

Matter of Abdin v Zapata
2020 NY Slip Op 31128(U)
April 29, 2020
Supreme Court, Kings County
Docket Number: 507106/20
Judge: Edgar G. Walker
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At Special Election Part 1 of the Supreme Court of the State of New York, held in and for the County of Kings, on the 29th day of April, 2020.

PRESENT:
HON. EDGAR G. WALKER
Justice.

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In the Matter of the Application of
Misba Abdin,
Petitioner-Candidate,

-against-

Index No. 507106/20

Ariana Zapata and Alexandra Alvarado,
Respondent-Objectors,

-and-

The Board of Elections in the City of
New York,
Respondent

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The following papers numbered 1 to 4 herein:

	<u>Numbered</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed	-----1-2-----
Opposing Affidavits (Affirmations)	-----3, 4-----
Reply Affidavits (Affirmations)	-----

Petitioner Misba Abdin brings the instant petition pursuant to Article 16 of the Election Law seeking an order validating the designating petition that he filed with respondent Board of Elections in the City of New York (the Board) seeking placement on the ballot for the June 23, 2020 Democratic Party primary election for the office of Member of City Council for the 37th Council District. The Board and respondent-objectors Ariana Zapata and Alexandra

Alvarado separately move to dismiss the petition and petitioner moves for an order granting the petition. Upon the foregoing papers, and after oral argument held on the record before the court, the court rules as follows.

BACKGROUND FACTS AND PROCEDURAL HISTORY

On or about February 25, 2020, petitioner began to collect voter signatures on his designating petition seeking placement on the ballot. At that time, the petitioning process was scheduled to last until April 2, 2020, during which time, petitioner needed to collect 450 valid signatures in order to be placed on the ballot. On March 14, 2020, as a result of the public health emergency arising out of the COVID-19 pandemic, and the dangers inherent in collecting petition signatures during the pandemic, Governor Cuomo signed Executive Order 202.2. This Order provides in relevant part that:

“Article 6 of the Election Law is modified to the extent necessary to reduce the required number of signatures on petitions pursuant to Section 6-136 of such law to 1.5% of the enrolled voters required, or 30% of the stated threshold, whichever is less. Further such provisions are modified to require that gathering of signatures shall be suspended effective Tuesday, March 17, 2020 at 5 p.m

Thus, the Governor's Executive Order eliminated the final 16 days of the petitioning process. Further, in recognition of the prejudice that this would cause candidates who were circulating petitions, the Executive Order reduced the number of required signatures in such petitions to the lesser of 1.5% of the of the enrolled voters in the political unit in which the office is to be voted or 30% of the "stated threshold."

On March 20, 2020, petitioner filed with the Board a designating petition containing 331 signatures. Subsequently, the respondent objectors filed general and specifications of objections with the Board. On April 7, 2020, the Board issued a preliminary clerk's report on the specifications of objections. The clerk's report determined that 162 of the 331 signatures in the designating petitions were valid, that 270 valid signatures were required for placement on the ballot, and that petitioner should not be placed on the ballot inasmuch as her petition contained 108 fewer signatures than necessary for placement on the ballot. In this regard, Election Law § 6-136 (2) requires that designating petitions for City Council be signed by at least 5% of the enrolled voter of the party residing in the City Council district. However, Election Law § 6-136 (2)(c-1) further provides the number of signatures required for City Council designating petitions "need not exceed" 900. Five percent of the number of enrolled Democrats in the 37th Council District greatly exceeds 900. Further, although the Executive Order reduced the 5% requirement to 1.5%, that number exceeds 900 as 1.5% of enrolled Democrats in the district amounts to 934 voters. Accordingly, the clerk determined that, under the Executive Order, the number of required signatures was 30% of 900, which amounts to 270 signatures.

On April 22, 2020, the Board's Commissioners met, modified the clerks report, and confirmed the report as modified. In particular, for the reasons discussed below, the Commissioners determined that 450 valid signatures were required for placement on the ballot,

not 270 signatures as determined in the initial clerk's report. According, the Commissioners ruled the petitioner off the ballot. Within three business days of the Board's final determination, petitioner commenced the instant validating proceeding.

In 2010, the City Charter was amended by the voters of the City of New York to effectively reduce the number of signatures required in designating and nominating petitions seeking placement on the primary ballot for the office of member of City Council. In particular, § 1057-b (a) of the City Charter provides that:

“The number of signatures required for any designating petition or independent nominating petition for the designation or nomination of a candidate for an elected office of the city shall be governed by applicable provisions of the New York state election law, except that in no event shall the number of signatures required exceed the following limits . . . (3) for the office of member of the city council, four hundred fifty signatures.”

