

Matter of Cadel v Suffolk County Bd. of Elections
2008 NY Slip Op 32313(U)
August 11, 2008
Supreme Court, Suffolk County
Docket Number: 0027697/2008
Judge: Thomas F. Whelan
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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 33 - SUFFOLK COUNTY

PRESENT:

Hon. THOMAS F. WHELAN
Justice of the Supreme Court

MOTION DATE 7/29/08
ADJ. DATES 8/4/08
Mot. Seq. # 001 - MG; CDISP

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In the Matter of the Application of WILLIAM A. CADEL, a candidate for the nomination of the Working Families Party for District Court Judge, 3rd District, Town of Huntington, and GARY P. FIELD, a candidate for the nomination of the Working Families Party for District Court Judge, 3rd District, Town of Huntington, and DEBORAH R. CADEL, an enrolled voter in the Town of Huntington.

Petitioners,

-against-

SUFFOLK COUNTY BOARD OF ELECTIONS, CATHY L. RICHTER-GEIER and ANITA S. KATZ, Commissioners constituting the Suffolk County Board of Elections, and STEVE HACKELING, a candidate for the nomination of the Working Families Party for District Court, 3rd District, Town of Huntington, and PAUL HENSLEY, a candidate for the nomination of the Working Families Party for District Court Judge, 3rd District, Town of Huntington,

Respondents.
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Upon the following papers numbered 1 to 13 read on this election law proceeding
 _____; Notice of Motion/Order to Show Cause and supporting papers 1 - 3 ;
 Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 4; 5; 7; 8-9;
10-11; 12-13 _____; Response Return and supporting papers 6; _____; Other _____; ~~(and after hearing~~
~~counsel in support and opposed to the motion)~~ it is,

ORDERED that this proceeding seeking to declare null and void the designating petition of the Suffolk County Working Families Party (SU08-107) filed on July 10, 2008 in support of the respondent candidates Steve Hackeling and Paul Hensley as candidates for the Working Families Party for District Court Judge, 3rd District, Town of Huntington is granted, and it is further

ORDERED AND ADJUDGED that the respondent Suffolk County Board of Elections is directed to remove the names of the respondent candidates Steve Hackeling and Paul Hensley from the ballot to be voted on at the Primary Election to be held on September 9, 2008, as candidates for the Working Families Party for District Court Judge, 3rd District, Town of Huntington.

Respondent candidates Steve Hackeling and Paul Hensley filed petitions with the respondent Suffolk County Board of Elections (Board) designating each as candidates for the Working Families Party for District Court Judge, 3rd District, Town of Huntington at the Primary Election to be held on September 9, 2008. Objections and specifications were subsequently filed by the petitioner, Deborah R. Cadel. By order to show cause dated July 23, 2008, petitioners William A. Cadel and Gary P. Field, as candidates-aggrieved, and objector, Deborah R. Cadel, commenced this special proceeding, pursuant to Election Law §16-102(1), to invalidate the challenged designating petitions. Finally, on July 31, 2008, the Board, by a split decision, failed to approve a resolution finding the specifications of objections sufficient and by virtue of that split decision, the challenged designating petitions were declared valid.

A review of the petition at issue reveals a total of 21 signatures. A total of 16 signatures are required to support a valid designation. The Board found 16 valid signatures.

The challenge to the designating petition is two-fold: first, it is claimed that the designating petition fails to set forth the title to the public office sought; secondly, it is claimed that there are insufficient signatures on the designating petition due, in great part, to the failure to set forth the town in which the voter resides.

The Court will address the second challenge first. The Court agrees that the five signatures on page two, the five signatures on page three, and the five signatures on page four, are invalid. Under the statutorily required portion of the petition which mandated the name of the Town where the signer resides, hamlet names (that is, Huntington Sta., Hunt. Sta., or Dix Hills) are set forth.

