

**Conroy v State Comm. of the Independence
Party of N.Y.**

2007 NY Slip Op 32582(U)

August 20, 2007

Supreme Court, Kings County

Docket Number: 0700025/2007

Judge: Joseph S. Levine

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(E)

At a Special Election Part 1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 20th day of August, 2007.

P R E S E N T:

HON. JOSEPH S. LEVINE,

Justice.

-----X

ROBERT CONROY, et al.,

Petitioners,

- against -

Index No. 700025/07

STATE COMMITTEE OF THE INDEPENDENCE PARTY OF NEW YORK, et al.,

Respondents.

-----X

The following papers numbered 1 to 3 read on this motion:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	_____ 1, 2 _____
Opposing Affidavits (Affirmations) _____	_____ 3 _____
Reply Affidavits (Affirmations) _____	_____
_____ Affidavit (Affirmation) _____	_____
Other Papers _____	_____

Upon the foregoing papers, petitioners, by way of an order to show cause, seek to invalidate a certain amendment to the New York State Independence Party rules which were adopted by its State Committee.

Background

On June 10, 2007, the State Committee held its regular spring meeting in Albany. Various amendments to the State Committee rules were adopted at the meeting. Petitioners

seek to invalidate a certain amendment arguing that it purports to deprive county committees in the City of New York of the right to authorize candidates for public office.

Specifically, the amendment petitioners challenge is the addition of Section 11 to Article VI of the rules which states as follows:

11. Authorizations in a City of one million or more. Notwithstanding any rule or by-law to the contrary, authorizations for all public offices to be elected in a city of one million or more that are made pursuant to section 6-120 of the Election Law, shall be made by the executive committee of the state committee.

Petitioners argue that said amendment does not conform to the provisions of §6-120(3)¹ of the Election Law which states in pertinent part that:

The members of the party committee representing the political subdivision of the office for which a designation or nomination is to be made, unless the rules of the party provide for another committee, in which case the members of such other committee, and except as hereinafter in this subdivision provided with respect to certain offices in the city of New York, may, by a majority vote of those present at such meeting provided a quorum is present, authorize the designation or nomination of a person as candidate for any office who is not enrolled as a member of such party as provided in this section. In the event that such designation or nomination is for an office to be filled by all the voters of the city of New York, such authorization must be by a majority vote of those present at a joint meeting of the executive committees of each of the county committees of the party within the city of New York, provided a quorum is present at such meeting . . .

¹ This section is commonly known as the Wilson-Pakula Law and the authorizations issued are referred to as Wilson-Pakula authorizations.

Petitioners argue that the second sentence of the statute clearly mandates that county committees authorize candidates for citywide offices in the City of New York and the State Committee's amendment expressly conflicts with that provision. Petitioners discuss the Second Department's holding in *Matter of Pohanka v Working Families Party of N. Y. State*, (30 AD3d 625 [2006]), in which the court found that "the State Committee of the Working Families Party of New York State [was] . . . empowered to amend its rules to permit it to issue certificates authorizing the nomination of candidates, inter alia, for county, town, and village elections, even though the candidate is not enrolled as a member of the Working Families Party of New York State." Petitioners note that the court's holding was consistent with Election Law §6-120 (3) which permits a State Committee to render authorizations for all offices other than citywide offices in New York City.

In opposition, respondents contend that venue was improperly placed in Kings County inasmuch as the authorizations at issue are based on contests in Richmond County. However, the court notes that the instant matter relates to a challenge to a rule amendment by the State Committee of the Independence Party and not to the issuance of any specific Wilson-Pakula authorizations. Respondents argue that the rule amendment at issue is an internal party matter and that the State Committee is merely exercising its right to control its' internal affairs. Further, respondents state that petitioners have admitted that *Pohanka* is the law governing this case. However, the court notes that although the *Pohanka* court held that the State Committee of the Working Families Party could itself issue Wilson-Pakula

authorizations for county town and village elections, as opposed to the county committees, which had previously done so, the issue of the Working Family Party's rule amendments application to citywide elections in the city of New York was not addressed in *Pohanka*.

Discussion


"[I]t is firmly established that except where expressly governed by legislation, the internal organization and authority of a political party is governed by the party rules" (*Donnelly v Curcio*, 284 AD2d 460 [2001]; see *In the Matter of Independence Party State Committee of the State of New York, v Berman*, 28 AD3d 556, 558 [2006]; *Matter of Bachmann*, 164 AD2d 926, at 928, citing Election Law § 2-114). Additionally, courts have consistently held that "[i]nternal issues arising within political parties are best resolved within the party organization itself and judicial involvement should only be undertaken as a last resort" (*Bachmann v Coyne*, 99 AD2d 742 [1984]; see *Bloom v Notaro*, 67 NY2d 1048, 1049 [1986]). However, although political parties are afforded wide latitude in adopting rules for party governance, such rules cannot conflict with statutory directives (*Matter of Kahler v McNab*, 48 NY2d 625 [1979]; see *Matter of Independence Party State Comm. of the State of New York*, 28 AD3d at 556 [2006]; *Keukelaar v Monroe County Bd. of Elections*, 307 AD2d 1073, 1074 [2003]; *Bachmann v DeFronzo*, 164 AD2d 926, 928 [1990]; *Matter of Lugo v Board of Elections*, 123 Misc 2d 764 [1984]).

Here, the court finds that the bylaw adopted by the State Committee on June 10, 2007, adding Article VI, section 11, which provides that authorizations for all public offices in

New York City shall be made by the executive committee of the state committee conflicts with the second sentence of Election Law §6-120(3), which makes it mandatory that in New York City an authorization for a citywide office (*i.e.*, Mayor, Comptroller, Public Advocate) be by a majority vote of those present at a joint meeting of the executive committee of each of the five county committees of the party. Therefore the court finds that the amendment to the State Committee Rules, which added section 11 of Article VI, conflicts with existing Election Law and is therefore invalid (*see Terenzi v Westchester County Comm. Conservative Party of N.Y. State*, 171 Misc 2d 93, 95 [1996]; [which annulled amendments which added qualifications for party offices in contravention of Election Law § 2-112]; *Matter of Hammer v Curran*, 203 Misc 417, 422 [Sup Ct, Albany County 1952] [holding that a rule adopted by a County Committee "imposing upon the eligibility of candidates for membership limitations more restrictive than the statutory provision is invalid"]. Petitioners' motion for an order declaring invalid Article VI, section 11 of the New York State Independence Party by laws, as adopted on June 10, 2007 is granted and said by law is annulled. In light of the foregoing, the court need not consider petitioners' remaining contentions.

The foregoing constitutes the decision and order of the court

E N T E R,



J.S. C.