Further, § 1057-b (b)(1) provides that “[t]he following provisions of the election law shall not apply to the extent that they govern the designation of . . . member of city council . . . paragraphs . . . (c-1) of subdivision two of section 6-136.” Thus, under the new City Charter provision, Election Law § 136 (2)(c-1), which states that number of signatures required in City Council petitions need not exceed 900, no longer applied. Further, although the requirement under Election Law § 6-136 (2) that such petitions be signed by 5% of enrolled voters in the district still applied, the number of required signatures in City Council designating petitions could not exceed 450. Even though § 1057-b of the City Charter does not specifically set forth a minimum number of signatures required for City Council designating petitions, inasmuch as 5% of the enrolled Democrats exceeds the number 450 in every single City Council district, the new City Charter provision effectively established a threshold of 450 petition signatures when read in conjunction with Election Law § 6-136. Indeed, following the

enactment of § 1057-b of the City Charter, both the Board and courts have applied this 450 threshold number when ruling on the validity of challenged designating petitions in Democratic City Council primary elections. However, as noted above, this threshold number is not the creation of City Charter § 1057-b alone inasmuch as this provision does not set forth a stated threshold number, it merely states a ceiling of 450 signatures. Rather, the City Charter provision is intertwined with Election Law § 6-136 (2), and the provisions must be read in conjunction in order to create the stated threshold of 450 signatures. Thus, if the Election Law was amended to require 300 signatures for placement on the ballot in City Council designating petitions, 300 signatures are all that would be required under City Charter § 1057-b (a).

Given this background and the enactment of City Charter § 1057-b, the Board's Commissioners determined that the preliminary clerk's report incorrectly determined the minimum number of required signatures was 270. In this regard, as noted above, this figure was calculated by taking 30% of the 900 number set forth in Election Law § 6-136 (2)(c-1). However, City Charter § 1057-b (b)(1) expressly provides that this statute shall not apply to the extent it governs City Council designating petitions. Further, the Commissioners determined that the correct minimum number of signatures remained 450 notwithstanding Executive Order 202.2. In particular, the fact that the Executive Order reduced the number of signatures based upon the percentage of eligible voters from 5% to 1.5% had no effect inasmuch 1.5% of the enrolled Democrats in the subject district amounts to 934 voters, an amount in excess of the 450 ceiling contained in City Charter § 1057-b (a). Further, with respect to the Executive Order also reducing the required number of signatures to 30% of the "stated threshold," the Commissioners determined that it would be impermissible to reduce the number of required signatures to 30% of 450 (i.e., 135 signatures) inasmuch as the Executive Order did not specify that it was suspending

or altering any provision of the City Charter. In this regard, the Board points to Executive Law § 29-(a)(2)(c), which requires that Executive Orders “specify the statute, local law, ordinance, order, rule or regulation or part thereof to be suspended and the terms and conditions of the suspension.” Thus, it was the Commissioner’s position that Executive Order 202.2 had no effect on the signature requirements for designating petitions in the instant primary election notwithstanding the fact that, with less than three days advanced notice, the same Executive Order shortened the time period during which petition signatures could be collected by 16 days.

Arguments

On April 28, 2020, the matter was returnable before the court via Skype for oral argument on the Board’s and respondent-objectors respective motions to dismiss petitioner’s validating proceeding. In support of its motion to dismiss, the Board contends that the position taken by the Commissioners regarding the minimum number of valid signatures was correct. In particular, the Board notes that, although Executive Order 202.2 reduced the number of required signatures to 1.5% of the registered Democratic voters in the district, this had no effect on the minimum number of signatures required inasmuch as 1.5% of enrolled Democrats in the district amounted to 934 voters, which exceeds the 450 maximum set forth in City Charter § 1057-b (a). In addition, the Board contends that the Executive Order cannot be read as reducing the number of required signatures to 30% of the 900 number set forth in Election Law § 6-136 (2)(c-1) inasmuch as City Charter § 1057-b (b)(1) specifically provides that this Election Law provision did not apply and the Governor’s Executive Order did not identify this portion of the City Charter as being suspended as required under Executive Law § 29 (a)(2)(c). At the same time, the Board maintains that the required minimum of signatures may not be deemed to be 30% of the 450 maximum number of signatures number set forth in City Charter § 1057-b (a) inasmuch

as the Executive Order did not identify the City Charter provision as required under Executive Law § 29 (a)(2)(c). In particular, the Board argues that it was the intent of the drafters of the City Charter to create a threshold number of 450 signatures for placement on the ballot in Democratic Party City Counsel primaries. In the alternative, the Board argues that, at best, Executive Order 202.2 may be interpreted as reducing the required number of signatures to 30% of the 900 signature threshold set forth in Election Law § 6-136 (2)(c-1) (i.e., 270 signatures). Here, since the petitioner's designating petition contained 96 fewer valid signatures than this 270 figure, the Board contends that the instant validating petition must be dismissed under this alternative interpretation of the Executive Order.

