

Dadey v Balter

2020 NY Slip Op 33928(U)

September 4, 2020

Supreme Court, Onondaga County

Docket Number: 005259/2020

Judge: Scott J. DelConte

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At a Special Term of the Supreme Court of the State of New York held in and for the County of Onondaga on September 4, 2020.

PRESENT: **HON. SCOTT J. DELCONTE**
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
ONONDAGA COUNTY

THOMAS V. DADEY, JR., Chair of Party Committee,
and **GEORGE DOOHER**, Objector;

Petitioners,

v.

Index No. 005259/2020

DANA BALTER, Purported Working Families Party Candidate for the Public Office of Member of Congress, 24th District of New York State; **NEW YORK STATE BOARD OF ELECTIONS**; **WORKING FAMILIES PARTY OF NEW YORK STATE**; **STATE EXECUTIVE BOARD OF THE WORKING FAMILIES PARTY OF NEW YORK STATE**; **SANDRA OXFORD**; and **DANIEL LANGENBUCHER**,

Respondents.

DECISION AND JUDGMENT

APPEARANCES:

Joseph T. Burns, Esq., *for Petitioners Thomas V. Dadey, Jr., and George Dooher*

Alexander Rabb, Esq., Levy Ratner P.C., *for Respondents Dana Balter, Working Families Party of New York State, State Executive Board of the Working Families Party of New York State, Sandra Oxford and Daniel Langenbucher*

William J. McCann, Esq., and Brian L. Quail, Esq., *for Respondent New York State Board of Elections*

This is a special proceeding pursuant to Election Law § 16-102. Petitioners Thomas V. Dadey, Jr., and George Dooher seek an order invalidating the Working Families Party's certificate of substitution designating Respondent Dana Balter as the party's candidate for Member of Congress, 24th Congressional District. Petitioners assert that there is no vacancy to fill because the declination filed by Steven Williams – the party's previously designated congressional candidate – was invalid. For the reasons set forth below, the relief requested in the Verified Petition is **GRANTED**.

I.

On August 10, 2020, the 11th Judicial District Convention of the Working Families Party filed a certificate of nomination that purported to nominate Steven Williams as a candidate for Justice of the Supreme Court in the November 3, 2020 general election. Williams accepted this judicial nomination and, on August 12, 2020, filed a certificate of declination with Respondent New York State Board of Elections, declining his earlier designation as the Working Families Party's candidate in New York's 24th Congressional District. In response to the purported vacancy created by Williams' declination, the State Executive Board of the Working Families Party filed a certificate of substitution designating Balter as the party's congressional candidate (NYSCEF Doc. 4).

Petitioner Dooher timely filed general objections and specifications to the certificate of substitution asserting that there was no vacancy to fill since Williams was not lawfully nominated by the Working Families Party's judicial convention because it was not properly constituted (NYSCEF Docs. 5 - 6). The Court is not aware of a ruling on Dooher's objection.

Thereafter, on August 17, 2020, Dooher and Dadey, along with John F. Haggerty, Jr., commenced a special proceeding under Election Law § 16-102 (*Dooher et al. v Williams et al.*, Onondaga County Index No. 005089/2020) challenging the certificate of nomination only as it relates to Williams, as well as Williams' subsequent certificate of declination concerning his congressional candidacy.

Then, on August 22, 2020, Petitioners Dooher and Dadey (as chair of the Onondaga County Republican Committee) commenced this proceeding challenging the Working Families Party's certificate of substitution designating Balter as the party's congressional candidate in place of Williams. The Court granted the Order to Show Cause on August 24, 2020, and set a briefing schedule and a hearing date on September 2, 2020, concurrent with the hearing in the related Onondaga County proceeding *Dooher v Williams*. Counsel for Petitioners, Respondents and the New York State Board of Elections are the same in both proceedings.

II.

Procedurally, Respondents Balter, the Working Families Party of New York State, the State Executive Board of the Working Families Party of New York State, Oxford and Langenbucher raise two potentially dispositive procedural objections in this proceeding, namely: lack of subject matter jurisdiction due to improper service, and lack of standing.

