

Petroffski v Kaiser

2021 NY Slip Op 31402(U)

April 19, 2021

Supreme Court, Madison County

Docket Number: EF2021-1297

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.

MICHAEL KAISER and MADISON COUNTY
BOARD OF ELECTIONS,

Defendants.

DECISION AND ORDER

Index No.: EF2021-1297

APPEARANCES:

COUNSEL FOR PLAINTIFF:

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DEFENDANT:

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JOSEPH A. MCBRIDE, J.S.C.

This matter follows a lawsuit initiated by Petitioner, Lori Petroffski (“Petroffski”) against Michael Kaiser (“Kaiser”), 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 Kaiser for City of Oneida, 6th Ward Councilor and Restraining BOE from placing Kaiser’s name on the primary ballot for June 22, 2021. The matter was scheduled for appearances on April 15, 2021 and Kaiser appeared via Microsoft Teams and orally opposed the petition. BOE appeared and took no position on the matter. Subsequent to the appearance, and with the Court’s permission, Kaiser filed opposition by way of a letter memorandum memorializing BOE’s decision to validate the 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 resident of ward 6 in the city of Oneida, and a registered voter entitled to vote in the public office in question. Kaiser submitted a “Designating Petition” containing 9 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. Further, the public office or party position is misleading as Kaiser merely put “City of Oneida Ward 6” rather than correctly labeling the position for which he sought candidacy. 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 Kaiser’s petition and retraining BOE from including his name on the primary ballot. Petroffski argued that these two defects are fatal errors which required invalidation. Kaiser acknowledged the errors, however, argued that the Court should

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.

consider the BOE commissioners' letter memorandum which upheld the validity of the petition claiming the errors were not misleading. It should be noted that the case law Kaiser submitted contained one relevant Third Department case regarding the party position, though upholding an alternative conclusion than put forth by Kaiser. The memorandum further 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

“It is settled that the name of the public office or party position sought must be clearly set forth on the designating petition.” Bliss v. Nobles, 297 AD2d 457, 457-58 (3rd Dept. 2002). Simply putting the district's geographical location as opposed to providing “sufficiently informative” descriptions of the public office title, is not adequate and the omission of such causes the designated petition invalid. See Id. at 458. Moreover, “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 Kaiser, it is a one-page document with nine signatures. The area for the date of the election is left blank and the “Party Position” box merely states a geographical location. 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 be substantially in the enumerated form. Including date of the election and title of the applicable position. Failure to comply will cause the petition to be invalidated. While the Third Department has held that petitions will be validated if they are “sufficiently informative” not to mislead the voting public, the Third Department specifically held that simply putting the district's geographical location is not adequate. See Bliss, 297 AD2d at 458. Here, Kaiser's petition does not comply with the statutory requirements pursuant the Election Law for Designating Petitions. Therefore, each

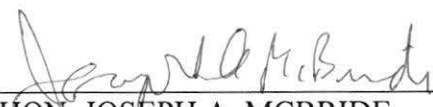
page of the petition that does not comply must be invalidated. In this case, that is just one page and therefore the entire petition.

CONCLUSION

The Court finds that the two distinct fatal errors contained within Kaiser’s Designating Petition invalidate the entire petition. Kaiser’s petition is stricken and BOE is restrained from including Kaiser’s name on the June 22, 2021 primary ballot for the position of Oneida City 6th Ward Councilor. 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