

Matter of Wohl v Bruen

2025 NY Slip Op 31701(U)

April 23, 2025

Supreme Court, Rockland County

Docket Number: Index No. 032374/2025

Judge: Thomas P. Zugibe

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application of

LAUREN M. WOHL,

DECISION and ORDER

Index No.: 032374/2025

Petitioner,

-against-

DAVID BRUEN,

Respondent-Candidate,

-and-

THE ROCKLAND 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 to Fill Vacancy purporting to designate Respondent Candidate for the Public Office of Town Clerk, Town of Clarkstown, in the Democratic primary election to be held on June 24, 2025, and Restraining the Board of Elections from Printing and Placing the Name of Said Candidate Upon the Official Ballots of Such Primary Election.

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ZUGIBE, J.

LAUREN M. WOHL (hereinafter referred to as “Petitioner” or “Wohl”) makes an application pursuant to N.Y.S. ELECTION LAW (“Election Law”) §§ 16-100, 16-102 and 16-116 by way of Order to Show Cause filed April 14, 2025 as against Respondent-Candidate DAVID BRUEN (hereinafter referred to as “Bruen”) and the ROCKLAND COUNTY BOARD OF ELECTIONS (“RCBOE”) (hereinafter collectively referred to as “Respondents”) seeking an Order declaring the Certificate to Fill a Vacancy purporting to designate Bruen as a candidate for the public office of Town of Clarkstown Town Clerk in the Democratic Primary Election to be held on June 24, 2025 as insufficient, defective, invalid and null and void. In addition, Petitioner seeks an Order restraining the RCBOE from printing and placing Bruen’s name on the official ballot to be used at said primary. NYSCEF Docs. 1, 2.

The Order to Show Cause was initially made returnable before the Hon. David Fried, A.J.S.C., on April 18, 2025. NYSCEF Doc. 4. Following a conference which took place on April 18, 2025, Judge Fried recused. NYSCEF Doc. 9. The matter was ultimately reassigned to the

undersigned, and this matter was scheduled for a conference on April 21, 2025. NYSCEF Doc. 10.

The Commissioners of the RCBOE have taken different positions with respect to the relief requested in the aforementioned Petition. Each Commissioner, therefore, has retained separate counsel to represent them in the instant proceeding. Commissioner Allison Weinraub (“Commissioner Weinraub”) has filed an Answer with an Affirmative Defense and an Objection in Point of Law. Commissioner Weinraub requests in her opposition that the Court deny the Petition in its entirety. NYSCEF Doc. 6. No other responsive papers were filed with the Court.

On April 21, 2025, the undersigned allowed each party the opportunity to be heard on the record. Counsel for Petitioner was allowed the opportunity to be heard with respect to the relief requested in the Petition. Bruen appeared *pro se* and opted not to be heard. RCBOE Commissioners Patricia Giblin and Allison Weinraub were each heard through their separately retained counsel. Following the arguments which took place on the record, the Court indicated that the matter would be deemed fully submitted, and a decision issued expeditiously.

The material facts in this proceeding are not in dispute. To recap, as alleged in the Petition, on or about March 31, 2025, the RCBOE received designating petitions purporting to designate Petitioner for the position of Clarkstown Town Clerk for the June 25, 2025 primary election. NYSCEF Doc. 1. Subsequently, on or about April 3, 2025, the RCBOE received designating petitions purporting to designate Bruen for the position of Clarkstown Town Clerk for the June 25, 2025 primary election. *Id.* On or about April 7, 2025, Bruen filed a certificate declining the nomination as a candidate for the position of Clarkstown Town Clerk. *Id.* On or about April 11, 2025, a Certificate of Substitution from the Committee to Fill Vacancies after Declination, Death or Disqualification was filed with the RCBOE purporting to nominate Bruen to fill the position of Clarkstown Town Clerk. *Id.* Also dated April 11, 2025 and filed with the RCBOE on that date is Bruen’s Certificate of Acceptance of the aforementioned substitute nomination.

