

Lalota v Katz
2015 NY Slip Op 31910(U)
October 15, 2015
Supreme Court, Suffolk County
Docket Number: 17796/2015
Judge: John C. Bivona
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**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 2 - SUFFOLK COUNTY**

P R E S E N T :

HON. JOHN C. BIVONA
Justice of the Supreme Court

Motion Date: 10/14/2015
Submit Date: _____
Motion: MOT 001-D

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NICHOLAS J. LALOTA, in his official
capacity as Republican Commissioner of the
Suffolk County Board of Elections,

Petitioners,(sic)

PLTF'S/PET'S ATTY:
GARRETT W. SWENSON, JR., ESQ.
76 Bay Road
Brookhaven, NY 11719

-against-

ANITA S. KATZ, in her official capacity as
Democratic Commissioner of the Suffolk
County Board of Elections,

Respondent,

DEFT'S/RESP'S ATTY:
LAWRENCE H. SILVERMAN, ESQ.
350 Veterans Memorial Highway
Commack, NY 11725

-and-

SUSAN BERLAND

Intervenor/
Respondent.

DEFT'S/RESP'S ATTY:
SANFORD NEIL BERLAND PLLC
16 Wildwood Drive
Dix Hills, NY 11746

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The Court in its deliberations has considered:

1. Order to Show Cause and supporting papers;
2. Verified Answer and Counterclaim;
3. Order to Show Cause and supporting papers on behalf of Susan A. Berland.

Motion on behalf of incumbent counsel woman candidate Susan Berland to intervene in the proceeding as a Respondent is **GRANTED**.

As a designated candidate of the Women's Equality Party Councilwoman Berland is an interested party. Joinder as a party is authorized by statute (see **CPLR §406; 1012 (2) and 1013**) and she is permitted to intervene in this special proceeding, commenced by petitioner against respondent, both

of whom are Commissioners of the Suffolk County Board of Elections.

Petitioner, in his official capacity as the Republican Commissioner of the Suffolk County Board of Elections, seeks an Order of the Court (1) directing respondent, Democratic Commissioner of the Suffolk County Board of Elections, to forthwith participate with petitioner in the examination of a Certificate of Nomination, dated September 10, 2015 and filed by purported representatives of the Women's Equality Party and to participate in a meeting at which time a vote of the Board of Elections will be had as to whether to receive and file said Certificate of Nomination; (2) in the absence of a resolution duly adopted by a unanimous vote of the Board of Elections to receive and file said Certificate of Nomination, directing Respondent to forthwith certify Official ballots for the 2015 General Election which do not contain the Women's Equality Party candidates, as their names appear upon the aforementioned Certificate of Nomination; (3) in the absence of a resolution duly adopted by a unanimous vote of the Board of Elections to receive and file said Certification of Nomination, enjoining, restraining and prohibiting the Respondent from certifying and signing any Official Ballot of the 2015 General Election which contains the Women's Equality Party candidates appearing upon said Certificate of Nomination.

In this special proceeding, commenced by Order to Show Cause granted October 9, 2015, Petitioner requests leave to submit upon the return date (October 14, 2015) such additional evidence, exhibits and other proof as may be necessary to support the various allegations made in the verified petition. Service of a copy of the Order to Show Cause and its supporting papers was made October 9, 2015. At a hearing conducted October 14, 2015, Court Exhibit 1 was placed in evidence on the Court's own motion: Two letters dated September 15, 2015 issued to two prospective candidates notifying them that each has been designated by the Women's Equality Party for the specified public office.

Respondent Katz has filed a verified answer and counterclaim.

On October 14, 2015, the aforementioned candidate, Susan Berland, appeared and moved to intervene which application the Court granted, although opposed by Petitioner upon grounds of lack of standing.

As a designated candidate, Ms. Berland has a vested superior interest, such that she should be heard through her counsel.

Attached to Respondent Katz's verified answer, are minutes of a special meeting of the Board of Elections, dated October 1, 2015 (Exhibit A). That meeting was concluded with a vote whereby the Petitioner voted yes and Commissioner Katz voted no. The minutes explicitly state that the purpose of the meeting was to "rule on the validity of Women's Equality Party candidates with respect to the 2015 General Election Ballot".

