

**Matter of Piacentino v Oneida County
Republican Comm.**

2022 NY Slip Op 33746(U)

October 28, 2022

Supreme Court, Oneida County

Docket Number: Index No. EFCA2022-002308

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 Oneida on October 28, 2022.

PRESENT: **HON. SCOTT J. DELCONTE, J.S.C.**

SUPREME COURT OF THE STATE OF NEW YORK
ONEIDA COUNTY

In the Matter of **STEVEN PIACENTINO**,

Petitioner,

v.

Index No. EFCA2022-002308

ONEIDA COUNTY REPUBLICAN COMMITTEE, NEW YORK STATE BOARD OF ELECTIONS, ONEIDA COUNTY BOARD OF ELECTIONS, PETER SOBER, MARY PRATT, REED KINDERMAN, DONNA PEKOLA, JOSEPH HOBIKA, JR., JOHN A. NASH, and APPOINTED COMMITTEE MEMBERS JOHN and JANE DOES 1-75,

Respondents.

**DECISION, ORDER AND JUDGMENT ON PETITION AND MOTIONS TO DISMISS
(MOTIONS NOS. 1, 2 and 3)**

APPEARANCES:

Jason B. Ziegler, Esq., *for Petitioner Steven Piacentino*

Fusco Law Office, by Adam Fusco, Esq. *for Respondents Oneida County Republican Committee, Peter Sobel, Mat Pratt, Reed Kinderman, Donna Pekola, Joseph Hobika, Jr., and John A. Nash*

Kenny Shelton Liptak and Nowak, LLP by Daniel K. Cartwright, Esq. and David Walsh, Esq. *for Respondent Oneida County Board of Elections*

Kevin G. Murphy, Esq. *for Respondent New York State Board of Elections*

This is a special proceeding under Article 16 of the Election Law seeking to overturn the internal actions of a political party during its annual meeting. Specifically, Petitioner Steven Piacentino, a member of the Respondent Oneida County Republican Committee, challenges that Committee's annual reorganizational meeting held on September 28, 2022, and asks the Court to order a reconvention (Motion No. 1). Among other contentions, Piacentino alleges that notice was not properly provided to the Committee's membership, and that vacancies were therefore unlawfully filled. Respondents, with the sole exception of the New York State Board of Elections, now move to dismiss the Petition arguing, among other things, that the Court has no jurisdiction because the proceeding was not timely commenced (Motions Nos. 2 and 3). For the reasons set forth below, the motions to dismiss are **GRANTED**, the relief requested in the Verified Petition is **DENIED**, and the Petition is **DISMISSED**.

I.

A Court presiding over a special proceeding under Article 16 of the Election Law must resolve all potentially dispositive procedural objections at the outset, before it can address the underlying merits (*Castracan v Colavita*, 173 AD2d 924, 925 [3d Dept 1991]). Respondents here move by Orders to Show Cause (NYSCEF Docs. 20 and 28) to dismiss the Petition based upon several potentially dispositive procedural defenses, including timeliness under the statute of limitations. These moving Respondents argue that the Petition is time barred because it was not filed and served upon all necessary parties – and, therefore, the proceeding not commenced – within the governing ten-day limitations period under Election Law § 16-102(2) (NYSCEF Docs. 17, 23). Petitioner, while not disputing the controlling caselaw (or submitting opposition papers), argues that strict compliance with the ten-day imitations period would effectively preclude judicial review in election law cases.

The Court of Appeals was absolutely clear that the ten-day limitations period under Election Law § 16-102(2) applies to special proceedings that – just like here – seek to challenge a county political committee’s annual organization meeting (*Kosowski v Donovan*, 18 NY3d 686, 687 [2012] quoting *Sack v Board of Elections of City of New York*, 65 NY2d 958, 959 [1985] “[A] petition challenging ‘the validity’ of a county committee must be commenced ‘within 10 days after the ... organizational meeting of the committee, at the latest.’”). In order to be timely commenced, election law proceedings must be both filed and served on all necessary parties within the limitations period (*see e.g. Wilson v Bowman*, 121 AD3d 1402, 1403 [3d Dept 2014] “[T]o institute a proceeding under Election Law § 16–102, a petitioner must commence the proceeding and complete service on all the necessary parties within the period prescribed by Election Law § 16–102(2).” [internal quotations omitted]).