The Petitioner challenges the filing of the Certificate of Substitution and submits that same is a nullity based on the principal that one cannot decline to accept a nomination for a certain candidacy, then subsequently accept a designation to fill the vacancy created by their prior declination. As a result of the foregoing, Petitioner requests an Order declaring the Certificate of Substitution invalid and null and void, and further restraining and prohibiting the RCBOE from printing and placing Bruen’s name on the official ballot.

In opposition, Commissioner Weinraub poses two arguments. First, she submits that the Petitioner’s failure to join the Committee to Fill Vacancies as a party to this proceeding is a jurisdictional defect requiring dismissal of the proceeding in its entirety. With respect to the merits of the Petition, Commissioner Weinraub argues that there is nothing in N.Y. ELECTION LAW (“Elec. Law”) § 6-148 that prohibits the redesignation of a candidate who previously declined the same designation. Further, she contends that the cases relied upon by Petitioner in asserting that the Certificate of Substitution is invalid are not binding and/or no longer represent the law in the State of New York.

As indicated, *supra*, Commissioner Giblin did not oppose the relief requested in the Petition, and the *pro se* Respondent-Candidate filed no opposition papers, and opted not to be heard on the record with respect to the pending application.

The Court will analyze the jurisdictional issue first. Respondent Weinraub acknowledges that a Committee to Fill vacancies is generally not a necessary party in a proceeding to invalidate a designating petition, but avers that this situation is different inasmuch the subject Petition challenges the actions of the Committee to Fill Vacancies inasmuch as said Committee filed the Certificate of Substitution Petitioner seeks to declare invalid. In so averring, Respondent Weinraub relies primarily on a 2002 Supreme Court case out of Nassau County wherein the Court held that where a proceeding is brought “challenging the action of the committee [to fill vacancies] itself its members are clearly necessary[.]” *Matter of Hensley v. Efman*, 192 Misc.2d 782, 784, 747 N.Y.S.2d 339 (Sup. Ct., Nassau Cnty. 2002). Respondent Weinraub also cites to an Appellate Decision, Fourth Department case that indicates when a certificate of nomination is issued by a Town Committee after a vacancy is created, the Town Committee that issued the Certificate that is the subject of the challenge is a necessary party to the proceeding. *See, Matter of Rowles v. Orsini*, 309 A.D.2d 1307, 1309, 765 N.Y.S.2d 729 (4th Dept. 2003).

The Court notes that the Appellate Division, Second Department, has weighed in on what appears to be a similar issue, same having been noted by counsel for Petitioner in Court at the April 21, 2025 argument. In the *Matter of Becker v. Shapiro*, the petitioner sought to invalidate the designating petition, the Committee to Fill Vacancies and the Certificate of Substitution. 110 A.D.3d 874, 875, 975 N.Y.S.2d 62 (2d Dept. 2013). The Court determined that the respondent’s contention that the proceeding should have been dismissed for failing to join all necessary parties was without merit. *Id.* at 876. Specifically, the Court determined that the Committee to Fill Vacancies was not a necessary party to the proceeding, apparently notwithstanding the fact that the Committee’s Certificate of Substitution was, in part, *one* of the challenged actions in that proceeding. There is a distinguishing feature in *Becker*, however. The Second Department determined that the substitution that was the subject of that proceeding was required to be made by a majority of the members of the *party committee*, and *not* by the Committee to Fill Vacancies. Therefore, in *Becker*, the actions of the Committee to Fill Vacancies were not the genuine issues before the Court, and the fact that the petitioner in that proceeding failed to name the Committee was not deemed to constitute a fatal defect requiring the proceeding’s dismissal.¹

The *Becker* Court in making the aforementioned determination relied upon a 1986 New York State Court of Appeals case, *Berman v. Board of Elections of the County of Nassau*. Similar to *Becker*, the Court of Appeals also determined that the Committee to Fill Vacancies was not a necessary party in that particular proceeding. 68 N.Y.2d 761, 763, 506 N.Y.S.432 (1986). However, the Court of Appeals determined that the crux of that specific case rested upon the validity of the *original designating petitions* being challenged, and not simply the

¹ The Court notes that *Matter of Becker v. Shapiro* has only been cited by the Second Department on one occasion, for an entirely unrelated reason. *See, Venditto v. Roth*, 110 A.D.3d 908, 911, 975 N.Y.S.2d 59 (2d Dept. 2013).

substitution.² *Id.* Therefore, once again, the actions of the Committee to Fill Vacancies were not at issue in *Berman*.

