

Dugan v Schoharie County

2025 NY Slip Op 33905(U)

October 10, 2025

Supreme Court, Schoharie County

Docket Number: Index No. 2025-148

Judge: James H. Ferreira

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHOHARIE

MICHAEL DUGAN and MIRIAM MCGIVER,

Petitioners,

- against -

SCHOHARIE COUNTY, SCHOHARIE COUNTY
BOARD OF SUPERVISORS, and CLIFFORD HAY,

**DECISION and
ORDER/JUDGMENT**

Index No.: 2025-148

Respondents.

(Supreme Court, Schoharie County, Article 78 Term)

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HON. JAMES H. FERREIRA, Acting Justice:

Michael Dugan (“Dugan”) and Miriam McGiver (“McGiver”) (collectively, “Petitioners”) commenced this Article 78 proceeding against Schoharie County, the Schoharie County Board of Supervisors (the “Board”), and Clifford Hay (“Hay”) (collectively, “Respondents”). Before the Court is Respondents’ motion dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

On October 30, 2024, the Schoharie County Democratic Committee (“SCDC”) filed a certificate of party recommendation with the Board and recommended that Dugan be appointed as the Democratic Election Commissioner for the Schoharie County Board of Elections. On

December 20, 2024, the Democratic members of the Board appointed Hay as the Democratic Election Commissioner. On January 27, 2025, the SCDC filed a second certificate of recommendation with the Board and recommended that McGiver be appointed as the Democratic Election Commissioner.

On March 13, 2025, Petitioners filed an Article 78 petition against Respondents alleging that the Board's appointment of Hay did not comply with Election Law § 3-204. The petition seeks an order (1) vacating Hay's appointment as the Democratic Election Commissioner; and (2) directing the Board to appoint Dugan or McGiver as the Democratic Election Commissioner.

On April 22, 2025, in lieu of filing an answer, Respondents moved to dismiss the Article 78 petition pursuant to CPLR § 3211(a)(1), (7), and (10). Respondents argue the petition must be dismissed because (1) the Board's appointment of Hay did not violate the Election Law; (2) the relief requested in the petition would violate the separation of powers doctrine; and (3) Petitioners failed to join SCDC, which they argue is a necessary party.

DISCUSSION

I. Merits of Article 78 Petition

Respondents move to dismiss on the ground that “a defense is founded upon documentary evidence” pursuant to CPLR § 3211(1). Such a motion under CPLR § 3211(1) may be granted “only where the documentary evidence utterly refutes [petitioner's] factual allegations, conclusively establishing a defense as a matter of law” Goshen v Mutual Life Ins. Co of New York, 98 NY2d 314, 326 [2002]. Significantly, however, rather than “utterly refute[] [Petitioners'] factual allegations” (compare Crepin v Fogarty, 59 AD3d 837, 838 [3d Dept 2009] [internal quotation marks omitted]), Respondents admit to Petitioners' factual allegations and have provided “documentary evidence” that provides support for and supplements such allegations. Essentially,

Respondents agree that they acted as Petitioners said they acted but argue that their actions were proper under Election Law § 3-204. Under these circumstances, the Court believes that it is appropriate to reach the merits of the Article 78 petition on Respondents' pre-answer motion (see Matter of Source Renewables, LLC v Town of Cortlandville Zoning Bd. of Appeals, 213 AD3d 1178, 1180 [3d Dept 2023] [holding that trial court properly proceeded to merits of petition on pre-answer motion where "the arguments of the parties with respect to the rationality of the ZBA's determination were fully set forth in the motion papers"]; Matter of Hunt v Hamilton County, 235 AD2d 758 [3d Dept 1997] [holding that trial court properly granted petition before respondent answered where "respondent argued the merits of its case and submitted affidavits in support thereof"]).