In support of their own motion to dismiss the validating proceeding, respondent objectors submit arguments which mirror the Board's position regarding 450 valid signatures being the minimum number of valid signatures required for placement on the ballot. Respondents further contend that the minimum number of required signatures may not be reduced to 30% of 450 based upon the language in City Charter § 1057-b (a) that the number of signatures required shall be governed by the Election Law. Respondents contend that this is a reference to the requirement under Election Law §6-136 (2) that petitions be signed by 5% of the registered voters in the district, and the Executive Order reduced that number to 1.5% of registered voters.

In opposition to the respondent's motion to dismiss, and in support of his own motion for an order granting the validating petition and placing him on the ballot, petitioner maintains that, although Executive Order 202.2 only references Election Law § 6-136, this statute cannot be read in a vacuum and the court must give effect to the Governor's clear intent in signing the executive order. In particular, although the stated threshold for number of signatures under Election Law § 6-136 (2) (c-1) is 900 signatures, and 30% of that figure is 270, the actual stated

threshold is 450 signatures and, inasmuch as 30% of 450 is 135 signatures, his petition must be granted. In support of this argument, petitioner points to Election Law § 1-102, which provides in pertinent part that “[w]here a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter, such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply notwithstanding any other provision of law.” According to petitioner, City Charter § 1057-b is inconsistent with Election Law § 6-136 (2)(c-1) inasmuch as the Election Law provides that the required number of signatures for City Council petitions need not exceed 900 signatures while the City Charter provisions provides that the required number of signatures for City Council petitions may not exceed 450. Further, given the fact that this provision of the Election Law does not state that it shall apply notwithstanding any other provision of law, petitioner maintains that the City Charter provision governs the number of signatures required for City Council petitions. In addition, petitioner contends that the interplay between City Charter § 1057-b and Election Law § 6-136 created a minimum signature requirement of 450 signatures for City Council petitions. Under the circumstances, inasmuch as Executive Order 202.2 states that the number of required signatures shall be 30% of the stated threshold, petitioner contends that the required number of signatures for his petition is 30% of 450, or 135 signatures. Since it is undisputed that his petition contained more than this number of valid signatures, petitioner maintains that the instant petition to validate must be granted.

Rulings and Findings

“The court’s function in interpreting a statute is to attempt to effectuate the intent of the Legislature, and where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used” (*Ryder v City of New*

York, 32 AD3d 836, 837 [2006] [internal citations and quotations omitted]). “However, there are limits to literalism; “[i]n the exposition of a statute, the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter” (*Matter of Allstate Ins. Co., v Libow*, 106 AD2d 110, 114 [1984], [quoting *Giblin v Nassau County Med. Center*, 61 NY2d 67, 74 [1984]]). Thus, “[c]ourts will not blindly construe statutes or the rules or regulations of an administrative agency in a manner which thwarts the obvious legislative intent and reaches unreasonable, absurd, or unexpected consequences” (*Matter of Allstate Ins. Co.*, 106 AD2d at 114). Instead, courts “must interpret a statute so as to avoid an unreasonable or absurd application of law” (*People v Santi*, 3 NY3d 234, 244 [2004]). Finally, inasmuch as they are, in effect, legislation by fiat, the same rules apply when interpreting the intent of executive orders (*see Matter of Parietti v Sampson*, 117 AD3d 830, 834-835 [2014]).

Here, as previously noted, and as relevant to this matter, Executive Order 202.2 modified Article 6 of the Election Law to require that the gathering of petition signatures be suspended on March 17, 2020 as opposed to April 2, 2020. The reason for this suspension was that the gathering of petition signatures, and the inability to maintain social distancing during the petitioning process, posed an inherent public health risk during the COVID-19 pandemic. In recognition of the prejudice caused by shortening the period during which petition signatures could be collected, Executive Order 202.2 further suspended/modified Election Law § 6-136 “to the extent necessary to reduce required number of signatures on petitions . . . to 1.5% of the enrolled voters required, or 30% of the stated threshold, whichever is less.” Here, it is undisputed that 1.5% of the enrolled Democrats in the 37th Council District greatly exceeds the number of signatures in petitioner’s designating provision. Accordingly, the first method of reducing the number of required signatures provided for in the Executive Order is of no benefit

to petitioner. Thus, the focus is placed on the second method of reducing the required number of signatures in Executive Order 202.2, namely, a reduction to 30% of the “stated threshold.”

