

Matter of Schildt v Campanella

2025 NY Slip Op 30696(U)

February 27, 2025

Supreme Court, Monroe County

Docket Number: Index No. E2025004001

Judge: Daniel J. Doyle

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

In the Matter of the Application of
LESLIE SCHILDT, as Candidate for the
12th Legislative District of Monroe County

Decision and Order

Petitioner,

Index No.: E2025004001

vs.

DEBORAH CAMPANELLA, ERIN
LOFTUS, MONROE COUNTY BOARD
OF ELECTIONS, PETER ELDER, as
Commissioner of the Monroe
County Board of Elections, MONROE
COUNTY REPUBLICAN COMMITTEE,
PATRICK REILLY, as Chairman of the
Monroe County Republican
Committee, WHEATLAND REPUBLICAN
COMMITTEE, JAMES KIRCH, as
Chairman of the Wheatland Republican
Committee, RIGA REPUBLICAN
COMMITTEE, CHRISTOPHER
LOCKWOOD, as Chairman of the Riga
Republican Committee, HENRIETTA
REPUBLICAN COMMITTEE, and
CHRISTOPHER CHAMBERLAIN, as
Chairman of the Henrietta Republican
Committee,

Respondents.

For an Order Pursuant to Sections 16-100,
16-102, and 16-116 of the Election Law
Declaring Invalid One Improperly Cast

Vote in the Republican Mini-Convention for
the 12th Legislative District and Ordering a
Recount of all Valid Votes.

Appearances:

Matthew R. Lembke, Esq., CERULLI MASSARE & LEMBKE, Attorney for Petitioner
John T. Refermat, Esq., REFERMAT & DANIEL PLLC, Attorney for Respondents
Monroe County Republican Committee and Patrick Reilly
Daniel E. Strollo, Esq., Attorney for Respondents Deborah Campanella and Erin
Loftus
John P. Bringewatt, Esq., Monroe County Attorney, Maria Rodi, Esq., of counsel, for
Respondents Monroe County Board of Elections and Peter Elder

Doyle, Daniel J.:

In this proceeding Petitioner Leslie Schildt (hereinafter “Schildt”), candidate
for the Republican nomination for the Monroe County Legislature’s 12th Legislative
District (hereinafter “LD 12”), seeks to invalidate the designation of Respondent
Deborah Campanella (hereinafter “Campanella”) as the Republican Party candidate
for LD 12 that occurred at a nominating convention held by Respondent Monroe
County Republican Committee on February 18, 2025. The essence of Schildt’s claim
for relief is that Respondent Erin Loftus (hereinafter “Loftus”) was improperly seated
as a delegate at the nominating convention (as Loftus did not reside in the Town of

Henrietta, in violation of the residency requirements of the Henrietta Republican Committee by-laws), and that Loftus' votes must be declared void.¹

Loftus now moves to: (1) amend her Petition; (2) for an order authorizing substituted service; and (3) for an order granting leave to renew her argument for preliminary injunctive relief.

For the reasons that follow, the motion to amend is GRANTED, the motion for substituted service is GRANTED, and the motion to renew is DENIED.

Relevant Facts

Concomitantly with her Petition, Schildt field a proposed Order to Show Cause seeking (among other relief contained in the Petition) a temporary restraining order prohibiting Respondents Riga Republican Committee, Wheatland Republican Committee, and Henrietta Republican Committee from distributing nominating petitions containing the name of Respondent Deborah Campanella as the Republican candidate for LD 12 and prohibiting Campanella from "producing campaign literature, advertising, and otherwise representing or holding herself out to voters in LD 12 as the properly endorsed Republican Party candidate".

The Court signed the Order to Show Cause but did not grant the requested temporary restraining order. The Court directed that Loftus be served personally.

¹ Loftus is alleged to have cast her weighted vote of 144 votes for Respondent Deborah Campanella.

Schildt now avers that in attempting to serve Loftus personally it was discovered that Loftus was in Hawaii for ten days and her actual address is 30 W. Broad Street, Apartment 409, in the City of Rochester. She avers further that Loftus has lived there since January of 2024.

Schildt argues that as Loftus' address places her in the 138th Assembly District various laws and the by-laws of the Monroe County Republican Party would render her ineligible to participate in the nominating convention wherein Campanella was selected as the candidate for LD 12. Schildt seeks leave to amend her Petition.

Schildt also avers that Campanella is representing to the general public that she is the Republican candidate for LD 12 and seeks to renew her application for a temporary restraining order prohibiting Campanella from doing so.

Motion to Amend the Petition is Granted

“Leave to amend the pleadings “shall be freely given” absent prejudice or surprise resulting directly from the delay (CPLR 3025, subd. [b]; *Fahey v. County of Ontario*, 44 N.Y.2d 934, 935, 408 N.Y.S.2d 314, 380 N.E.2d 146).” (*McCaskey, Davies & Assocs., Inc. v. New York City Health & Hosps. Corp.*, 59 NY2d 755, 757 [1983].) As none of the Respondents have established any prejudice, and the claims and allegations made in the amended Petition are directly related to the claims advanced in the original Petition, there cannot be a claim of surprise. Thus, the motion to amend is GRANTED.

