

**Manning v Senecal**

2023 NY Slip Op 32797(U)

August 11, 2023

Supreme Court, Clinton County

Docket Number: Index No. 2023-00023449

Judge: Glen T. Bruening

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT COUNTY OF CLINTON

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JERIKA MANNING, JEFFREY STEPHEN LUCK,  
and JAMES C. MONTY,

Petitioners-Objectors,

-against-

DECISION, ORDER  
& JUDGMENT

AMY ASADOURIAN SENEAL,

Respondent-Candidate,

-and-

Index No. 2023-00023449

CLINTON COUNTY DEMOCRATIC COMMITTEE,  
BRANDI LLOYD as Chair, MARY DYER as Secretary,  
for Purposes of the Meeting Held June 9, 2023,

Respondent-Committee,

-and-

RJI No. 09-1-2023-0312E

CLINTON COUNTY BOARD OF ELECTIONS,  
Respondent,

For an Order Pursuant to Sections 16-100, 16-102 and  
16-116 of the Election Law, Declaring Invalid the  
Certificate of Nomination purporting to authorize  
Amy Asadourian Senecal as a Candidate of the Democratic  
Party for the Public Office of Clinton County Family Court  
Judge at the November 7, 2023 General Election.

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APPEARANCES:

JAMES P. CURRAN, ESQ., Brown & Weinraub, PLLC, Albany, N.Y., for petitioner.

TIMOTHY J. LAWLISS, ESQ., Peru, N.Y., for respondent-candidate.

MARK SCHNEIDER, ESQ., Plattsburgh, N.Y., for respondent-committee.

JACQUELINE M. KELLEHER, ESQ., Plattsburgh, N.Y., for respondent-board.

GLEN T. BRUENING, A.J.S.C.

Petitioners commenced this special proceeding pursuant to Election Law § 16-102 seeking to invalidate the certificate of nomination filed by the Clinton County Democratic Committee nominating Amy Asadourian Senecal as a candidate of the Democratic Party for the public office of Clinton County Family Court Judge at the general election to be held on November 7, 2023. In support of their challenge, petitioners submit the order to show cause dated July 19, 2023 and returnable August 4, 2023 (NYSCEF Doc. No. 12), verified petition dated July 19, 2023 with exhibits A through E (NYSCEF Doc. Nos. 1, 4-9), and emergency affirmation of James P. Curran, Esq., dated July 19, 2023 (NYSCEF Doc. No. 3). Petitioners seek an order declaring the certificate of nomination invalid on the grounds that the Clinton County Democratic Committee failed to properly constitute and organize pursuant to Election Law §§ 2-104 and 2-112.

On July 31, 2023, respondent Amy Asadourian Senecal filed her verified answer with affirmative defense and objection in point of law with exhibit 1 (NYSCEF Doc. Nos. 18-19). On August 1, 2023, respondent Clinton County Democratic Committee filed its verified answer with affirmative defense and objection in point of law (NYSCEF Doc. No. 21), and on August 3, 2023 filed the affidavit of Brandi Lloyd sworn to August 3, 2023 (NYSCEF Doc. No. 25). On August 3, 2023, respondent Clinton County Board of Elections filed its verified answer with exhibit 1 (NYSCEF Doc. Nos. 23-24).

The court held oral argument at the courthouse on August 4, 2023, in which all parties appeared with counsel, except that petitioners Jeffrey Stephen Luck and James C. Monty appeared only by counsel. The court considered the above papers, the oral arguments advanced by all parties, and on consent of all parties, a letter of clarification submitted by Jacqueline M. Kelleher, Esq., dated August 4, 2023 (NYSCEF Doc. No. 26).

On or about July 11, 2023, the Clinton County Democratic Committee filed with the Clinton County Board of Elections a certificate of nomination nominating Amy Asadourian Senecal as a candidate of the Democratic Party for the public office of Clinton County Family Court Judge at the general election to be held on November 7, 2023. The certificate of nomination recites that Amy Assadourian was nominated at a meeting of the Clinton County Democratic Committee held on June 29, 2023, and is signed by Brandi Lloyd as the presiding officer and Mary Dyer as secretary, each with the date of June 29, 2023 appearing opposite their signatures (see verified petition, exhibit A).

