

**Jasikoff v Commissioners of the Westchester
County Bd. of Elections**

2020 NY Slip Op 32010(U)

March 27, 2020

Supreme Court, Westchester County

Docket Number: 1376/2020

Judge: David F. Everett

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
STEPHEN JASIKOFF,

Plaintiff,

Index No. 1376/2020

-against-

Decision and Order

COMMISSIONERS OF THE WESTCHESTER COUNTY
BOARD OF ELECTIONS

Defendant.

-----X
EVERETT, J.

The following papers were read on the motion:

Order to Show Cause/Aff in Supp/ Exhibits

The Court has reconsidered, sua sponte, its decision, rendered from the bench on March 23, 2020, after further consideration of the unique facts and circumstances of this case, and the public health crisis (Coronavirus Disease 2019) which we are currently enduring.

These are extraordinary times for which the play book is still being written and rewritten.

In making this decision, the Court reconsidered the papers submitted by plaintiff, and the oral arguments presented on March 23, 2020, and March 27, 2020, by plaintiff, and by the Assistant County Attorney on behalf of defendant, the Commissioners of the Westchester County Board of Elections, and hereby recalls, revokes and vacates the decision rendered on March 23, 2020, and grants the motion.

On March 7, 2020, Governor Andrew Cuomo issued Executive Order Number 202, declaring a Disaster Emergency in the State of New York. On March 14, 2020, Governor Cuomo issued Executive Order 202.2 titled Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency. Under the subheading "Suspension of Laws and

Regulations,” the Executive Order states, in relevant part:

“Article 6 of the Election Law is modified to the extent necessary to reduce required number of signatures on petitions pursuant to Section 6-136 of such law to 1.5% of the enrolled voters required, or 30% of the stated threshold, whichever is less. Further such provisions are modified to require that gathering of signatures shall be suspended effective Tuesday, March 17, 2020 at 5 p.m.”

Chapter 24 of the Laws of 2020, which was approved and became effective on March 18, 2020, provides that the time period for the filing of designating petitions runs from Tuesday, March 17, 2020, through Friday, March 20, 2020.

The statute existing at the time of the enactment of Chapter 24 of the Laws of 2020, Election Law Section 6-158, provides for a four-day window for the filing of petitions.

There is inherent unfairness when a statute that is intended to provide four days in which to file petitions creates a window for filing that starts the day before the statute was enacted. The new statute specifies a four-day window (March 17, 2020 - March 20, 2020) that started the day before the statute’s very enactment (March 18, 2020). In fact, had someone attempted to file their petitions on March 17, 2020, they would have been rejected, as the statute had not yet been enacted permitting a filing on that date. To make matters worse, as of 7:04 p.m., on March 18, 2020, the change in the law had not been posted on the New York State Board of Elections website. This failing effectively narrowed down to two days, at best, the time in which potential candidates would know they could file petitions. It is also noteworthy, as pointed out by plaintiff, and not challenged by defendant, that as of late morning March 23, 2020, the Westchester County Board of elections had not published this change of law, nor had it updated its own 2020 Election Calendar.

Here, plaintiff attempted to file his petition on Monday, March 23, 2020, prior to 9:00

a.m. Since the Westchester County Board of Elections is closed on weekends, and no action would be taken with respect to filed petitions between the time the Board of Elections closed on Friday, March 20, 2020, and the time it officially reopened at 9:00 a.m. on Monday, March 23, 2020, no harm would come to the Board of Elections and no prejudice would accrue to any other candidate by permitting the late filing. The fact that there currently exists a critical health crisis does not mean that standards of fundamental fairness go out the window. This is particularly so under the limited circumstances presented here, where such unfairness can be cured by permitting the belated filing, nunc pro tunc. It is not intended that this decision be applied in any other case.

While prior case law has routinely held that the failure to timely file a petition constitutes a fatal defect, those cases do not appear to have been decided under the high stress circumstances of the public health crisis we are now facing. What is clear in the instant case is that the original intent of the New York State Legislature was to provide a period of four days to file, as evidenced by the fact that the newly enacted filing period was March 17 - 20, 2020, and that publication was not made nor notice given of the new law in a timely manner.

Although well-intentioned, the effect of the newly enacted legislation on March 18, 2020, was to deprive potential candidates of their full four-day window. It is of no small moment that notice of the change was not, and could not, have been timely provided, given that the enactment of the new legislation took place one day after the commencement of the four-day period, and this glitch was exacerbated by the lack of timely notice via publication.

As a Court of Equity, I find this grossly unfair. Accordingly, it is

ORDERED that my decision of March 23, 2020 is recalled, revoked and vacated; and it is

further

ORDERED that the motion is granted and defendant Commissioners of the Westchester County Board of Elections is directed to accept as valid, nunc pro tunc to March 20, 2020, plaintiff's petitions for the Democratic Primary election for the New York 88th Assembly District currently scheduled for June 23, 2020, upon presentment of said petitions within one business of the filing of this decision and order; and it is further

ORDERED that plaintiff shall serve upon defendant a copy of this decision and order with notice of entry within five (5) business days of entry

Dated: White Plains, New York
March 27, 2020

ENTER:


HON. DAVID F. EVERETT, J.S.C.