

Matter of Reinhart v New York State Bd. of Elections
2021 NY Slip Op 31990(U)
July 29, 2021
Supreme Court, Albany County
Docket Number: 906219-21
Judge: Christina L. Ryba
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of

ANTHONY REINHART, Individually and as Chairman
of the Richmond County Republican Committee of
New York, JESSICA L. RIOS, Individually and as
Secretary Richmond County Republican Committee of
New York,

Petitioners,

-against-

DECISION/ORDER

Index No.906219-21

RJI No. 01-21-138725

NEW YORK STATE BOARD OF ELECTIONS,
PETER S. KOSINSKI, as Co-Chair of the New York
State Board of Elections, DOUGLAS KELLNER,
as Co-Chair of the New York State Board of Elections,
ANDREW J. SPANO, as Commissioner of the New York
State Board of Elections, and ANTHONY J. CASALE, as
Commissioner of the New York State Board of Elections,

THE BOARD OF ELECTIONS IN THE CITY
OF NEW YORK, and

JOHN CLINTON, Objector,

Respondents.

APPEARANCES:

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Board of Elections, Douglas Kellner and
Andrew Spano
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Peter Kosinski
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Bronx, NY 10464

RYBA, J.,

On July 16, 2021, respondent Board of Elections of the City of New York (hereinafter the City Board of Elections) received a Certificate to Fill Vacancies in Party Positions which purported to name certain individuals as Delegates to the Republican Judicial Convention of the 13th Judicial District from the 61st, 62nd, 63rd and 64th Assembly Districts of the State of New York. A general objection challenging the Certificate to Fill Vacancies was thereafter filed by objector-respondent John Clinton with the City Board of Elections. Petitioners, both duly registered voters enrolled in the Republican Party who are eligible to vote in the November 3, 2021 General Election and were named in the Certificate to Fill Vacancies as Delegates to the Judicial Republican Convention within the 62nd Assembly District, commenced this proceeding by Order to Show Cause on July 22, 2021. The petition seeks an order 1) adjudging and/or declaring that petitioners are entitled to their seats as Judicial Delegates to the Republican Judicial Convention for the 13th Judicial District, and 2) directing respondent New York State Board of Elections (hereinafter the State Board of Elections) to certify a roll call for the Republican Judicial Convention of the 13th Judicial District to select the nominees to Justice of the Supreme Court to be elected at the November 3, 2021 General Election.

Clinton filed an Answer and a Demand to Change Venue pursuant to CPLR 511 (b) and 503 (a) and (c), asserting that venue was improperly placed in Albany County and that this matter should be transferred to New York County, where the City Board of Elections has its principal place of business. The City Board of Elections has also filed an Answer in which it requests, inter alia, an order transferring venue in this matter to New York County. Respondents Andrew J. Spano and Douglas A. Kellner, who respectively serve as a Commissioner and a Co-Chair of the State Board

of Elections, join in the request to transfer venue to New York County. Petitioner opposes the applications to change venue. Respondents Anthony J. Casale and Peter S. Kosinski, who also respectively serve as a Commissioner and a Co-Chair of the State Board of Elections, have indicated that they take no position on the merits in this matter. Oral argument was conducted virtually via Teams on July 29, 2021, the return date of petitioners' Order to Show Cause.

Venue in this matter was placed in Albany County based upon the location of the State Board of Elections' principal place of business (CPLR 503 [a] [c]). The moving respondents contend that the State Board of Elections is not a proper party to this proceeding, and that therefore they are entitled to transfer venue as of right to New York County, where the only proper parties are located. It is well settled that "[w]here venue is initially placed on the basis of the principal place of business of an improper party, a motion to change venue should be granted *after the action is dismissed as against the improper party*" (Pittman v Maher, 202 AD2d 172, 175 [1994]; see, Scuzo v Safdar, 134 AD3d 511, 512 [2015]; Clase v Sidoti, 20 AD3d 330, 331 [2005]) (emphasis supplied). Notably, no formal motion seeking dismissal of the petition against the State Board of Elections is pending before this Court. Accordingly, the Court declines to render a determination as to whether the State Board of Elections should be dismissed from this proceeding as an improper party. As the State Board of Elections remains a party to this proceeding, the moving respondents have failed to demonstrate that a change in venue is warranted as of right, and the motion therefore "[becomes] one addressed to the court's discretion" (Callanan Indus. v Sovereign Constr. Co., 44 AD2d 292, 295 [1974] ; see, Obas v Grappell, 43 AD3d 431, 432 [2007]). Discretionary venue determinations will not be disturbed unless the Court clearly abuses its discretion (see, Blaine v International Bus. Machines Corp., 91 AD3d 1175 [2012]).

The principal place of business of the City Board of Elections is located in New York County, in close proximity to Richmond County where the material witnesses in this matter reside. Notably, New York County is the venue of the companion proceeding of John Clinton v The Board of Elections in the City of New York et al. (Index No. 156842/2021), in which Clinton seeks to invalidate the very same Certificate to Fill Vacancies which forms the basis of the present matter. Permitting two competing proceedings involving the same subject matter to remain pending in two different jurisdictions would waste valuable judicial resources and create the potential for inconsistent determinations. In view of the foregoing, the Court finds that “the convenience of material witnesses and the ends of justice will be promoted” by a discretionary change in venue to New York County (CPLR 510 [3]; Manchester Technologies Inc. v Hansen, 6 AD3d 806, 808 [2004]; Vasta v Village of Liberty, 235 AD2d 1006 [1997]) . Accordingly, venue in this proceeding is transferred to New York County, where the matter may be heard in conjunction with John Clinton v The Board of Elections in the City of New York et al. (Index No. 156842/2021). In view of this determination, petitioners’ motion to transfer venue of the companion case to Albany County for consolidation with this matter is denied.¹

For the foregoing reasons, it is

ORDERED that a change in venue is granted, and the Clerk of the County of Albany is directed to transfer all papers in this matter to the New York County Clerk.

This shall constitute the Decision and Order of the Court, the original of which is being transmitted to the Albany County Clerk for electronic filing and entry. Upon such entry, counsel for

¹ The Court notes that the motion was served only one day in advance of the return date. Accordingly, petitioners failed to give timely notice of the motion pursuant to CPLR 2214 (b).

respondent John Clinton shall promptly serve notice of entry on all other parties (see, Uniform Rules for Trial Courts [22 NYCRR] § 202.5-b [h] [1], [2]).

Dated: July 29, 2021



HON. CHRISTINA L. RYBA
SUPREME COURT