On or about July 14, 2023, petitioners each filed with the Clinton County Board of Elections their general objections to the certificate of nomination (see verified petition, exhibit B). Although the verified petition states that specific objections were also filed with the Clinton County Board of Elections, they were not included as an exhibit to the petition. By decision dated July 25, 2023, the Clinton County Board of Elections rejected petitioners' objections to the certificate of nomination stating:

“The Board of Elections has reviewed the Specific Objections filed by Jerika Manning, Jeff Luck, and James Monty on 7/20/2023 in regards to a Certification of Nomination filed by the Clinton County Democratic Party, nominating Amy Asadourian Senecal to the Democratic line for the 2023 General Election. It is the determination of the Board to rule these specific objections as Invalid on Prima Facia Review, as the material within is not within the purview of the Board of Elections, and furthermore there is current litigation regarding the matter”

(Clinton County Board of Elections answer, exhibit 1).

While the petition is fashioned as a challenge to the certificate of nomination, petitioners do not allege that the form of the certificate of nomination is defective. Rather, the petition alleges that the Clinton County Democratic Committee is not a properly constituted county committee of a political party pursuant to Election Law § 2-104 and, therefore, was not

authorized to issue the certificate of nomination. Specifically, petitioners allege that the Clinton County Democratic Committee failed during the 2022 primary to elect at least twenty-five percentum of the committee members required to be elected to constitute a county committee pursuant to Election Law § 2-104 (1) and (3). Petitioners further allege that the Clinton County Democratic Committee failed to hold a mandatory organization meeting after the 2022 primary election pursuant to Election Law § 2-112 (1) (b), and failed to file proof of that meeting pursuant to Election Law § 2-112 (1) (d).<sup>1</sup>

In opposition to the petition, the Clinton County Democratic Committee asserts, as an affirmative defense and objection in point of law, that it is a long-standing constituted county committee that is not subject to the rules for the creation of new county committees set forth in Election Law § 2-104 (1) and (3). Rather, the members of the Clinton County Democratic Committee continue to serve until the next election pursuant to Election Law § 2-106 (4), at which members of the committee are elected pursuant to Election Law § 2-106 (3). Respondents Amy Asadourian Senecal and Clinton County Democratic Committee assert, as affirmative defenses and objections in point of law, that petitioners lack standing to maintain this proceeding, that the proceeding is barred by the statute of limitations, and that petitioners should be equitably estopped from asserting defects relating to the organization meetings held by the Clinton County Democratic Committee.

### STANDING

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<sup>1</sup> Petitioners' allegation that the Clinton County Democratic Committee failed to hold its mandatory organization meeting in 2022 was premised on their other allegation that the Clinton County Democratic Committee failed to file its certificate of officers elected at the 2022 organization meeting with the State Board of Elections as required by Elections Law § 2-112. Respondent Clinton County Democratic Committee did not offer any proof that the certificate of officers was filed, but argued that it was a paperwork error without consequences committed also by the Clinton County Republican Committee. At oral argument, petitioners withdrew their allegation that the organizational meeting was not held, but argued that failure to file the certificate of officers was a fatal defect resulting in the invalidation of the organization meeting. However, petitioners submit no support for their fatality argument, and the court declines to adopt it.

Petitioners are registered with the Republican Party and seek to invalidate a certificate of nomination of a county committee of the Democratic Party pursuant to Election Law § 16-102. Election Law § 16-102 (1) provides that

“[t]he nomination or designation of any candidate for any public office or party position or any independent nomination, or the holding of an uncontested primary election, by reason of a petition for an opportunity to ballot having been filed, or the election of any person to any party position may be contested in a proceeding instituted in the supreme court by any aggrieved candidate, or by the chairman of any party committee or by a person who shall have filed objections, as provided in this chapter, except that the chairman of a party committee may not bring a proceeding with respect to a designation or the holding of an otherwise uncontested primary.”

“Case law has construed this provision as prohibiting a member of one political party from objecting to the certificate of nomination of a candidate of another political party where the nature of the objections relate solely to the internal operations of the other political party” (Matter of Rose v Smith, 220 AD2d 922, 924 [3d Dept 1995] [internal citations omitted]). This interpretation also prevailed under the predecessor sections of the Election Law of 1946 prior to recodification in 1976 (see Matter of Wydler v Cristenfeld, 35 NY2d 719, 719 [1974]).