Where the signers have failed to accurately list their correct town, as mandated by Election Law §6-130, courts have held that such a failure will result in the invalidation of such signatures (*see Matter of Stark v Kelleher*, 32 AD3d 663, 820 NYS2d 193 [3d Dept 2006]; *Matter of Stoppenbach v Sweeney*, 98 NY2d 431, 433, 749 NYS2d 210 [2002]; *Matter of Bowen v Ulster County Bd. of Elections*, 21 AD3d 693, 800 NYS2d

245 [3d Dept 2005]; *Shaughnessy v Herkimer County Bd. of Elections*, 104 AD2d 731, 480 NYS2d 639 [4th Dept 1984]).

The unremedied inaccuracy in the designation of the town by the actual signatories to the petition is a fatal defect rendering the petition invalid. The Court of Appeals has consistently adhered to its precedent that compliance with the form of petition set forth in Election Law § 6-130 is a matter of substance and not of form. The requirement that one accurately complete a simple, one-page petition sheet does not restrict access to the ballot or impose an undue burden upon candidates (*see Matter of Stark v Kelleher*, 32 AD3d 663, *supra*).

A review of the work-sheets of the inspection team of respondent Board demonstrates that the two-person team and the respondent Commissioners all agreed that the five signatures on page four of the petition, wherein the Town is incorrectly listed as Dix Hills, were found to be invalid. With regard to five signatures on page two and the five signatures on page three, wherein the Town is incorrectly listed as Hunt. Sta., it appears that the two-person team initially found the signatures to be invalid, but then the markings for these two sheets were changed to that of reserved for a decision by the Commissioners. In reading the minutes of the Commissioners' Decision on this matter, the respondent commissioners split, with respondent Cathy L. Richter Geier disagreeing with the objection. No explanation is offered for the distinction between the Dix Hills ruling and the Hunt. Sta. ruling.

Candidate-respondents claim that the hamlet is sufficient, particularly, the Huntington Station hamlet, since it contains the name Huntington. It is even suggested by one candidate-respondent that the Station portion of the hamlet name should simply be disregarded. Such is not only contrary to the above cited caselaw, it is contrary to the holdings of the Second Department that “[t]here is no requirement, however, that a signer list the hamlet or particular geographic area within the town or city in which he or she resides” (*Matter of Gonzalez v Lavine*, 32 AD3d 483, 820 NYS2d 616 [2d Dept 2006]).

Additionally, candidate-respondents failed to provide an explanation at oral argument as to why a hamlet that happens to contain a Town name within the hamlet name, for instance, North Babylon or West Babylon, should be viewed more favorably than the many hamlets with a Town that possess distinct names, for instance, Deer Park, Amityville, Lindenhurst, Copiague, North Lindenhurst, North Amityville, East Farmingdale, Wyndanch, and Weatley Heights, all hamlets within the Town of Babylon. No rational or legal distinction exists, as found by the respondent Board's split decision, to invalidate the Dix Hills signatures but not the Hunt. Sta. signatures. A review of the applicable statute Election Law §6- 130 mandates, in part, “town or city (except in the city of New York, the county)” (*see also* Election Law §6- 132[1]). Such demonstrates that the State Legislature requires a municipal subdivision and not the less definitive post office hamlets.

Finally, no attempt was made, pursuant to Election Law §6-134(12), to provide to the respondent Board, no later than three days following the receipt of specific objections to the signatures, proof that such address is the accepted address of such signer, if such relief is available (*see generally Matter of Ligammari v Noriss*, 275 AD2d 884, 719 NYS2d 787 [4th Dept 2000]; *Ptak v Erie County Bd. Of Elections*, 307 AD2d

1072. 763 NYS2d 516 [4th Dept 2003]).

The Court also agrees with the objection that the signature on line one of page four of the designating petition is that of the subscribing witness, invalidating that signature. Additionally, it is conceded that the signer on line four of page four had previously signed a prior petition for different candidates for the same public office, invalidating that signature. However, those signatures have already been found to be invalid.

With 15 invalid signatures out of the 21 signatures submitted, the challenged petition is insufficient to designate the respondent candidates.

