

**Democratic Comm. of Richmond County, Inc. v City
Council of the City of N.Y.**

2023 NY Slip Op 32590(U)

July 27, 2023

Supreme Court, New York County

Docket Number: Index No. 157150/2023

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

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INDEX NO. 157150/2023

DEMOCRATIC COMMITTEE OF RICHMOND COUNTY,
INC., a.k.a. STATEN ISLAND DEMOCRATS,

MOTION DATE 07/18/2023

Petitioner,

MOTION SEQ. NO. 001

- v -

THE CITY COUNCIL OF THE CITY OF NEW YORK,

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16

were read on this motion to/for PETITION/OSC/PRELIMINARY INJUNCTION.

Upon the foregoing documents, the court denies Petitioner Democratic Committee of Richmond County, Inc., a.k.a. Staten Island Democrats’ (“Petitioner”) Verified Petition and order to show cause and the court dismisses the Verified Petition against Respondent The City Council of the City of New York (“Respondent”) without costs to any party.

Petitioner brought this proceeding against Respondents seeking a declaratory judgment that Respondent must act, pursuant to New York State Election Law § 3-204, by appointing or disapproving Petitioner’s second nominee for the Richmond County Democratic Party’s Commissioner of the Board of Elections in the City of New York (“BOE”) within sixty days of the party’s nomination, a mandatory injunction directing Respondent to appoint the nominee as properly and timely submitted, and to toll the sixty-day statutory deadline.

On July 20, 2023, pending the hearing of this matter, Hon. Debra A. James granted Petitioner’s request for a temporary restraining order tolling the sixty-day statutory deadline, which was set to expire on July 23, 2023.

Oral argument on the Petition and remainder of the order to show cause seeking a preliminary injunction was held before the undersigned on July 26, 2023. The court reserved decision and continued the stay of the sixty-day period granted in the temporary restraining order portion of the order to show cause until the court rendered its written decision.

Petitioner alleges that each county in New York City is permitted one representative from the republican party and one representative from the democratic party to serve as a commissioner of the BOE. Petitioner alleges in substance that on January 31, 2023, Patricia Anne Taylor, resigned her position as the Democratic Commissioner to the BOE from Richmond County. Petitioner further alleges that on March 6, 2023, Petitioner timely and properly filed the certification to nominate Priscilla Marco to fill the vacancy. Respondent failed to act on the nomination by failing to vote to appoint her or disapprove the nomination. As the requisite sixty-day statutory period was close to expiring, Ms. Marco withdrew her nomination. Petitioner further alleges that on May 25, 2023, Petitioner filed the certification necessary to nominate Deborah L. Rose as its second nominee to fill the vacancy. Petitioner further alleges in substance that again Respondent failed to act or vote on Petitioner's nominee.

Petitioner argues that the court must compel Respondent to act on this nomination. Petitioner argues in substance that since Respondent has failed to act on their nominee, the residents of Richmond County have been deprived of having a Democratic representative on the BOE and the residents of the City of New York have been deprived of having full membership on the BOE. Petitioner further argues that Respondent, including its lone democratic Council Member from Richmond County, have refused to bring this matter to a vote and refused to engage in meaningful discussion. Petitioner further argues that the sixty-day statutory deadline was set to expire on July 23, 2023, and if it expires without a vote, then Petitioner will be forced

to recommend a third nominee and the process could continue indefinitely, while depriving Petitioner, Staten Islanders and New Yorkers of their right to a democratic commissioner.

Petitioner further argues that Respondent is required to act on the nomination within sixty days and its refusal to appoint Ms. Rose is a denial of Petitioner's right to designate a nominee for this position.

Respondent opposes the Verified Petition and the order to show cause and opposes Petitioner's request for the preliminary injunction and continued stay. Respondent argues in substance that the court should deny Petitioner's request for relief because Petitioner failed to satisfy its burden for entitlement to a preliminary injunction. Respondent further argues in substance that Respondent has been granted the discretion to discharge its constitutional and statutory functions and the court is precluded from interfering with such discretion. Respondent argues that it has been granted the discretion not to act on Petitioner's nomination and it does not have to appoint, or otherwise vote on Ms. Rose's nomination. Furthermore, Respondent argues in substance that Petitioner is free to recommend a third person to fill this vacancy within the thirty-day period and that if the court compels Respondent to act on Petitioner's nominee by forcing it to vote or appoint Petitioner's nominee, then it would be a clear violation of the separation of powers.

Respondent further argues that Petitioner failed to demonstrate its likelihood of success on the merits because Respondent did not violate the provisions of Election Law § 3-204, irreparable harm, or that the balance of equities favor a preliminary injunction or stay.

