

Day v Watkins

2021 NY Slip Op 31555(U)

April 30, 2021

Supreme Court, Onondaga County

Docket Number: 003883/2021

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 April 30, 2021.

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

SUPREME COURT OF THE STATE OF NEW YORK
ONONDAGA COUNTY

ED DAY; EDWARD T. MARKUNAS; FRANK J. HAGEN; DAVID J. PERRY; GEORGE HOEHMANN; DONALD FRANCINO; SCOTT MILLICH; ANDREW ZAVOSKI; and JAMES F. FLYNN,

Index No. 003883/2021

(Previously under Index No. 031821/2021 in Rockland County)

Petitioners,

v.

L'TANYA WATKINS; MICHAEL F. CURLEY; CHARLES C. BARONE; JO MEEGAN CORRIGAN; JEFFREY GREENBERG; SAMUEL SALGADO HERNANDEZ; ROBERT MALONE; ADAM KAUFMAN; SHARI LIN FISHBERG; LAUREN SHIMKO; SHERRY MCGILL; ROCKLAND COUNTY BOARD OF ELECTIONS; THE WORKING FAMILIES PARTY OF NYS; THE EXECUTIVE BOARD OF THE WORKING FAMILIES PARTY (WFP) OF NYS; JONATHAN WESTIN and DANIEL LANGENBUCHER,

DECISION, ORDER AND JUDGMENT

Respondents.

This is a special proceeding pursuant to Election Law § 16-102(1) challenging the Working Families Party's designated candidates for elected offices in Rockland County. Petitioners allege that the designations are invalid because the county-wide certificate of authorization (commonly known as a *Wilson-Pakula* authorization) filed with the Board of Elections is a legal nullity since it was signed electronically (and not by hand) and acknowledged remotely by video conference. In response, the Working Families Party ("WFP") and the Respondent candidates contend that there was a failure to join necessary parties, and that the

Wilson-Pakula authorization is effective because it was properly signed in accordance with the Electronic Signatures and Records Act and lawfully acknowledged pursuant to the Governor's emergency pandemic directives under Executive Order 202.7. For the reasons set forth below, the relief requested in the Verified Petition is **DENIED**, and the Petition is **DISMISSED**, with prejudice.

I.

Under New York's fusion voting system, candidates can, if properly authorized, run for elected office on multiple party lines. Political parties have the power to control their ballot lines, and a nonmember cannot be designated as a party candidate without first receiving, and timely filing, a proper *Wilson-Pakula* authorization issued by the party (Election Law § 6-120[3]). Here, since the Respondent candidates are not registered members of the Working Families Party, they were required to timely file a *Wilson-Pakula* authorization along with their WFP designating petitions to gain access to the WFP's ballot line. For the authorization to be effective, it had to "be signed and acknowledged by the presiding officer and the secretary of the meeting at which such authorization was given," and then filed with the Board of Elections "not later than four days after the last date to file the designating petition" (Elections Law §§ 6-106; 6-120[3]).

As the record establishes, on March 25, 2021, the Executive Board of the Working Families Party of New York State met remotely via Zoom video conference in accordance with Executive Order 202.93 to authorize candidates in the 2021 local elections across the state. Later that day, Jonathan Westin (the Presiding Officer of the authorizing meeting and Working Families Party Co-Chair) and Daniel Langenbacher (Working Families Party Assistant Secretary) met again remotely with William Sacks (a notary public) by Zoom video conference to complete the cross-

endorsement process and issue the *Wilson-Pakula* authorization designating 15 candidates for public office in Rockland County.

At the beginning of this meeting, Westin and Langenbucher (who were physically in their Kings County homes) held up and showed Sacks (who was physically in his New York County office) their driver's licenses. Sacks watched remotely, through Zoom, as the party officers separately signed their names by hand on blank pieces of paper. Westin and Langenbucher then photographed their signatures using their cell phones, and uploaded the digital images to their individual computers. Next, Westin and Langenbucher personally affixed the digital images of their hand-written signatures to the digital version of the *Wilson-Pakula* authorizations (which Langenbucher had earlier prepared and shared at the virtual meeting on Google Drive) by electronically "cutting-and-pasting" the downloaded image into the appropriate signature blocks on the certificates. Westin and Langenbucher viewed, and signed, the authorizations county by county in alphabetical order. With the use of available technology, all of this was observed, over many hours, by Sacks in real time.