In Matter of Rose v Smith, Republican Party members had objected to certificates of nomination on the grounds that they were not executed by the proper Democratic County Committee. That court held that

“[s]tanding to file objections should be denied where they relate to the internal operations of another political party. Respondents, as Republican Party members, thus should not have been permitted to file objections to the internal workings of the Democratic Party’s nominating procedures”

(Smith, 220 AD2d at 924). Here, petitioners are objecting to the certificate of nomination on the very similar ground that the officers who executed the certificate of nomination were not authorized to do so. This challenge is directed at the heart of the internal operations of another political party.

In another similar case, a member and candidate of the Democratic Party challenged the certificates of nomination approved at a judicial nominating convention of the Conservative Party on the grounds that the composition of the convention's delegates did not comply with the specific provisions of the Election Law requiring "that the number of delegates selected shall meet the ratio between the number of votes that the party's last gubernatorial candidate received in each assembly district and the total number received on that line statewide" (Matter of Nicolai v Kelleher, 45 AD3d 960, 963 [3d Dept 2007]). The court ruled that the petitioner lacked standing, finding that "[a] nonparty member has no interest in whether the statutory violations asserted here occurred, particularly in the absence of any claim that the nomination that resulted does not represent the will of the party that conducted the convention" (id.).

This rule does not deprive all nonparty members from challenging nominations or designations. Standing will lie where the challenge is to the sufficiency of the certificate and other matters that "transcend the mere regulation of the affairs of a political party," such as the requirement to file a Wilson-Pakula authorization, which are not at issue in this case (Matter of Gross v Hoblock, 6 AD3d 933, 936 [3d Dept 2004] [internal quotation marks and citations omitted]).

Respondents Clinton County Democratic Committee and Amy Asadourian Senecal correctly point out that petitioners have raised no objections to the four corners of the certificate of nomination. Nor is there any claim that the certificate does not represent the will of the party. Rather, petitioners claim that there were insufficient Clinton County Democratic Committee members elected at the 2022 primary election and, because of that, the Clinton County Democratic Committee could not hold its 2022 organization meeting and, therefore, is automatically defunct and unable to issue the certificate of nomination. In support of their

argument for such a draconian result, petitioners point to Election Law § 2-104 (1) which governs the creation of county committees of any party. In order to properly form, that section requires, among other things, the election in each election district within the county of at least two members, and of such additional members as the committee's rules provide, subject to proportionality requirements. Whereas petitioners allege that this section must be met every time there is an election of committee members, respondents Clinton County Democratic Committee and Amy Asadourian Senecal argue that this provision is limited to the initial creation of county committees, and that the rules regarding the election of committee members and the filling of vacancies on the county committee thereafter are governed by Election Law §§ 2-106 and 2-118.

There is no dispute that the Clinton County Democratic Committee was lawfully created. The only dispute is whether the Clinton County Democratic Committee followed the correct procedures to organize each year, and particularly after the 2022 primary election. This dispute necessarily relates to the “internal affairs and operating functions of another political party” (Kelleher, 45 AD3d at 962).

In support of its position, respondent Clinton County Democratic Committee submitted the affidavit of Brandi Lloyd, sworn to on August 3, 2023. In support of her position, respondent Amy Asadourian Senecal submitted the affidavit of Brandi Lloyd, sworn to on July 31, 2023. Chair Lloyd attests that she was elected to the position of Interim Chair of the Clinton County Democratic Committee on July 5, 2022, that she conducted the organization meeting held by the committee on September 27, 2022, and that she was elected chair at that meeting. According to her recollection, there were 169 members of the Clinton County Democratic Committee, and 57 committee members were present at that meeting. She further attests that she has been a

committee member since “at least 2014,” and that the committee has functioned continuously since then.

Petitioners argue that the number of petitions filed for candidates for election as Clinton County Democratic Committee members falls far short of the minimum twenty-five percent threshold required by Election Law § 2-104.<sup>2</sup> Even if petitioners had standing, this argument does not take into consideration that committee memberships can be filled by appointment pursuant to Election Law § 2-118.