The ten-day limitations period for Petitioner Piacentino began to run the date the Oneida County Republican Committee assembled for their annual reorganization meeting, September 28, 2022 (NYSCEF Doc. 1). That limitations period, therefore, expired on Saturday, October 8. Since Saturday October 8 and Sunday, October 9 were not business days, and Monday, October 10 was a federal holiday, the deadline to judicially challenge the meeting was automatically extended to the next business day, Tuesday, October 11 (General Obligations Law § 25-a). Piacentino did not electronically file his Petition until 4:36 p.m. on October 11, 2022 – after the Supreme Court Clerk’s Office closed that evening – and as a result his Order to Show Cause was not received and signed by this Court until the following day, October 12 (NYSECF Doc. 14). Most critically, the Order to Show Cause, Petition and supporting papers were then not served until October 14 and 15 (NSCEF Doc. 31).

Because Piacentino's challenge to the Oneida County Republican Committee's reorganizational meeting was not served on the necessary parties within the ten-day limitations period under Election Law § 16-102(2), it is barred by the statute of limitations (*contra Max v Ward*, 107 AD3d 1597, 1599 [4th Dept 2013] [holding that a challenge to the Erie County Democratic Committee's organization meeting "was timely inasmuch as this proceeding was commenced within 10 days of the reorganization meeting"]). This Court cannot disregard the statute of limitations (CPLR 201 ["No court shall extend the time limited by law for the commencement of an action."]). Accordingly, the Petition must be **DISMISSED**.

II.

Where this Court to reach the merits of this action, however, it does not appear from the pleadings that judicial relief would be proper. Absent illegality, "there is a general policy of noninterference with the internal workings of a political party" (*Danielewicz v Aurigema*, 90 AD2d 667 [4th Dept 1982], *appeal dismissed* 58 NY2d 88 [1983]); and, as such, "internal issues arising within political parties are best resolved within the party organization itself and judicial involvement should only be undertaken as a last resort" (*Leherer v Cavallo*, 43 AD3d 1059, 1060 [2d Dept 2007], *quoting Bachman v Coyne*, 99 AD2d 742 [2d Dept 1984]). Even if Piacentino's special proceeding had been timely commenced, based upon the circumstances presented and specifically articulated in the Petition, this Court would providently exercise judicial restraint and not intervene in the routine business of the County Committee (*Valin v Adamczyk*, 286 AD2d 566 [4th Dept 2001]).

III.

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 Respondents motions to dismiss the Petition (NYSCEF Motions Nos. 2 and 3) are **GRANTED**; and it is further

ORDERED and ADJUDGED that the Petition (NYSCEF Motion No. 1) is **DISMISSED**, in its entirety and as against all Respondents, with prejudice.

Dated: October 28, 2022


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

ENTER.

PAPERS CONSIDERED:

1. Order to Show Cause filed October 12, 2022 (NYSCEF Doc. 14);
2. Verified Petition, sworn to October 11, 2022, with Exhibits A through H, attached (NYSCEF Docs. 1, 3-10);
3. Order to Show Cause, filed October 18, 2022 (NYSCEF Doc. 20);
4. Affirmation of Adam Fusco, Esq., affirmed October 17, 2022 (NYSCEF Doc. 17);
5. Verified Answer of Respondents Oneida County Republican Committee, Peter Sobel, Mat Pratt, Reed Kinderman, Donna Pekola, Joseph Hobika, Jr., and John A. Nash sworn to October 17, 2022 (NYSCEF Doc. 18);
6. Order to Show Cause, filed October 20, 2022 (NYSCEF Doc. 28);
7. Affirmation of David H. Walsh, Esq., affirmed October 20, 2022, with Exhibits A through C (NYSCEF Docs. 23-26); and
8. Letter of Kevin G. Murphy, Esq., dated October 26, 2022, with Exhibit (NYSCEF Docs. 29-30).