Pursuant to Election Law § 3-204(4),

Commissioners of election shall be appointed by the county legislative body, or in the city of New York, by the city council. Provided, however, that if a legislative body shall *fail to appoint* (emphasis added) any person recommended by a party for appointment as a commissioner pursuant to this section, within thirty days after the filing

of a certificate of recommendation with such legislative body, then the members of such legislative body who are members of the political party which filed such certificate may appoint such person. And further provided, if there are no members of the legislative body who are members of the political party which filed such certificate, the appointment shall take effect upon the expiration of thirty days from the date that the certificate was filed. If none of the persons named in any of the certificates filed by a party are so appointed within sixty days after the filing of any such certificate, then such party may file another certificate within thirty days after the expiration of any such sixty day period recommending a different person for such appointment. If a party fails to file a certificate within the time prescribed by this section, the members of the legislative body who are members of such party may appoint any eligible person to such office (Election Law § 3-204[4]).

Here, the court denies Petitioner's request for a preliminary injunction and other relief, the court lifts the stay of the sixty-day period which it previously granted in the temporary restraining order portion of the order to show cause and the court dismisses the Verified Petition. The court agrees with Respondent's arguments and finds that Petitioner failed to demonstrate its entitlement to the relief requested, as it failed to demonstrate a likelihood of success on the merits, irreparable harm, or that the balance of equities tip it in its favor. The court also finds that Petitioner failed to demonstrate that Respondent has a constitutional or statutory duty to appoint Petitioner's second nominee and that Respondent is ignoring such alleged duty by failing to vote on the nominee. The court finds that Respondent has the authority to appoint the nominee, but not the duty to appoint this particular nominee. Additionally, Respondent has the authority not to appoint the nominee, which is what it chose to do in this matter by not voting on the nominee.

Additionally, the court finds that in this instance, the separation of powers prohibits the court from compelling Respondent to appoint Petitioner's nominee and the court cannot direct Respondent to act on the nomination by voting to approve or disapprove Petitioner's nominee. Election Law § 3-204(4) grants Respondent the discretion not to appoint Petitioner's nominee, which includes voting to disapprove the nominee and not voting at all. Therefore, the court finds

that Respondent has not violated this statute, the legislative intent, nor spirit of the statute by failing to vote on Petitioner's nomination.

As set forth above, Election Law § 3-204(4) governs the situation arising in this proceeding where Respondent failed to appoint Petitioner's recommended commissioner. Within thirty days of such failure to appoint, the lone Democratic City Council Member from Richmond County had the authority to appoint the nominee. In this case, she chose not to do so. Therefore, once the sixty-day period expires, Petitioner has a right to file another certificate recommending a different person within thirty days. No where in the statute, nor in controlling case law does it prohibit Petitioner from filing more than two certificates of recommendation. Although a court prohibited a legislative body and county officials from appointing a person who was not recommended by Petitioner in a valid and timely filed certificate of recommendation, that it not the scenario in the instant proceeding (*see Green v County of Chautauqua*, 72 Misc. 3d 713 (Sup Ct, Chautauqua County April 21, 2021). Although the current method may not be the most expeditious method to select a commissioner when the party and the party's legislative member(s) cannot agree on a nominee, it certainly encourages and rewards compromise (*see id.* at 722).

Therefore, Petitioner has the authority to file a third certificate and additional certificates if necessary. Unfortunately, the court shares Petitioner's frustration and concern that the process could continue indefinitely while citizens of Richmond County and the City of New York are deprived of their Democratic representative on the Board of Elections, however Petitioners failed to demonstrate that the court has the authority to compel Respondent to appoint Petitioner's second nominee, to vote on Petitioner's recommendation, nor to act in any other manner with respect to this nomination. Additionally, the court is not persuaded by Petitioner's arguments to

the contrary, nor Petitioner's arguments regarding the applicability of the holdings in the cases relied upon by Petitioner.

Therefore, the court denies Petitioner's Verified Petition and order to show cause, the court lifts the stay of the sixty-day statutory period for which Respondent has to approve Petitioner's nomination which was previously granted in the temporary restraining order portion of the order to show cause as of the date of entry of this decision and order and the court dismisses the Verified Petition without costs to any party.

The court has considered any additional argument raised by the parties which was not specifically addressed herein and the court denies any additional request for relief which was not expressly granted herein.

As such, it is hereby

ORDERED and ADJUDGED that the court denies Petitioner Democratic Committee of Richmond County, Inc., a.k.a. Staten Island Democrats' Verified Petition and order to show cause and the court dismisses the Verified Petition against Respondent The City Council of the City of New York without costs to any party; and it is further

ORDERED that the court lifts the stay of the sixty-day statutory period for which Respondent has to approve Petitioner's nomination, which was previously granted in the

temporary restraining order portion of the order to show cause, as of the date of entry of this decision and order.

This constitutes the decision and order of the court.


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<u>7/27/2023</u> DATE		<u>ERIKA M. EDWARDS, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE