

SUPREME COURT CHAMBERS
STATE OF NEW YORK
ANGELO A. DELSIGNORE CIVIC BUILDING
775 THIRD STREET
NIAGARA FALLS, NEW YORK 14302-1710
Hon. Frank Caruso
Justice of Supreme Court
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August 12, 2015

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Re: Tamburlin & Slocum vs.
 Peterson, Kellner, Kosinski, Women's Equality Party, Fiala,
 Joy,Gold,Andrew Cuomo, Kathy Hochul, Giovanelli, Fox, & Collins
 Index # 156326

Counselors:

Enclosed please find a copy of the Decision and Order for the above referenced case. The original has been filed with the Niagara County Clerk's Office.

Sincerely,

Michelle Metz
 Secretary to
 Hon. Frank Caruso, J.S.C.

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

In the Matter of:

Mary Jo Tamburlin and Jamie Slocum
Registered Voters and Citizen Objectors
Petitioners,

Decision & Order

-against-

Index No. 156326

Gregory Peterson, Douglas Kellner, Peter Kosinski,
and Andrew Spano, Commissioners constitution
THE NEW YORK STATE BOARD OF ELECTIONS, and

The purported WOMEN'S EQUALITY PARTY,
COMEN'S EQUALITY PARTY INTERIM STATE
COMMITTEE and EXECUTIVE COMMITTEE,
Allegedly organized on or about JUNE 25, 2015 and
Filed July 2, 2015, and

Barbara Fiala,
INDIVIDUALLY AND AS ALLEGED CHAIR OF EACH
OF THE WOMEN'S EQUALITY PARTY INTERIM
STATE COMMITTEE and THE EXECUTIVE
COMMITTEE THEREOF, and

Kathy Joy,
INDIVIDUALLY AND AS ALLEGED SECRETARY
OF EACH OF THE WOMEN'S EQUALITY PARTY
INTERIM STATE COMMITTEE and THE
EXECUTIVE COMMITTEE THEREOF, and

Rachel Gold,
INDIVIDUALLY AND AS ALLEGED EXECUTIVE
COMMITTEE MEMBER OF EACH OF THE
WOMEN'S EQUALITY PARTY INTERIM
STATE COMMITTEE and THE EXECUTIVE
COMMITTEE THEROF, and

Andrew Cuomo and Kathleen C. Hochul,
IN THEIR CAPACITIES AS CANDIDATES
CERTIFYING THE RULES AND ELECTION OF
OFFICERS OF THE EXECUTIVE COMMITTEE
OF THE INTERIM STATE COMMITTEE OF THE
WOMEN'S EQUALITY PARTY and

Nancy R. Giovanelli, Bernadette Fox &
Heather Collins, objectors,
Respondents.

For an Order pursuant to Articles 2, 6, and 16 of
The Election Law and General Association Law, and
Article 78 of the CPLR.

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Caruso, J.

This decision is the result of an Order to Show Cause filed by petitioners requesting this court to invalidate both sets of organizational certificates of the Women's Equality Party, invalidating any and all certificates issues or filed by the Women's Equality Party to nominate or authorize candidates, declare the election of officers and adoption of rules to be null and void, declaring the Women's Equality Party to have failed to have been constituted on an interim basis, permanently enjoining the Women's Equality Party from taking any action to nominate candidates for public office, and permanently enjoining the Women's Equality Party from issuing authorizations, nominations or substitutions. Respondents oppose the Order to Show Cause and move this Court for an order of consolidation and for change of venue. Absent the Court granting this relief, respondents also move for an order of dismissal. It is noted by the Court that the Nassau County case with which this case was requested to be consolidated with has been withdrawn, making that request moot.

Petitioners come forward as registered voters within the state of New York who have filed general and specific objections to two sets of certificates which purported to create rules of the Women's Equality Party (WEP) and election of officers. They argue that in order for such a certification to be valid under New York Election Law §6-128(4), it must be certified by a majority of the candidates who were nominated by WEP as an independent body for statewide election in 2014. As there were four statewide candidates who were nominated by the WEP in that year, it is claimed that three of them must sign off on the rules submitted for them to be valid. As only two, Governor Andrew Cuomo and Lieutenant Governor Kathleen Hochul, have signed any certification this does not make up the majority alleged to be required. As the statewide candidates are the only individuals or body which is recognized in the Election Law for the formation of a new party, a majority certification is absolutely necessary and the failure to secure it is fatal requiring this Court to deem the WEP filings a nullity.

With respect to the motion to change venue, respondents point out that it is properly determined to be in Albany County as that is where all of the actions involved in this case took place. The filings were completed at the New York State Board of Elections with its principle office in Albany. It is argued that the only reason venue was placed in Niagara County was due to objections filed by one of its residents and CPLR §506(b) sets for special venue rules for state agencies which requires this case be moved to Albany County.

In support of their motion to dismiss, respondents argue first that the Court lacks standing to hear the challenge brought before it. It is pointed out that the sections of law relied upon by the petitioners pertain to the nomination or designation of a candidate for public office or party position, and the actions which may be taken with respect to them. There is no provision found in the election law which sets forth any procedure to challenge the filing of a new party certification by way of objection or court challenge. The State Board of Elections has not taken any action with respect to the filings so there is no administrative action for this Court to review.

Respondents then argue that the petitioners themselves lack standing to bring an action against the WEP. The petitioners simply alleged that they are registered voters in New York State and filed general and specific objections to the certification papers filed by the WEP. There is no indication that they attempted to file a competing set of rules, nor that they are seeking nomination by the WEP, nor that they even wish to change their affiliation to that of the WEP. Given the complete lack of cognizable interest in the WEP directly or indirectly, respondents argue that petitioners are not in a position to challenge how the party is formalized and that it has long been held that general voters do not have standing to challenge the internal functioning of a political party of which they are not a member.

Third, respondents claim that Election Law §6-128 does not apply in the manner petitioners wish to utilize it. This section sets forth the rules for how an independent body becomes a political party within the state and the process which must be undertaken. The instant challenge is brought

primarily under §6-128(4) which respondents indicate states that when a conflict or question arises relating to the rules filed, then the rules endorsed by a majority of the statewide candidates of that party shall be controlling. Thus it is asserted that there is no initial need for any certification by the statewide candidates for a party to be valid and a failure of a majority of them to sign off here is not required as there is no conflict to be resolved.

The Court has considered the following: Order to Show Cause granted by this Court on July 10, 2015; Order to Show Cause granted by this Court on July 23, 2015; Verified Petition verified by John R. Drexelius, Jr., Esq. July 10, 2015; Amended Verified Petition verified by John R. Drexelius, Jr., Esq. July 22, 2015; Notice of Motion to Consolidate and for Change of Venue by Steven C. Russo, Esq. dated July 17, 2015; Affirmation of Steven C. Russo in Support of Motion to Consolidate and for Change of Venue, dated July 17, 2015 with exhibits attached thereto; Affirmation of John R. Drexelius, Jr in Opposition to Motion to Consolidate and for Change of Venue dated July 22, 2015 with attachments; Notice of Motion to Dismiss by Steven C. Russo, Esq. dated July 29, 2015; Affirmation of Steven C. Russo in Support of Motion to Dismiss dated July 29, 2015 with exhibits attached thereto; WEP Respondents' Memorandum of Law in Support of Motion to Dismiss by Steven C. Russo, Esq. dated July 29, 2015; and Affirmation in Opposition to Motion by Vincent J. Messina, Jr., Esq. dated August 5, 2015.


It is well settled that in a summary election law proceeding brought in Supreme Court, the court is vested only with the limited authority to review that which the statute allows. (See *Delgado v Sunderland*, 97 N.Y.2d 420 [Ct. App. 2002; *Corrigan v. Board of Elections*, 38 A.D.2d 825 [2nd Dept. 1972]; *DiBenio V Panaro*, 34 Misc.2d 814 [Orange Cty. Sup. Ct. 2962]). New York State Election Law Article 16 sets forth the judicial proceedings which can be brought before the Court to summarily determine an issue of law or fact. These include designation and nominations (§16-102), form of the ballot (§16-104), casting and canvas of ballots (§16-106), registration and voting (§16-108), issues of enrollment (§16-110), preservation of ballots (§16-112), audit of records (§16-113), issues

of campaign financial disclosures (§16-114), using buildings for polling places (§16-115), and removal of committee members (§16-118). Nowhere in the aforementioned sections is a challenge to the filing of party certifications listed as something this Court can consider and "this Court has no inherent power to expand judicial review of election matters beyond that provided by statute." *Sellers v LaPietra*, 23 Misc.3d 368 at 371-372 (Schoharie Cty. Sup. Ct. 2009).

Here, there is no action taken by the Board of Elections, a State Agency, which could be reviewed. All which occurred here was essentially the filing of a of paper, and there is no provision found in the Election Law which allows anyone to challenge this, much less have a court of law invalidate it. Some other action must be undertaken to bring it within the realm of the enumerated judicial proceedings which the legislature has clearly laid out. Indeed, even the case-law cited in support of this petition involved challenges to the designation of a candidate under §16-102. Were that the case here, this Court might then advance to the question if the WEP was formed properly or if there were competing sets of rules filed thus triggering an examination of the required certifications under §6-128(4). However, as all that is before this Court is the filing of paper, and with no provision granting an ability to act on that, the Court has no choice but to grant the respondents' motion to dismiss for lack of jurisdiction. Having no authority to determine the further issues at hand, the remaining issues raised will not be reached.

Therefore, the petition is dismissed and the motion for change of venue is dismissed as moot.

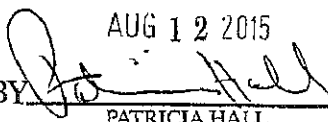
This decision shall constitute the Order of the Court.



 FRANK CARUSO
 Supreme Court Justice

GRANTED

Dated: August ____, 2015
 Niagara Falls, New York

AUG 12 2015
 BY 

 PATRICIA HALL
 COURT CLERK