With regard to the claim that the absence of a public office is a jurisdictional defect, the Court disagrees with the objection. The question is whether the petition accurately describes the public office sought. The petition describes the office as “3rd District Court, Huntington, NY.” The rule is well settled that a petition is not invalid if part of the description of the public office is omitted so long as the petition as a whole is intelligible and not misleading (*see e.g. Matter of Donnelly v McNab*, 83 AD2d 896, 442 NYS2d 532 [2d Dept 1981]; *Matter of Liepshutz v Palmateer*, 112 AD2d 1101, 1102, 493 NYS2d 234 [3d Dept 1985], *affd on other grounds* 65 NY2d 965, 493 NYS2d 1021[1985]). Here, there is no impairment of the ability of the Board to ascertain the correct vacancy (*see Matter of Plunkett v Flynn*, 220 AD2d 671, 632 NYS2d 645 [2d Dept 1995]), that is, District Court Judge.

Unlike the situation where the error was one where the public office listed was for an office where no vacancy existed (*see Matter of Kiley v Coveney*, 77 AD2d 941, 431 NYS2d 124 [2d Dept 1980]) or where an Assembly District number was listed without indicating whether the office sought was Member of Assembly or Delegate to the Judicial Convention (*see Matter of Denn v Mahoney*, 64 AD2d 1007, 409 NYS2d 285 [4th Dept 1978]; *Matter of Bliss v Nobles*, 297 AD2d 457, 746 NYS2d 410 [3d Dept 2002]; *Dunlea v New York State Bd. of Elections*, 275 AD2d 589, 713 NYS2d 89 [3d Dept 2000]), the description in the instant petition is sufficiently informative so as to preclude any reasonable probability of confusion or deception to signers or the Board (*see generally Matter of Donnelly v McNab*, 83 AD2d 896, *supra*).

Here, it has not been shown that there is more than one title of public office elected from the designated geographic territory. While there may exist a distinction with petitions that contain a “geographic area” but not an “office sought” (*see Liepshutz v Palmateer*, 112 AD2d at 1102, *supra*; *Dunlea v New York State Bd. of Elections*, 275 AD2d at 590-1, *supra*) in the instant case, petitioners have not demonstrated a reasonable probability of confusion or deception to mandate invalidation of the designating petition on this ground (*see Matter of Marcoccia v Garfinkle*, 307 AD2d 1010, 763 NYS2d 506 [2d Dept 2003]; *Matter of Hipps v Sunderland*, 218 AD2d 774, 630 NYS2d 792 [2d Dept 1995]).

The cross petition by respondent candidate Steve Hackeling is defective and untimely. Since leave of the court was not sought prior to the attempted service of the validating cross claim pleading, it must be dismissed (*see Matter of Koplén v Austin*, 5 AD3d 515, 772 NYS2d 829 [2d Dept 2004], *Matter of White v Bilal*, 21 AD3d 573, 800 NYS2d 596 [2d Dept 2005], *Matter of Zenosky v Graziani*, 288 AD2d 843, 735 NYS2d 436 [2d Dept 2001]; *Matter of O’Connor v D’Apice*, 156 AD2d 610, 549 NYS2d 610 [2d Dept

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1989]). The failure to file the cross petition with the County Clerk is fatal (*see Matter of White v Bilal*, 21 AD3d 573 *supra*). Moreover, it was not timely served (*see Matter of Henry v Blake*, 207 AD2d 508, 616 NYS2d 246 [2d Dept 1994]; *Matter of Bearak v Laufer*, 196 AD2d 604, 601 NYS2d 820 [2d Dept 1993]; *Matter of Cheevers v Gates*, 230 AD2d 948, 646 NYS2d 726 [3d Dept 1996]).

Accordingly, the special proceeding is granted and the challenged designating petition is declared invalid. The Board shall forthwith remove the names of the respondent candidates for the primary election ballot to be held on September 9, 2008. This constitutes the decision and judgment of the Court.

DATED: 8/11/08



THOMAS F. WHELAN, J.S.C.