Under the New York State Constitution, boards and officers charged with qualifying voters, distributing ballots, and receiving, recording, or counting votes must be equally represented by the two main political parties (see NY Const, art II, § 8). "All such boards and officers shall be appointed or elected, upon the nomination of such representatives of said parties respectively, as the legislature may direct." (id.). To carry out this mandate, Election Law § 3-200 provides that "[t]here shall be a board of elections in each county of the state," which generally "consist[s] of two election commissioners" (see Election Law § 3-200[1]-[2]; see also Matter of Graziano v County of Albany, 3 NY3d 475, 477 [2004]). Election Law § 3-204 sets forth the required procedure for nomination and appointment of those election commissioners (see Election Law § 3-204; Matter of Wood v County of Cortland, 72 AD3d 1447, 1449 [3d Dept 2010]; Matter of Baker v Kalil, 182 AD2d 895, 896 [3d Dept 1992]; Matter of Matthews v Zwirn, 170 AD2d 708, 709-10 [2d Dept 1991]; Matter of Ryan v Albany County Democratic Comm., 68 AD2d 1014, 1015 [3d Dept 1979], modified 47 NY2d 963 [1979]).

Election Law § 3-204 provides:

1. At least thirty days before the first day of January of any year in which a commissioner of elections is to be appointed, the chairman or secretary of the appropriate party county committee shall file a certificate of party recommendation with the clerk of the appropriate local legislative body.
2. Party recommendations for election commissioner shall be made by the county committee or by such other committee as the rules of the party may provide, by a majority of the votes cast at a meeting of the members of such committee at which a quorum is present. If at any time a vacancy occurs in the office of any election commissioner other than by expiration of term of office, party recommendations to fill such vacancy shall be made by the county committee or by such other committee as the rules of the party may provide, by a majority of the votes cast at a meeting of the members of such committee at which a quorum is present.
3. The certificate filed shall be in such form and contain such information as shall be prescribed by the state board of elections.
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 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.
5. If at any time a vacancy occurs in the office of any election commissioner other than by expiration of term of office, such vacancy shall be filled as herein provided for the regular appointment of a commissioner except that a person who fills a vacancy shall hold such office during the remainder of the

term of the commissioner in whose place he shall serve. Certificates of party recommendation to fill such vacancy shall be filed not later than forty-five days after the creation of the vacancy.

(Election Law § 3-204).

To summarize, party committees nominate individuals for election commissioner, and county legislative bodies appoint election commissioners (see Matter of Graziano, 3 NY3d at 480). First, at least 30 days before January 1st of the year an election commissioner is to be appointed, the party committee files a certificate with the county legislative body recommending a party member for election commissioner (see Election Law § 3-204[1]-[2]). The county legislative body then has 30 days to appoint the recommended person (see Election Law § 3-204[4]). If the legislative body does not appoint the recommended person in 30 days, and no members of the legislative body are members of the relevant party, the recommended person is automatically appointed (see Election Law § 3-204[4]). If there are members of legislative body that are members of the relevant party, they have another 30 days to appoint the recommended person themselves (see Election Law § 3-204[4]). If they decline to do so, the party committee has 30 days to recommend a different person (see Election Law § 3-204[4]).

Here, the SCDC filed a certificate of recommendation nominating Dugan for election commissioner more than 30 days before January 1st of the year that position was to be filled (see Election Law § 3-204[1]-[2]). The Board declined to appoint Dugan, which was their prerogative (see Matter of Matthews v Gulotta, 198 AD2d 280, 281-82 [2d Dept 1993] [holding that county legislature may decline to appoint a qualified nominee], appeal dismissed 83 NY2d 547 [1994]). After 30 days had passed, the democratic members of the Board appointed Hay as election commissioner. While the democratic members of the Board were not required to appoint Dugan, they were not permitted to appoint an election commissioner that was not recommended by the

SCDC at this stage of the process (see Matter of Baker, 182 AD2d at 897 [“It is only if the party committee fails to make a recommendation within 30 days of the resignation that the legislative members of said party may make the appointment.”]). Therefore, the unauthorized appointment of Hay as election commissioner must be annulled (see id. at 895, 897 [affirming trial court order annulling appointment of election commissioner where county legislature appointed election commissioner before party’s time to file certificate of recommendation had expired]).