“The filling of vacancies in a political party’s County Committee is governed by Election Law § 2-118, which provides, in pertinent part, that, in the case of a failure to elect a member of the committee [or the removal from office of a member of a committee], the vacancy created thereby shall be filled by the remaining members of the committee”

(Matter of Auerbach v Suffolk County Comm. of the Conservative Party, 171 AD3d 731 [2d Dept 2019] [internal quotation marks and citations omitted]). Although petitioners urge the court to conclude that the committee has no authority to fill vacancies unless the Election Law § 2-104 threshold is met at every primary election, Election Law § 2-118 contains no such limitation. The court declines to accept such argument as it is not supported by the statutory scheme and would unnecessarily interfere with the internal affairs and operating functions of county committees.

At oral argument, petitioners suggested that the case Matter of Steward v Fosella, 243 AD2d 715 (2d Dept 1997) best supported their position on the merits. The court notes however, that standing does not appear to have been raised in that case. On the merits, that case is quite

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<sup>2</sup> Attached to the petition as exhibit D are copies of documents entitled “Designation Petition Sec. 6-132, ELECTION LAW,” without any certificate from the custodian of those records. Attached to the petition as exhibit E is a copy of a document entitled “RULES OF THE DEMOCRATIC COMMITTEE OF CLINTON COUNTY STATE OF NEW YORK.” Although the last page of this document includes what appears to be a date-stamp indicating that it was filed with the New York State Board of Elections on August 19, 2022, there is no certificate from the custodian of those records. Petitioners’ reliance on these exhibits highlights that this challenge necessarily concerns the internal affairs and operating functions of the Clinton County Democratic Committee.

distinguishable because, unlike in the present case, the new fledgling political party had failed to timely organize in the first instance.

Based on the above, petitioners lack standing to maintain this proceeding.

### STATUTE OF LIMITATIONS

Election Law § 16-102 (2) provides, in relevant part, that

“[a] proceeding with respect to a primary, convention, meeting of a party committee, or caucus shall be instituted within ten days after holding of such primary or convention or the filing of the certificate of nominations made at such caucus or meeting of a party committee.”

There is no dispute that this proceeding was commenced within 10 days of the filing of the certificate of nomination. However, respondents Clinton County Democratic Committee and Amy Asadourian Senecal argue that the petition is untimely because it challenges not the certificate of nomination itself, and not even the June 29, 2023 meeting that produced the certificate of nomination, but rather the September 27, 2022 organization meeting. Respondents’ characterization of the petition is compelling because petitioners are asking this court to conclude that the Clinton County Democratic Committee has failed to properly organize, which necessarily requires a determination on the results of the primary election and corresponding validity of the September 27, 2022 organization meeting. In other words, if the September 27, 2022 meeting was proper, the certificate of nomination is proper.

Although petitioners cast their challenge as one brought under Election Law § 16-102 (1), that provision does not appear to authorize the challenge to an organization meeting. However, Election Law § 16-102 (2), appears to recognize a challenge to a meeting of a party committee when it results in a certificate of nomination. Moreover, while there is a 10-day statute of limitations to challenge a primary election, there is no explicit statute of limitations for a challenge to an organization meeting that does not result in a certificate of nomination.

Nevertheless, the Court of Appeals has determined that challenges to organization meetings can be brought under the Election Law, filling this apparent statutory gap with a 10-day statute of limitations imposed on challenges to county committee meetings. “We have stated that 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” (Matter of Kosowski v Donovan, 18 NY3d 686 [21012] [internal quotation marks and citations omitted]).

As there is no dispute that the challenge to the 2022 Clinton County Democratic primary or the October 27, 2022 organization meeting of the Clinton County Democratic Committee was not commenced within 10 days of either, this proceeding is time-barred.

Accordingly, it is hereby

ORDERED that the verified petition is dismissed.

This constitutes the Decision, Order and Judgment of the court, which will be uploaded to the New York State Court’s Electronic Filing System (NYSCEF). Counsel is advised of 22 NYCRR 202.5-b (h) (2) relating to notice of entry.

IT IS SO ORDERED.

ENTER.

Dated: August 11, 2023  
Saratoga Springs, New York

  
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Glen T. Bruening  
Acting Supreme Court Justice