Petitioner argued in Court that she is not actually challenging the actions of the Committee, but rather, she is challenging Braun's Certificate of Acceptance for a nomination he has previously declined. However, the Court does not accept this argument. The actual challenge in this proceeding pertains to *the Committee's* act of substituting an individual as a candidate for a position who had previously declined the nomination for the same position. It is the Committee's filing of the Certificate of Substitution that is the complained-of action. Indeed, the Petitioner's Order to Show Cause specifically indicates that Petitioner is seeking to declare the Certificate of Substitution invalid. Since the Committee's actions are directly being challenged in this proceeding, the Court determines that the failure to name and serve the Committee necessitates dismissal of this proceeding in its entirety.

Turning to the merits of the Petition, since the Court is required to address all issues raised in Election Law proceedings, the Court actually agrees with Petitioner on the underlying substantive argument raised in her Petition. This Court determines, contrary to the position of Respondent Weinraub, that the law is clear and well established in this regard. Elec. Law § 6-148 sets forth that a vacancy in a designation or nomination caused by declination may be filled by the making and filing of a certificate, "setting forth the fact and cause of the vacancy, the title of the office, the name of the *original* candidate, if any, and the name and address of the candidate *newly* designated or nominated." Elec. Law § 6-148(1) (emphasis supplied). The vacancy may be filled by a majority of the committee to fill such vacancies. Elec. Law § 6-148(2).

Courts have long held that the Election Law "plainly contemplates that the candidate designated to fill a vacancy shall be a person other than the person originally named." *Matter of Nestler v. Cohen*, 242 A.D. 726, 273 N.Y.S. 923 (1st Dept. 1934). Although this case is rather antiquated in its age, it has been relied upon in recent years by the Appellate Division, in both the Second and Fourth Departments.

In *Matter of Turdick v. Bernstein*, the Second Department indicated that even if a vacancy had been created, the Committee Authorized to Fill Vacancies could not have named the individual that they in fact named as a substitute, as said individual was the same individual originally named in the designating petition. 87 A.D.3d 748, 928 N.Y.S.2d 866 (2d Dept. 2011). Similarly, it has been held that a "committee to fill vacancies was properly barred from designating respondent to fill a vacancy created by his own declination." *Angletti v. Morreale*, 131 A.D.3d 808, 812, 15 N.Y.S.3d 532 (4th Dept. 2015). "It therefore necessarily follows that a person who creates a vacancy by his or her own declination cannot thereafter be designated by the committee to fill vacancies as the substitute designee for the very same position[.]" *Id.* The Court is not persuaded that the Second Department's ruling in *Turdick* is simply dicta, but even if it were, this Court would be bound to follow the Fourth Department's clear and unambiguous

² It is indeed well settled that in the absence of a valid designating petition in the first instance, a declination does not create a vacancy within the meaning of the Election Law. *See, e.g., Hunter v. New York State Bd. of Elections*, 32 A.D.3d 662, 663, 820 N.Y.S.2d 191 (3d Dept. 2006).

ruling in *Angletti* in the absence of Second Department authority, or other binding authority, that holds the contrary. Indeed, counsel for Respondent Weinraub was unable to point the Court to any legal authority that supported her objection on this point of law.

The Court is never pleased to decide cases for reasons that stray from its merits. However, in the instant proceeding, the Court is left with little choice. The Petitioner's application clearly challenges the actions of the Committee to Fill Vacancies in substituting Bruen, who had very clearly declined the nomination, for the exact position for which he is now being nominated. The Committee was not named as a party, or served with process, and therefore had no opportunity to defend the challenged action. The Court therefore denies this Petition in its entirety based on the failure to join an indispensable party, and declines to restrain the RCBOE from printing and placing Bruen's name on the official ballot.

Now, therefore, it is hereby

ORDERED, that the Petition is denied in its entirety.

The above shall constitute the Decision and Order of this Court.

Dated: New City, New York
April 23, 2025



Hon. Thomas P. Zugibe, J.S.C.

To: *All counsel of record with NYSCEF*