

Harkenrider v Hochul
2022 NY Slip Op 32400(U)
May 11, 2022
Supreme Court, Steuben County
Docket Number: Index No. E2022-0116CV
Judge: Patrick F. McAllister
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW,
SUSAN ROWLEY, JOSEPHINE THOMAS,
AND MARIANNE VIOLANTE,

Index No.
E2022-0116CV

Petitioners,

ORDER

-against-

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, AND THE NEW YORK
STATE LEGISLATIVE TASK FORCE ON
DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT,

Respondents.

PRESENT: *Hon. Patrick F. McAllister,*
Acting Supreme Court Justice

The Court of Appeals Remittitur in this matter directed the record of the proceedings of the Court of Appeals be remitted to this Court “there to be proceeded upon according to law.” The Court of Appeals provided “[w]e are confident that, in consultation with the Board of Elections, Supreme Court can swiftly develop a schedule to facilitate an August primary election, allowing time for the adoption of new congressional maps, the dissemination of correct information to voters, the completion of the petitioning process, and compliance with federal voting laws, including the Uniformed and Overseas Citizen Absentee Voting Act...” In accordance with that command, to facilitate the orderly unfolding of elections for State Senate and Members of the United States House of Representative, on Constitutionally sound maps

changes to the political calendar and certain nominating and designating processes must be provided for. . On May 10, 2022, the United States Federal District Court for the Northern District of New York (Judge Gary Sharpe) ordered an August 23, 2022 primary for Member of the United States House of Representatives from New York “to accommodate New York’s congressional redistricting process” provided that such election and the subsequent General Election shall be fully compliant with federal laws, in particular those related to military and overseas voters. Dates and methods recommended herein are recommended by the New York State Board of Elections.

NOW, therefore, upon consideration of all papers and proceedings heretofore had herein, and after due deliberations it is

ORDERED that ballot access for the August 23, 2022 primary elections for State Senate and offices or party positions elected by Congressional Districts, including the public office of Member of House of Representatives and members of any party state committee elected by Congressional District, shall be by the following methods, which are not mutually exclusive:

(1) *Ballot Access Method One: Candidates who previously qualified for ballot access for the June 28, 2022 primary:*

State Senate Districts. A person duly designated for nomination at the June 28, 2022 primary for the office of New York State Senator, whose petition was valid at the board of elections or by determination of a court of competent jurisdiction, shall be deemed to have been likewise duly designated by the same party for the office of State Senator at the August 23, 2022 primary election in any Senate District for which they are constitutionally and legally eligible to run, to be specified by such candidate in a signed writing filed with the appropriate board of elections no later than May 31, 2022. No new acceptance or authorization shall be required. The State Board of Elections shall set forth the elements that must be contained in such writing no later than May 15, 2022 and shall conspicuously post the same on their web site. In addition, the State Board of Elections shall advise all county boards of election of the elements that must be contained therein.

Congressional Districts. A person duly designated for nomination at the June 28, 2022 primary for the office of Member of Congress, in any district, whose petition was valid at the board of elections or by determination of a court of competent jurisdiction, shall be deemed to have been likewise duly designated by the same party for the office of Member of Congress at the August 23, 2022 primary election in any one Congressional District, to be specified by such candidate in a signed writing filed with the appropriate board of elections no later than May 31, 2022. No new acceptance or authorization shall be required. The State Board of Elections shall set forth the elements that must be contained in such writing no later than May 15, 2022 and shall conspicuously post the same on their web site. In addition, the State Board of Elections shall advise all county boards of election of the elements that must be contained therein.

(2) *Ballot Access Method Two: Party Designating petitioning (and opportunity to ballot petitioning) for any candidate eligible to seek the aforesaid offices or positions, shall occur in accordance with law such that the maximum number of signatures required on any such*

designating petition for a State Senate District shall be 850 and for a Congressional District shall be 1,062, or 4.25% of the number of enrolled members of the party in such district, whichever is less. The requirements of valid acceptances and authorizations shall apply.

ORDERED that the following political calendar dates shall apply for the primary election to be held on August 23, 2022, for State Senate and offices or party positions elected by Congressional Districts, with all filings required to be made at the appropriate board of elections with no filings permitted by mail except to the extent that any mailed filing is actually received by the last date allowed.:

BALLOT ACCESS METHOD ONE: PRIOR CANDIDATE QUALIFICATION	
5/31/22	Last day to file Certificate to use Prior Petition specifying district
6/3/2022	Last day to decline designation
6/6/2022	Last day to file a substitution after a declination
6/10/2022	Last day to authorize substitution

BALLOT ACCESS METHOD TWO: DESIGNATING PETITIONING		
5/21/22	First day to sign	1 day after the district lines are finalized and published.
6/8-6/10	Filing Period	18-20 days after First day to sign Designating Petition
6/13/22	Last day to accept or decline nomination	3 days after last day to file Designating Petition
6/13/22	Last Day to Authorize	3 days after last day to file Designating Petition
6/15/22	Last day to file substitution to fill vacancy created by a declination	2 days after last day to decline Designating Petition
Rolling	General Objections	3 Days after Designating Petition is filed

6/15/22	Specific Objections	5 Days after last day to file Designating Petition (fixed date)
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ORDERED that the following political calendar dates shall apply to the independent nominating process for Member of Congress and New York State Senate, for the November 8, 2022 General Election for State Senate and Member of New York State House of Representatives, with the signature requirements provided for by current law to be unchanged, as follows, with all filings required to be made at the appropriate board of elections with no filings permitted by mail except to the extent that any mailed filings is actually received by the last date allowed:

5/21/22	First day to sign	1 day after the district lines are finalized and published.
6/27-7/5	Filing Period and Last Day to Sign	Final week of six week period (6-138 (4)) with added day owing to July 4
7/11/22	Last day to accept or decline nomination	3 days after last day to file rolls to Monday
7/12/22	Last day to file substitution to fill vacancy created by a declination	6 days after last day to file
rolling	General Objections	3 days after petition is filed
7/11/22	Specific Objections	5 days after last day to file petition

ORDERED that time frames for the August 23 primary applicable to absentee ballots, certification of the elections, voter registration cutoffs, campaign financial disclosure and early voting and transmission of military and overseas ballots shall be as provided for by current law as measured from the date of the August 23, 2022 primary election;


ORDERED that the State Board of Elections shall post a full calendar of dates on the New York State Board of Elections web site no later than May 21, 2022;

ORDERED this court will entertain any applications from the New York State Board of Elections for any further or additional accommodations required to ensure political calendar

compliance and actual transmission of ballot requirements, with all provisions of federal law related to transmission of military and overseas ballots;

ORDERED that nothing herein shall be construed to prevent the New York State Legislature from providing for an August 23, 2022 UOCAVA compliant election calendar and ballot access schema by statute in lieu of this *Order* but that in the absence of such a legislatively adopted plan this *Order* is necessary to effectuate the remedial Constitutional imperative to conduct State Senate and Congressional elections on district lines that are Constitutional.

Dated: May 11, 2022



Hon. Patrick F. DeWalt, A.J.S.C.