

Petroffski v Carinci
2021 NY Slip Op 31401(U)
April 19, 2021
Supreme Court, Madison County
Docket Number: EF2021-1296
Judge: Joseph A. McBride
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At a Virtual Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Madison County Courthouse, Wampsville, New York, on the 15th day of April 2021.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF MADISON
HON. JOSEPH A. MCBRIDE

LORI PETROFFSKI,

Plaintiffs

vs.

LEWIS CARINCI and MADISON COUNTY
BOARD OF ELECTIONS,

Defendants.

DECISION AND ORDER

Index No.: EF2021-1296

APPEARANCES:

COUNSEL FOR PLAINTIFF:

Joseph Burns, Esq.
1811 Northwood Dr.
Williamsville, NY 14221

DEFENDANT:

Lewis Carinci

Lewis Carinci, SRL
429 West Elm St.
Oneida, NY 13421

COUNSEL FOR DEFENDANT:

Madison County BOE

Tina M. Wayland-Smith, Esq.
Madison County Department of Law
PO Box 635
138 N. Court St
Wampsville, NY 13163

JOSEPH A. MCBRIDE, J.S.C.

This matter follows a lawsuit initiated by Petitioner, Lori Petroffski (“Petroffski”) against Lewis Carinci (“Carinci”), and Madison County Board of Elections, (“BOE”). Currently before the Court is Petition to for an Order pursuant Article 16 of the Election Law declaring invalid and striking the petition of Carinci for Madison County Supervisor, Wards 4, 5, and 6 of the City of Oneida, and Restraining BOE from placing Carinci’s name on the primary ballot for June 22, 2021. The matter was scheduled for appearances on April 15, 2021 and Carinci appeared via Microsoft Teams and orally opposed the petition. BOE appeared and took no position on the matter. Subsequent to the appearance, Carinci filed opposition by way of a letter memorandum memorializing BOE’s decision to validate Michael Kaiser’s petition (unrelated to the current petition) signed by both the Democratic Commission and the Republican Commission of BOE. Court received and reviewed all documents electronically filed in the matter and decided; as discussed below.¹

BACKGROUND FACTS

Petroffski is a registered voter in Ward 6 of the City of Oneida and entitled to vote for the position in question. Carinci submitted a “Designating Petition” containing 17 signatures. Petroffski objected to the validity of the petition at BOE. Petroffski argued that the date in which the primary is to held is blank, invalidating the petition. After consideration at the BOE, Commissioner Egger voted to sustain the objection and Commissioner Cohen voted to validate the petition. Therefore, with a split vote, the petition was not sustained and remained valid. Pursuant Article 16 of the Election Law, Petroffski initiated this current action seeking an order declaring the petition invalid and striking Carinci’s petition and retraining BOE from including his name on the primary ballot. Petroffski argued that omitting the date of the primary election on the petition was a fatal error which required invalidation. Carinci acknowledged the errors, however, argued that the Court should consider the BOE commissioners’ letter memorandum

¹ All the papers filed in connection with this motion are included in the electronic file maintained by the County Clerk and have been considered by the Court.

which upheld the validity of Michael Kaiser’s petition claiming Kaiser’s errors were not misleading. It should be noted that the case law Carinci submitted contained no relevant case law to Carinci’s argument. The memorandum cited case law from Arizona Supreme Court, which is not binding in New York State and will not be discussed below. The Court reviewed all submissions and decides as discussed below.

LEGAL DISCUSSION AND ANALYSIS

“The date of the election is information statutorily required to appear on each sheet... [pursuant NY CLS Elec § 6-132] and strict compliance therewith is necessary in order to overcome a challenge to the petition on that basis.” O'Connor v. Salerno, 105 A.D.2d 487, 488 (3rd Dept. 1984). Further, caselaw has provided that failure to correctly state the day of the primary election requires the invalidation of the designating petition. See Sternberg v. Hill, 269 A.D.2d 730 (3rd Dept. 2000).

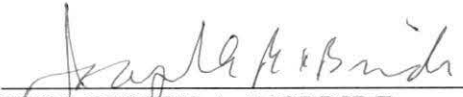
Here, the Court finds that upon review of the Designating Petition submitted by Carinci, it is a one-page document with 17 signatures. The area for the date of the election is left blank. Based on the Court’s reading of the applicable election law, for designating petitions pursuant NY CLS Elec § 6-132, the information contained within the petition form shall substantially comply with the statute in the enumerated form, including date of the election. Here, Carinci’s petition does not comply with the statutory requirements pursuant the Election Law for Designating Petitions. Therefore, each page of the petition that does not comply must be invalidated. In this case, that is just one page and therefore the entire petition.

CONCLUSION

The Court finds that the fatal error contained within Carinci’s Designating Petition invalidates the entire petition. Carinci’s petition is stricken and BOE is restrained from including Carinci’s name on the June 22, 2021 primary ballot for the position of Madison County Supervisor for Wards 4, 5, and 6 of the City of Oneida. Petroffski’s petition is GRANTED.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this DECISION AND ORDER by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: 4/19, 2021
Norwich, New York



HON. JOSEPH A. MCBRIDE
Supreme Court Justice