

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF NIAGARA

In the Matter of the Application of:

Joey P. DeLabio  
Citizen Objector Aggrieved  
Petitioner,

Decision & Order

-against-

Index No. 156792

Lora Allen and Jennifer Fronczak,  
Commissioners constitution the  
Niagara County Board of Elections, and

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

Kathryn L. Palka – Lance, Candidate, and

Barbara Fiala, Kathleen Joy, Rachel Gold,  
Vivian Viloria –Fisher, Susan Zimet, Lynn Kopka,  
Colleen Anderson, Diane DiMeo,  
Lorie Barnum, and Diana Cihak, and

Mary Jo Tamburlin, Jamie Slocum,  
Heather Collins, Nancy R. Giovanelli, and  
Bernadette Fox, and

Cecilia Tkaczyk, rynn (Hannah) Reed,  
Mohini Sharma, Virginia Scholomiti,  
Joy Black, and Sandra McGarraugh,  
purported officers and members of the  
interim committee(s) of the Women's Equality Party, and

The Women's Equality Party, and the  
committees thereof,

Respondents.

For an order pursuant to the Election law,  
Declaring Invalid the Certificate of Nomination  
Purporting to Nominate the Respondent-  
Candidate for Member of Niagara County Legislature,  
7<sup>th</sup> District, to Restrain the Niagara County  
Board of Elections from Placing the Name of Said Candidate  
Upon the Official Ballots of the General Election and for a  
Declaratory Judgement adjudicating the validity of  
the party rules of the Women's Equality Party, and for  
a permanent injunction against such groups purporting  
to represent the Women's Equality Party from nominating  
candidates for public office.

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Caruso, J.

This decision results from an Order to Show Cause and Verified Petition brought by petitioners requesting this Court to declare null and void the certificate of nomination of respondent-candidate Kathryn L. Palka, restraining the respondent Niagara County Board of Elections from placing the respondent-candidate's name on the ballot, determine the validity of the rules of the various groups claiming to be the interim committees of the Women's Equality Party, permanently enjoin any group from making nominations in the name of the Women's Equality Party, and declare the rights of the parties and the validity of the documents purporting to organize the operations of the Women's Equality Party. During oral arguments, Petitioners asked this Court to consolidate a similar pending matter in Albany County, Women's Equality Party et al. v. Mary Jo Tamburlin, et al., Index No. 4454-15 but as this request was not formally made before the Court, it shall not be considered. Respondents Barbara Fiala, Kathy Joy, Rachel Gold, Andrew Cuomo and Kathy Hochul object to all but voiding the certificate of nomination and move to dismiss the petition in part.

Petitioner comes forward as a registered voter located in the County of Niagara in the 7<sup>th</sup> Legislative District entitled to vote in the 2015 general election. He has filed general as well as specific objections to a certificate purporting to nominate respondent-candidate Palka-Lance as the Women's Equality Party (WEP) candidate for the 2015 General Election for member of the Niagara County Legislature, 7<sup>th</sup> District. Part of the basis for his objection concerns the fact that three groups have filed papers with the New York State Board of Elections purporting to be rules organizing the interim committee of the Women's Equality Party. These groups are hereinafter referred to as the Gold Group (noting a change of leadership since the filing of the initial papers), the Tkaczyk Group, and the Tamburlin Group.

It is argued that the rules submitted by the three groups are all deficient as none of them are certified by a majority of the statewide candidates who ran in the 2014 general election. Citing

Election Law §6-128(4), the petitioner alleges that the certificates filed must be certified by a majority of the candidates who ran for statewide office on the Women's Equality line in the 2014 general election. As none of them have such a majority certification it is urged that this Court find them all to be invalid.

The Gold Group respondents allege that the petitioner and the Tamburlin Group are colluding in an effort to hinder the Women's Equality Party's ability to elect candidates. They note that the Tamburlin group are enrolled Republicans who had brought legal action before this Court previously seeking to invalidate the WEP. It is argued that the actions taken by them in filing rules and then nominating another Republican are a blatant attempt to create a conflict with the Gold Group's rules in an effort to destroy the WEP.

The Gold Group asserts that they have filed the only valid rules with respect to the WEP as they are the only ones to have been authorized by any of the statewide candidates who ran on the line in the 2014 general election. They indicate that the other groups who have submitted rules do not have any statewide candidate authorizing their rules and as they have two, they should be the only recognized group to represent the WEP.

The Gold Group also argues that their rules were filed, and then they held an organizational meeting prior to the other groups filing their proposed rules. They indicate that the time for other rules to be filed should be before such an organizational meeting takes place and as this was not done, the other two groups should not be recognized. To do otherwise would allow any person to file conflicting rules and attempt to take over. This recognition of the Gold Group's rules would necessarily invalidate the nomination of candidate Palka-Lance as it did not comply with their rules.

The Tamburlin Group argued during oral argument that they have as much right to exist as anyone else does. Their rules were filed and are presumptively valid making the nomination that they made also presumptively valid.

The Tkaczyk Group during oral arguments accused the Tamburlin Group as well as the Gold Group of being a raiding party on the WEP. Their group is the only one that has actual WEP members within their ranks who want to legitimately run a political party and as such they should be declared to be the only valid party which has been formed. In their view, everyone else is comprised of either Republicans or Democrats attempting to take over and run the WEP for themselves.

