office based on failure to comply with the residency requirement does not invalidate a designating petition, and, thus, the certificate to fill a vacancy nominating her as the substitute candidate is valid. The Court agrees with the Respondent.

Ever since *Grieco v Bader*, 43 Misc2d 245 (Sup Ct Kings County 1964), *affd* 21 AD2d 751 (2d Dept 1964), the disqualification of a candidate based upon lack of residency in the district of the office sought did not preclude the substitution of another designee or nominee. The failure to meet the residency qualifications constituted a disqualification under the applicable Election Law provision and authorized the substitution of a qualified candidate. Such has been the holding of various courts since that time. In *Venditto v Roth*, 110 AD3d 908 (2d Dept 2013), a candidate for a Nassau County Legislative District, who did not meet the residency requirement of the Nassau County Charter, was disqualified from running, but the vacancy in the nomination could be filled, by substitution, in keeping with Election Law § 6-148(3). The Second Department held that his disqualification did not invalidate the designating petition. See also *Handel v Maertz*, 2010 WL 3613151 (Sup Ct Suffolk County 2010).

The court in *Grieco* noted cases which prohibit a substitution, all of which involve the petition itself and not the designee or nominee. The combining of two defective petitions, where each lacked the requisite signatures, into one good petition did not permit the substitution of a candidate (*see DiLorenzo v Heffernan*, 187 Misc 766 [Sup Ct Kings County 1946], *affd* 271 AD 802 [2d Dept 1946], *affd* 296 NY 687 [1946] [“The statute would seem to imply the existence of a valid independent nomination in which a vacancy has occurred as a prerequisite to any valid action on the part of the committee to fill vacancies”]). The lack of an authorization from the political party to a non-party member one seeks to run as a candidate of precludes a substitution (*see Matter of English v Curan*, 206 Misc 709 [Sup Ct Montgomery County, 1954]; *see also Plunkett v Mahoney*, 164 AD2d 976 [4th Dept 1990]).

The Court of Appeals in *Matter of Owens v Sharpton*, 45 NY2d 794 (1978), clearly stated where no challenge is made to the signatures on the petitions themselves, the residency error did not preclude the naming of a substitute candidate. Only where the petition is invalid, as in *Matter of Fotopoulos v Board of Elections*, 45 NY2d 807 (1978), would the results be different. In that case, the candidate was not an enrolled member of the party for the required period and, as such, the petition was invalid.

The Court of Appeals, once again, in *Matter of Espada v Diaz*, 98 NY2d 715 (2002), a case involving a prior determination of a residency disqualification, permitted a substitution naming a new candidate.

Even an improper dual candidacy does not invalidate the underlying designating petitions

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themselves, but merely disqualifies the named candidate from running on each such petition (*see Scaringe v Greene*, 72 Misc3d 293 [Sup Ct Albany County 2021]; *see also Lawrence v Spellman*, 264 AD2d 455 [2d Dept 1999] [substitution permitted]).

Petitioner relies almost exclusively on a recent holding from the Second Department – that is, *Matter of Farrandino v Sammut*, 185 AD3d 992 (2d Dept 2020). In a holding two months prior, the Second Department disqualified the Republican Commissioner of the Board of Elections for Suffolk County from running for public office, holding he was barred by Election Law § 3-200(6) from being a candidate (*see LaLota v New York State Bd. of Elections*, 183 AD3d 785 [2d Dept 2020], *lv to appeal denied*, 35 NY3d 904 [2020]). Election Law § 3-200(6) is specific to an election commissioner and states that such an individual “shall not be a candidate to any election office ... unless he has ceased by resignation or otherwise, to be commissioner Otherwise such nomination or designation shall be null and void.” The Second Department held that a leave of absence was insufficient under the statute.

The subsequent substitution of a new candidate was upheld by the Hon. Joseph A. Santorelli, in a Short Form Order dated June 24, 2020, *Matter of Farrandino v Sammut*, (Sup Ct Suffolk County 2020), which found the underlying *LaLota*, *supra*, holding to be a disqualification of the candidate, which disqualification can be remedied by Election Law § 6-148. Such appears to be entirely in keeping with the above mentioned case law.

However, the Second Department reversed, *supra*, holding that the ordered paragraph of the *LaLota* opinion had invalidated the designating petition, even though there was no challenge to the signatures therein or any claim of fraud in the petition itself. What was a challenge to the candidacy of the elections commissioner and his personal disqualification became an event that precluded substitution certificates. The Court finds the *Farrandino* holding to be an aberration from the long-established case law that permits substitution, particularly in matters involving residency errors. Further, this Court notes that Election Law § 3-200(6) declares the “nomination or designation” to be null and void, with no mention of the underlying petition itself. Contrary to petitioner’s contention, this Court will not apply the *Farrandino* holding to the instant matter.

At oral argument, the Petitioner relied on *Glickman v Laffin*, 27 NY3d 810 (2016). However, *Glickman* is inapplicable to the facts of this case. In *Glickman*, the Court found that the candidate “lacked the requisite intent to establish residency for the five years required by our Constitution” (27 NY3d at 815). Moreover, *Glickman* did not address the issue of substitution of a candidate.

The Court acknowledges the Court of Appeals holdings that, where the original designating petition was void, there can be no substitution. However, in the September 8, 2023 holding of this Court in *White v Joyner*, the Court did not hold, and no proof was offered, that

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the petition itself was improper in any manner. The special proceeding was directed at the failure of the Suffolk County Board of Elections to perform its ministerial duties, which was obvious on the face of the designating petitions. Under such circumstances, the Executive Committee of the Democratic Party has the right to substitute a qualified candidate for the disqualified candidate, and the respondent Board of Elections is authorized to print and place the name of Rebecca L Sanin, the substituted nominee, upon the official ballot of the General Election to be held November 7, 2023.

Petitioner, having filed the requisite objections to the Certificate of Substitution, and based upon the exigent circumstances herein, possesses sufficient standing pursuant to Election Law § 16-102(1).

The remaining contentions either need not be addressed or are without merit.

Therefore, based on the facts as set forth above, it is

ORDERED AND ADJUDICATED that the petitioner's Order to Show Cause (#001) to prohibit and enjoin the Respondent Suffolk County Board of Elections, and the Commissioners thereof, from placing the name of Rebecca L. Sanin on the ballot for the 2023 General Election as a candidate for the Public Office of Suffolk County Legislator, 16th Legislative District; bar Rebecca L. Sanin's name from appearing on the ballot on any line as a candidate for that public office; and declaring invalid, null and void the Certificate of Substitution by Party Committee filed on September 15, 2023 nominating Rebecca L. Sanin as a candidate for that office, is denied in its entirety; and it is further

ORDERED AND ADJUDICATED that the motion (#002) by Respondent Rebecca L. Sanin to dismiss the special proceeding is granted solely for the reasons set forth above.

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

DATED: 9/22/23



THOMAS F. WHELAN, J.S.C.