For his part, Sacks – having verified Westin and Langenbucher's identity and watched them personally place their digital signatures on the digital certificates – printed the *Wilson-Pakula* authorizations on paper, notarized them by hand, scanned the completed documents, and then electronically transmitted them to Langenbucher. Finally, Langenbucher printed the completed digital version of the certificates of authorization, and sent the appropriate one to the Rockland County Board of Elections by regular and overnight mail. This same procedure was followed with the substitute *Wilson-Pakula* authorizations that were subsequently executed by Westin and Langenbucher (before different notary publics) on March 29, 2021 and March 31, 2021.

On April 5, 2021, Petitioners – purporting to be both objectors and aggrieved candidates – commenced this special proceeding in Rockland County Supreme Court challenging the Respondent candidates’ designating petitions on the grounds that the *Wilson-Pakula* authorization was invalid or, worse, fraudulent, because the paper document filed with the Board of Elections did not contain original signatures. The Court granted the Order to Show Cause on April 8, 2021 (NYSCEF Doc. 12). On April 22, 2021, Chief Administrative Judge Lawrence Marks issued Administrative Order 124/2021 (amended by AO/124a/2021), transferring the action to Onondaga County Supreme Court, and assigning it to the Hon. Scott J. DelConte, J.S.C. (NYSCEF Doc. 18). Altogether, 14 related actions challenging Working Families Party certificates of authorization filed with County Boards of Elections across the state were assigned to this Court.

On April 23, 2021, a consolidated briefing, hearing and argument schedule was issued for all 14 actions (NYSCEF Doc. 30). On April 27, 2021, Respondents Westin and Langenbucher, along with non-party witness Sacks, testified at a consolidated virtual hearing with respect to the signing and acknowledgement of the challenged certificates of authorization. On April 28, 2021, argument was held on the Petitions, virtually, in all related actions.

II.

A Court presiding over a special proceeding under Article 16 of the Election Law must resolve all potentially dispositive procedural objections before addressing the underlying merits of the action (*Castracan v Colavita*, 173 AD2d 924, 925 [3d Dept 1991]). Here, Respondents argue that: (1) this is a special proceeding under the Election Law and, therefore, Petitioners have no basis to seek declaratory or affirmative relief under CPLR 3001 or Article 78; (2) that there was a failure to join necessary parties; and (3) that any claims of fraud were not pled with the specificity required by CPLR 3016 and must be dismissed (NYSCEF Doc. 23).

Beginning with the nature of the relief requested in this action, although Petitioners are attacking the validity of the Working Families Party's *Wilson-Pakula* authorization, the ultimate relief that they seek is to void the Respondent candidates' designating petitions pursuant to Election Law § 16-102 (*see e.g. NY State Comm. of the Independence Party v NY State Bd. of Elections*, 87 AD3d 806, 809 [3d Dept 2011]; NYSCEF Doc. 1). Accordingly, the jurisdiction of this Court is strictly limited by the express provisions of the Election Law (*Scaringe v Ackerman*, 119 AD2d 327, 328 [3d Dept 1986] *affd* 68 NY2d 885 [1986]), and this Court cannot grant relief pursuant to CPLR 3001 or Article 78 except as otherwise available in an Election Law proceeding (*NY State Comm. of the Independence Party*, 87 AD3d at 810). To the extent that Petitioners seek any relief beyond the express provisions of the Election Law, such claims are dismissed.