The Court has considered the following: Order to Show Cause granted by this Court September 4, 2015; Verified Petition of Shawn Nickerson, Esq. verified by petitioner Joey P. DeLabio on September 3, 2015; Emergency Affirmation of Shawn Nickerson, Esq. dated September 3, 2015; Notice of Partial Motion to Dismiss by Steven C. Russo, Esq. dated September 10, 2015; Memorandum of Law in Support of Partial Motion to Dismiss by Steven C. Russo, Esq., dated September 10, 2015; Affirmation of Steven C. Russo, Esq. in Support of Partial Motion to Dismiss dated September 10, 2015 with exhibits attached thereto; Verified Answer of Peter Reese, Esq. dated September 11, 2015; and certified copies of the records relevant to this proceeding filed at the New York State Board of Elections.

Under New York State Election Law §1-104(3) a "party" is a political organization which polled at least fifty thousand votes for governor in the last preceding election. In 2014, Governor Andrew Cuomo appeared on the ballot under the WEP line and obtained 53,802 votes on that line, making it a party under state law. Election Law §2-108 allows the state committee to be formed pursuant to the rules of such party prior to the first primary for which members of such party are able to become enrolled. Here, there are three sets of rules which have been filed with the State Board of Elections which comprise the center of this dispute as it relates to the nomination of candidates for election under Election Law §6-128. This brings this within the jurisdiction of this Court under Election Law §16-102.

There are three groups before this Court which have all filed rules claiming to be the rightful interim state committee for the WEP. Both the Gold Group and the Tkaczyk Group have requested that discovery be allowed in this case so that the true intentions of the other groups can be fleshed out. During oral arguments, it was alleged that some groups may be insincere in their intentions of organizing the WEP. However, it is not this Court's proper place to investigate the potential reasons any particular group of individuals may choose to organize for the WEP. Undoubtedly such an endeavor would devolve into whose political philosophy may be more proper to represent the WEP and for this Court to determine the righteousness of those who make up political parties is not something which is proper for a court of law to engage in.

The Gold Group indicates that they filed their rules first and held a subsequent organizational meeting (under those rules) which should preclude the other groups from filing their own sets of rules. However this argument, as well as its further contention that anyone could at any time replace a newly organized party's rules by filing competing ones, completely ignores the fact that the legislature has already contemplated the situation where more than one set of rules could be filed in the creation of a new party.

Election Law §6-128(4) states:

"If there is any question or conflict relating to the rules or the rule-making body, rules which a majority of the candidates of such party who were nominated by petition for offices voted for by all the voters of the state at the general election at which the independent body became a party certify were duly adopted by a properly authorized body shall be deemed to be the rules. The certificate of such candidates describing the rule-making body shall be controlling."

Under §6-128(4) it would seem this situation could easily be resolved by looking at which group has a majority of candidates from the 2014 election certifying their rules, but none of the groups before the Court have such a majority. This is indeed a case of first impression within this state and it appears to be suggested that this Court should somehow "fix" the law to declare which group is valid.


The Gold Group suggests that because they are the only group for which any of the statewide candidates (two of the four) certified their rules, including the gubernatorial candidate and his running mate, that this should be enough to validate them as the true WEP party. However, this line of reasoning would require this Court to make the assumption that the remaining two candidates which did not certify any rules are ambivalent to adopting the Gold Group's rules. It could be just as likely that the other candidates had strong opposition to all of the rules filed or the individuals who filed them. Indeed, the Court has nothing before it which would shed any light as to why the other two chose not to certify anyone's rules, nor are they under any obligation to come forward with such information. As such, this Court will not begin what would be an unfortunate precedent of making assumptions of the inactions of those who legitimately chose not to act.

To even make such assumptions in the first place would further require ignoring the plain reading of the statute which looks to the *majority* of candidates to settle a dispute such as this one. The Gold Group's suggestion that their two candidates to the other groups' zero makes them valid would require changing "majority" to "plurality." The legislature certainly could have chosen to use that word instead but did not do so. The Tkaczyk Group's suggestion that having more WEP members within it makes them the only valid group would require the Court to rewrite the law completely. Neither of these suggestions are palatable as it is not proper for this Court, or any other, to substitute its own judgment by changing the laws passed by the people of New York State through their representatives within the State Legislature. *Matter of Chase Natl. Bank v. Guardian Realities, Inc.*, 283 N.Y. 350, 360 (Ct. App. 1940); *Matter of Madigan v. Haley*, 7 Misc.2d 1000 (Sup. Ct. Schenectady 1957). "It is not allowable to interpret what has not need of interpretation, and when the words have a definite and precise meaning, to go elsewhere in search of conjecture in order to restrict or extend the meaning," (*City of Buffalo v. Lawley*, 6 A.D.2d 66 [4<sup>th</sup> Dept. 1958] quoting *McCluskey v. Cromwell*, 11 N.Y. 593, 601). Here, there is nothing to interpret as the statute is clear as to what is required.

The result of the above is that there are three groups all claiming to be the rightful leaders of the WEP with all the rights that may entail, but none of them are able rise above the others via the procedure set forth §6-128(4). Therefore the inevitable conclusion is that none of them can be declared to be vested with any rights found under the election law with respect to the nomination of candidates since the conflict recognized as a possibility in §6-124(4) is unable to be resolved.

As such, the relief requested by the petitioner is granted in that the certificate of nomination for Respondent-Candidate Palka-Lance is declared null and void and the Respondent Niagara County Board of Elections is prohibited from placing said name on the ballot. Further, as a conflict exists requiring a majority of the candidates for the WEP from 2014 to determine what set of rules are valid, and no such majority exists, this Court declares all groups are enjoined from issuing any certification of nomination in the name of the Women's Equality Party unless and until a proper majority of said candidates certifies a set of rules.

This decision shall constitute the Order of the Court.

  
FRANK CARUSO  
Supreme Court Justice

Dated: September 14, 2015  
Niagara Falls, New York

GRANTED

SEP 14 2015  
BY:   
CORINNE CLERI, COURT CLERK