In addition to seeking an order vacating the Hay appointment, Petitioners additionally seek an order compelling Respondents to appoint either Petitioners Dugan or McGiver as election commissioner. This Court declines to issue such an order. The decision on whom to appoint is ultimately in the discretion of the Board, and mandamus does not lie (see Matter of Wood v Cortland, 23 Misc3d 913, 919 [Sup Ct, Cortland County], affd., 72 AD3d 1447 (3d Dept. 2010); Matter of Frangella v Albany County Legislature, 59 Misc2d 1057 [Sup Ct, Albany County 1969]). Moreover, Election Law § 3-204(2) sets forth the procedure to appoint an election commissioner when a “vacancy occurs in the office of any election commissioner other than by expiration of term of office.” (see also Matter of Baker, 182 AD2d at 896 [holding election commissioner vacancies shall be filled per the regular appointment of a commissioner and committee was accordingly entitled to 30 days to file a party recommendation to fill a vacancy]). This Court’s order annulling and vacating the Hay appointment will create a vacancy, triggering the statutory process by which the SCDC and Board must properly fill the vacancy. At this juncture, the Court need not insert itself into how the parties choose to comply with statutory procedures necessitated by the annulment and vacancy of the Hay appointment.

II. Constitutionality of Remedy Sought

Respondents argue that the Article 78 petition must be dismissed because “[t]he separation of powers doctrine prohibits a court from compelling a municipal body to appoint a political

candidate or nominee” (Respondent Memorandum of Law at 9). The Court will not address this issue at this time because the Court is not issuing an order directing Respondents to appoint a specific person as election commissioner. The question of whether such an order *would* violate the separation of powers doctrine is not an issue before this Court in this proceeding.

III. Necessary Party

Respondents further argue that the petition must be dismissed because Petitioners failed to join the SCDC. Respondents claim that the SCDC is a necessary party because “there is no indication whether SCDC believes the appointment of Hay to be improper,” and “the SCD[C]’s interests are not adequately protected as Petitioners request that this Court vacate the appointment of Hay.”

CPLR § 1001 governs necessary joinder of parties and provides that a necessary party is one “who ought to be [a party] if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action” (CPLR § 1001[a]). This provision is “strictly construed,” and its application “is limited to ‘those cases and only those cases where the determination of the court will *adversely* affect the rights of nonparties’” (Matter of Schulz v De Santis, 218 AD2d 256, 259–60 [3d Dept 1996], quoting Matter of Castaways Motel v Schuyler, 24 NY2d 120, 125 [1969]). “A principal reason for compulsory joinder of parties is to protect nonparties whose rights should not be jeopardized if they have a material interest in the subject matter” (Hitchcock v Boyack, 256 AD2d 842, 844 [3d Dept 1998], quoting Matter of Llana v Town of Pittstown, 234 AD2d 881, 883–84 [3d Dept 1996], lv denied 245 AD 968 [1997]; see also Matter of Furnia, 232 AD3d 1080, 1082 [3d Dept 2024]).

Here, Petitioners challenge the appointment of Hay—an action the SCDC played no part in—on the basis of the Board’s conduct (compare Matter of Miller v Lapine, 43 AD3d 480, 481

[2d Dept 2007] [holding that executive committee of political party was necessary party because “the petitioners challenge the actions and authority of the Executive Committee”], lv denied 9 NY3d 804 [2007]). Here, the SCDC’s participation in this action is not necessary to accord Petitioners the relief they are entitled to, and any rights the SCDC might have that could be adversely affected by the annulment of Hay’s appointment are not the kind contemplated by CPLR § 1001 (see Matter of Marzullo v DelConte, 165 AD3d 1466, 1466–68 [3d Dept 2018] [holding that political party committee that nominated candidate for public office was not necessary party in action seeking to invalidate certificate of nomination]; Matter of Michaels v New York State Bd. of Elections, 154 AD2d 873, 874 [3d Dept 1989] [holding that political party was not necessary party in action alleging that Conservative Party’s certificate of nomination was null and void]).

Accordingly, it is hereby

ORDERED that Respondents’ motion to dismiss is **DENIED**; it is further

ORDERED that the Petitioners’ Article 78 petition is **GRANTED** in part and **DENIED** in part; and it is further

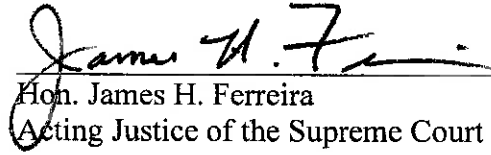
ORDERED that the appointment of Hay to the office of election commissioner of Schoharie County Board of Elections is **ANNULLED** and **VACATED**.

This constitutes the Decision and Order/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.

SO ORDERED AND ADJUDGED

ENTER.

Dated: Albany, New York
October 10, 2025



Hon. James H. Ferreira
Acting Justice of the Supreme Court

Papers Considered: NYSCEF Documents numbered 1-23.