First, with respect to jurisdiction, the affidavit of service filed by Petitioners (NYSCEF Doc. 10) establishes *prima facie* that the necessary papers were served in compliance with the mandates in the Order to Show Cause, and Respondents offer no evidence to overcome this presumption (*Nunziato v Messano*, 87 AD3d 647, 647 [2d Dept. 2011]; *Caci v State*, 107 AD3d 1121, 1123 [3d Dept. 2013]). This proceeding was properly commenced and, therefore, the Court has jurisdiction.

Second, with respect to standing, Dooher claims standing as an objector entitled to vote in the 24th Congressional District, and Dadey claims standing as the chair of a political committee (*see e.g. Nicolai v Kelleher*, 45 AD3d 960 [3d Dept 2007]). The parties stipulated on the record in open court that the Petitioners have standing to challenge the internal affairs of the Working Families Party concerning the disputed matters in the related proceedings, and the Court is therefore bound by this stipulation (*In re Petition of New York, L. & W. R. Co.*, 98 NY 447, 453 [1885]). Accordingly, the affirmative defense of lack of standing has been waived and, as the remaining procedural issues raised by Respondents have either also been waived or are without merit, the Court may properly consider the merits of Petitioners' substantive claim.

III.

By Decision and Judgment dated September 4, 2020, in the action *Dooher v Williams*, (NYSCEF Doc. No. 41 under Index No. 005089/2020), this Court held that Steven Williams' declination of his designation as the Working Families Party candidate for the 24th Congressional District is invalid because Williams had not been lawfully nominated as a candidate for Justice of the Supreme Court in the 11th Judicial District. Since William's declination is void, there is no vacancy on the Working Families Party line for congress in the 24th Congressional District to be filled under Election Law § 6-146(4). Therefore, the purported certificate of substitution executed by the State Executive Board of the Working Families Party for New York is void (*Leemhuis v State Board of Elections*, 155 Misc2d 531, 532 [Sup Ct, Albany Cty 1992] *affd upon the opinion below* 186 AD2d 863 [3d Dept 1992]).

IV.

Accordingly, after due deliberation; it is hereby

ORDERED that the Petition is **GRANTED**; and it is further

ORDERED AND DECLARED that Steven Williams is the Working Families Party candidate for the public office of Member of Congress, 24th Congressional District; and it is further

ORDERED AND ADJUDGED that the certificate of substitution filed with Respondent New York State Board of Elections purportedly designating Respondent Dana Balter as the Working Families Party candidate for the public office of Member of Congress, 24th Congressional District, is invalid and of no legal effect; and it is further

ORDERED AND ADJUDGED that Respondent New York State Board of Elections remove Respondent Dana Balter as the Working Families Party candidate for the public office of Member of Congress, 24th Congressional District on the November 3, 2020 ballot; and it is further

ORDERED AND ADJUDGED that Respondent New York State Board of Elections name Steven Williams as the Working Families Party candidate for the public office of Member of Congress, 24th Congressional District on the November 3, 2020 ballot.

Dated: September 4, 2020



HON. SCOTT J. DELCONTE, J.S.C.

ENTER.

PAPERS AND STIPULATIONS CONSIDERED:

1. Order to Show Cause, Executed August 24, 2020 (NYSCEF Doc. 9);
 2. Verified Petition, Verified August 22, 2020, with Exhibits A through D, attached (NYSCEF Docs. 1, 2 – 6);
 3. Affirmation of Service, sworn to August 25, 2020 (NYSCEF Doc. 10);
 4. Letter of No Position of the New York State Board of Elections, dated August 28, 2020, with Exhibits 1 through 4 attached (NYSCEF Docs. 11 – 15);
 5. Verified Answer, Verified August 31, 2020 (NYSCEF Doc. 17);
 6. Affirmation of Attorney Alexander Rabb, Affirmed August 31, 2020 (NYSCEF Doc. 18);
 7. Affirmation in Reply of Attorney Joseph T. Burns, Affirmed August 31, 2020 (NYSCEF Doc. 19); and
 8. The Appearances and Stipulations on the Record of Attorneys Joseph T. Burns, Alexander Rabb, William McCann and Brian Quail at the September 2, 2020 Hearing.
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