Motion for Substituted Service is Granted

The Court, recognizing that “[e]lection Law proceedings are subject to severe time constraints, and they require immediate action (*see Matter of Tenneriello v. Board of Elections in City of N.Y.*, 104 A.D.2d 467, 468, 479 N.Y.S.2d 72)” (*Master v. Pohanka*, 44 A.3d 1050, 1052 [2nd Dept. 2007]) will authorize substituted service upon Loftus.

As observed by the Appellate Division, Fourth Department in *Safadjou v. Mohammadi* (105 AD3d 1423 [4th Dept. 2013]):

“CPLR 308(5) vests a court with the discretion to direct an alternative method for service of process when it has determined that the methods set forth in CPLR 308(1), (2), and (4) are ‘impracticable’ ” (*Astrologo v. Serra*, 240 A.D.2d 606, 606, 659 N.Y.S.2d 481; *see Matter of Kaila B.*, 64 A.D.3d 647, 648, 883 N.Y.S.2d 132; *see generally Harkness v. Doe*, 261 A.D.2d 846, 847, 689 N.Y.S.2d 586). “Although the impracticability standard is not capable of easy definition” (*Astrologo*, 240 A.D.2d at 606, 659 N.Y.S.2d 481 [internal quotation marks omitted]), “[a] showing of impracticability under CPLR 308(5) does not require proof of actual prior attempts to serve a party under the methods outlined pursuant to subdivisions (1), (2) or (4) of CPLR 308” (*Franklin v. Winard*, 189 A.D.2d 717, 717, 592 N.Y.S.2d 726; *see Contimortgage Corp. v. Isler*, 48 A.D.3d 732, 734, 853 N.Y.S.2d 162; *Astrologo*, 240 A.D.2d at 606, 659 N.Y.S.2d 481; *see also Siegel*, N.Y. Prac. § 75 at 125 [5th ed. 2011]). “The meaning of ‘impracticable’ will depend upon the facts and circumstances of the particular case” (*Markoff v. South Nassau Community Hosp.*, 91 A.D.2d 1064, 1065, 458 N.Y.S.2d 672, *affd.* 61 N.Y.2d 283, 473 N.Y.S.2d 766, 461 N.E.2d 1253).

(*Id.* at 1424.)

Here, Schildt has established reasonable attempts at personal service and that further attempts at service pursuant to CPLR § 308 would be impracticable as she is in Hawaii for ten days and service must be accomplished by February 28, 2025. Thus, the Court will authorize service by email to Loftus at the email provided, and service upon her attorney who has appeared in this proceeding.

Motion for Leave to Renew is Denied

“A candidate's speech during an election campaign “occupies the core of the protection afforded by the First Amendment.” *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346, 115 S.Ct. 1511, 1518, 131 L.Ed.2d 426 (1995).” (*Weaver v. Bonner*, 309 F.3d 1312, 1319 [11th Cir. 2002].) It is immaterial that Schildt believes that Campanella's statements are either false statements negligently made, or true statements that are misleading. “Moreover, false statements made by candidates during political campaigns “may have serious adverse consequences for the public at large.” *McIntyre*, 514 U.S. at 349, 115 S.Ct. at 1529. Nevertheless, “erroneous statement is inevitable in free debate, and ... it must be protected if the freedoms of expression are to have the ‘breathing space’ that they ‘need ... to survive.’” *Brown*, 456 U.S. at 60–61, 102 S.Ct. at 1532–33 (quoting *N.Y. Times v. Sullivan*, 376 U.S. 254, 271–272, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964))(quoting *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405 (1963)). “The chilling effect of ... absolute accountability for factual misstatements in the course of political debate is incompatible with the

atmosphere of free discussion contemplated by the First Amendment in the context of political campaigns.” *Id.* at 61, 102 S.Ct. at 1533.” (*Id.*)

The motion to renew is DENIED.

Based upon the forgoing, and the submissions of the parties², it is hereby

ORDERED that the motion to amend the Petition is GRANTED and Petitioner shall file the amended Petition by February 27, 2025 at 4:00 p.m.; and it is further

ORDERED that the motion that the motion for service by court order pursuant to CPLR § 308 (5) is GRANTED and the Petitioner shall serve a copy of the amended Petition, the Order to Show Cause and all supporting papers (NYSCEF Docket #s 1-4) on Respondent Loftus by email and by serving a copy on counsel for Respondent Loftus by 12:00 p.m. on February 28, 2025; and it is further

ORDERED that the motion to renew is DENIED.

The parties are directed to appear at the previously scheduled appearance on March 3, 2025 at 10:00 a.m. at the Hall of Justice, Rochester, New York for further proceedings on the amended Petition.

Dated: February 27, 2025

Honorable Daniel J. Doyle, JSC

² Petition with exhibits (NYSCEF Docket #s 1-3); Order to Show Cause (NYSCEF Docket #s 4, 7-8); Notice of Motion (NYSCEF Docket # 15); Affidavit with exhibit (NYSCEF Docket # 16-17); Affidavit with exhibit (NYSCEF Docket # 18-19); Affidavit (NYSCEF Docket # 20); Affirmation (NYSCEF Docket # 21); Affirmation in Opposition (NYSCEF Docket # 24); Affirmation (NYSCEF Docket # 25).