As an initial matter, the Board and its Commissioners correctly ruled that the preliminary clerk’s report incorrectly determined that 270 signatures were required for placement on the ballot. In particular, although Election Law § 6-136 (2)(c-1) provides that the number of signatures required for City Council petitions need not exceed 900 signatures and 30% of 900 is 270, City Charter § 1057-b (b) expressly provides that this subdivision shall not govern City Council designating petitions. Further, City Charter § 1057-(b) (b) remained in effect since the Executive Order did not identify this portion of the City Charter as being suspended as required under Executive Law § 29 (a)(2)(c).

However, the court further finds that the Board erred in determining that the designating petition required a minimum of 450 signatures. In adopting this position, the Board has taken the position that, in signing Executive Order 202.2 in the midst of the COVID-19 pandemic, Governor Cuomo took the unprecedented step of drastically shortening the petitioning period while simultaneously drastically reducing the number of required signatures required for offices involved in upcoming primary, except that in the instant City Council primary, the Governor cast all health and prejudice concerns aside and intended that candidates collect the same amount of signatures as were required prior to the pandemic. In the court’s view, this is an absurd interpretation of Executive Order 202.2, which the court may not adopt. Indeed, to hold that the petitioner was required to obtain the full 450 signatures previously required would “frustrate the . . . purpose [of the Executive Order] and lead to a perverse result” (*Matter of Pell v Coveney*, 37 NY2d 494, 496 [1975]). A more reasonable and rational interpretation of Executive Order 202.2 is that the Governor intended that the signature requirement be reduced to 30% of the

previous stated threshold as it was with the designating petitions for all other offices. Thus, since the interplay between City Charter § 1057-b (a) and Election Law 136 (2) created a previous de facto stated threshold of 450 signatures, Executive Order 202.2 reduced the required number of signatures to 30% of that minimum number, or 135 signatures. Accordingly, since it is undisputed that the instant designating petition contained more than 135 valid signatures, and no invalidating proceeding has been commenced by the respondent objectors, petitioner is entitled to be placed on the ballot.

In reaching this conclusion, the court finds no merit to the Board and respondent objectors' argument that the Governor's failure to identify City Charter § 1057-b in his Executive Order precludes the court from interpreting the Order as reducing the required number of signatures to 30% of 450. In particular, inasmuch as City Charter § 1057-b (a) only functions when read in conjunction with Election Law § 6-136, and the Executive Order does refer to this section of the Election Law, the Executive Order encompasses City Charter § 1057-b (a) by implication. Moreover, Executive Law § 29-a(2)(c) does not preclude a finding that the minimum number of signatures required is 30% of 450. This law merely requires that Executive Orders which suspend a statute or local rule "shall specify the statute, local law, ordinance, order, rule or regulation or part thereof to be suspended and the terms and conditions of the suspension." Thus, if City Charter § 1057-b (a) on its face required that a City Council designating petition contain no less 450 signatures, the court could not find that Executive Order 202.2 reduced that number to 30% of 450 signatures because the Executive Order does not state that it is suspending or modifying this City Charter provision. However, as noted above, City Charter § 1057-b (a) does not require a minimum number of 450 signatures. Instead, it sets a maximum ceiling of 450 signatures. Although, during oral argument, the Board contended that it

was the intent of the drafters of the City Charter to create a threshold of 450 signatures in Democratic City Council primaries, the court will not ignore the plain language of the City Charter §1057-b (a) to read such a threshold into the City Charter. Indeed, to do so under the circumstances of the instant case would be particularly unwarranted given respondents' inconsistent positions of advocating a literal interpretation of Executive Order 202.2 and Election Law § 6-136 which would defeat the Governor's intent, while simultaneously ignoring the plain language of the City Charter and imposing a threshold number of signatures requirement based upon the purported intent of the drafters.

Under the circumstances, there is no need for a suspension of City Charter § 1057-b (a) and the court's determination that 135 signatures are required is entirely consistent with the City Charter provision inasmuch as the required number of signatures does not exceed 450. Since there has been no suspension of City Charter § 1057-b (a), Executive Law § 29-a(2)(c) is not implicated.

Accordingly, it is hereby ordered that petitioner's validating petition is granted. It is further ordered that the Board place the petitioner/candidate on the ballot for the June 23, 2020 Democratic Party primary election for the office of Member of City Council for the 37th Council District.

This constitutes the decision and final order of the court.

ENTER FORTHWITH,



J.S.C.