Next, with respect to necessary parties, the Court has an obligation to ensure, *sua sponte*, that all individuals who may be inequitably affected by the relief sought by Petitioners have been joined as parties (CPLR 1001[a]; *Manupella v Troy City Zoning Bd. of Appeals*, 272 AD2d 761, 763 [3d Dept 2000]; *Fulani v Smith*, 181 AD2d 940, 941 [3d Dept 1992]). Where, as here, the facial validity of a *Wilson-Pakula* authorization is challenged, each candidate named in the certificate must be joined as a necessary party (*Masich v Ward*, 65 AD3d 817 [4th Dept 2009]). Unlike multi-candidate designating petitions (*see Buchanan v Espada*, 88 NY2d 973, 975 [1996]), *Wilson-Pakula* authorizations are not unique, or separate, to each of the candidate named on them. They are singular documents that apply equally to all of the named candidates, who are inextricably interwoven through the party's authorization (*Masich*, 65 AD3d at 617; *see also Castracan*, 173 AD2d 924 [reaching the same conclusion with certificates of nomination]).

Consequently, every candidate named in a *Wilson-Pakula* authorization is entitled to defend the authorization, which means that each is a necessary party and all must be joined in an Election Law proceeding challenging its facial validity. Here, Petitioners failed to name cross-endorsed candidates Patrick Carroll and Mari Morrison as Respondents in this action. Since the Petitioners failed to join two individuals as parties in this action despite the fact that they were non-judicial candidates named on the challenged *Wilson-Pakula* authorization, this Court has no choice but to dismiss the Petition, in whole, pursuant to CPLR 1001(a) for failure to join necessary parties.

III.

The Court does not reach any of the other issues in this action. However, were the Court to reach the merits of the Petitioners' application, the Petition would be dismissed for the reasons set forth in the April 30, 2021 Decision, Order and Judgment in *Knapp v Hess* under Onondaga County Index Number 003260/2021 (NYSCEF Doc. 53). Accordingly, after consideration of all of the papers filed in this action and the argument of counsel for the parties, and upon due deliberation, it is hereby

ORDERED that relief requested in the Petition is **DENIED**, and the Petition is **DISMISSED**, with prejudice, for the failure to join necessary parties; and it is further

ORDERED that counsel for the Respondent Rockland County Board of Elections shall contact the Court's Chambers to make arrangements for the return of the original documents submitted pursuant to the Court's April 23, 2021 Scheduling Order.

Dated: April 30, 2021



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

ENTER.

APPEARANCES:

Messina Perillo & Hill, LLP *by John Ciampoli, Esq.* on behalf of the Petitioners

Daniel Szalkiewicz & Associates, P.C. *by Daniel S. Szalkiewicz, Esq.* on behalf of Rockland County Democratic Election Commissioner

Office of the Rockland County Attorney *by Thomas E. Humbach, Esq.* on behalf of the Rockland County Board of Elections

John R. Dicioccio, Esq. PC *by John R. Dicioccio, Esq.* on behalf of Rockland County Republican Election Commissioner

Levy Ratner PC *by Alexander C. Rabb, Esq.,* on behalf of Respondents the Working Families Party, The Executive Board of the Working Families Party, Jonathan Westin and Daniel Langenbucher

PAPERS CONSIDERED:

1. Verified Petition, sworn to April 7, 2021 (NYSCEF Doc. 1);
2. Amended Order to Show Cause of the Hon. Charles D. Wood, J.S.C., entered April 8, 2021 (NYSCEF Doc. 12);
3. Administrative Order 124-2021 (NYSCEF Doc. 18);
4. Verified Answer of Working Families Party Respondents and Respondent Candidates, sworn to April 26, 2021 (NYSCEF Doc. 23);
5. Affirmation of Alexander Rabb, Esq., in Support of Respondents' Verified Answer in Opposition to Petitioners' Verified Petition, Affirmed April 26, 2021, with Exhibits 1 through 4, attached (NYSCEF Docs. 24 to 28);
6. Affirmation of Daniel S. Szalkiewicz, Esq. in Opposition, affirmed April 26, 2021 (NYSCEF Doc. 35); and
7. Original Certificate of Authorization (NYSCEF Doc. 38).