The stated motion, voted upon was to alter the ballot, failed by split decision.

It is readily apparent, although disputed by Petitioner, that the Certificate of Nomination filed by the Women's Equality Party was examined by the Board of Elections as required by statute.

(Election Law §6-128 (3))

The Petitioner now seeks an Order to compel the Respondent Katz to again attend a meeting to review and consider the Certificate of Nomination filed by the Women's Equality Party, a new party. This group became a recognized political party after having garnered 53,804 votes, in the past gubernatorial election conducted statewide in 2014 with the election of now Governor Andrew Cuomo.

The minutes of the Board of Elections, dated October 1, 2015 clearly indicate that a meeting was held. Prior to this special meeting, letters had been issued by the Board of Elections informing the candidates listed on the Certificate of Nomination that "Pursuant to sections 6-144 and 6-158 of the New York State Election Law, you are hereby notified that you have been designated by the Women's

Equality Party...”. The letter further informed the candidate: “ It is not a statement of the validity of such petition, which is subject to challenge pursuant to Article 6 of the Election Law”. In the third paragraph of the letter, it states: “ Your name shall appear as it appears in this notice on any and all ballots.”

Thus, there exists no rational basis pursuant to either the Election Law or the Civil Practice Laws and Rules Article 78 for the Court to mandate the performance by Respondent Katz, as a public official in the exercise of her authority as a Commissioner of the Board of Elections of the County of Suffolk, as Petitioner requests.

It is apparent on its face that, although this is a newly formed party, that a special meeting was held, and the filed Certificate of Nomination was date stamped and RECEIVED (see Exhibit A, Verified Petition - RECEIVED Sep 14 2015 BOARD OF ELECTIONS SUFFOLK COUNTY, NY).

Exhibit B attached to the petition included a copy of the “Rules of the Women’s Equality Party of the State of New York”.

Petitioner voiced objections in points of law at the argument on the hearing which the Court accepted as such. It is claimed that Candidate Berland, as an intervenor has no standing to challenge an alleged “in-house dispute” since the present controversy only addresses the management of the Board of Elections business. Petitioner clearly argues that the instant proceeding is a special proceeding in mandamus, seeking to compel the Respondent Katz to perform a statutory duty and to examine with detailed specificity the filing requirements as listed in **§6 - 128 (1) ELECTION LAW**.

Respondent asserts that necessary parties are missing from the proceeding and argues that all designated candidates should have been named and served as Respondents. Failing that, Petitioner lacks standing. It is further noted that this proceeding is commenced one month after the Certificate of

Nomination was filed and received by the Board of Elections. It is further argued by Respondent that a split decision by the two Board Commissioners constitutes a nullity and whose effect is a tacit approval of the Certificate of Nomination filed and challenged herein.

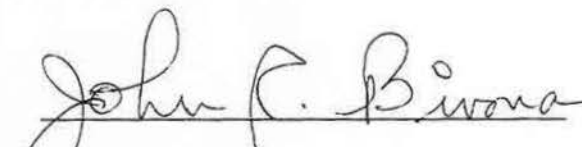
While this controversy between the Commissioners has the distinct odor of a political issue, the Court is nevertheless presented with a justiciable question. The Court concludes that the Commissioners, acting as the Board of Elections, received the Certificate of Nomination of the Women's Equality Party and notified the candidates, so nominated, thereby imposing upon the nominees the strictures promulgated in the Election Law, addressing specifications, objections and declinations.

For the foregoing reasons, the two Commissioners constituting the Suffolk County Board of Elections are each directed to forthwith certify and issue 2015 General Election ballots listing the names of each designated candidate of the Women's Equality Party. The petition is in all respects **DENIED.**

The cross-motions of the Respondent Katz and the intervening party Berland are **GRANTED.**

This constitutes the Decision and Order of the Court.

Dated: October 15, 2015


Hon. John C. Bivona, J.S.C.