

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
:
CAMPANELLO et al,
16-CV-1892 (SJF)
Plaintiffs,
-against- :
United States Courthouse
Central Islip, New York
NEW YORK STATE BOARD OF
ELECTIONS, et al
April 19, 2016
Defendants. : 2:00 p.m.

- - - - - X
TRANSCRIPT OF ORDER TO SHOW CAUSE
BEFORE THE HONORABLE JOANNA SEYBERT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: BY: BLAIRE FELLOWS, ESQ.
JONATHAN C. CLARKE, ESQ.
140 Gazza Boulevard
Farmingdale, New York 11735

For the Defendant: STATE OF NEW YORK
Office of the Attorney General
200 Old Country Road
Mineola, New York 11501
BY: RALPH PERNICK, ESQ.
Assistant Attorney General

Court Reporter: Perry Auerbach
100 Federal Plaza
Central Islip, New York 11722
(631) 712-6103

Proceedings recorded by mechanical stenography.
Transcript produced by computer.

1 THE CLERK: Order To Show Cause, Campanello
2 et al versus New York State Board of Elections et al.
3 Please state your appearance for the record.

4 MS. FELLOWS: Your Honor, Blaire Fellows,
5 attorney for Leonard Joseph Campanello et al, 140 Gazza
6 Boulevard, Farmingdale, New York 11735.

7 THE COURT: And seated next to you.

8 MR. CLARKE: I'm Jonathan Clarke, co-counsel
9 with Blaire Fellows. I'm not admitted in this court, but
10 I am an attorney.

11 THE COURT: And for the State of New York.

12 MR. PERNICK: Assistant Attorney General Ralph
13 Pernick for all defendants, 200 Old Country Road, Mineola
14 New York, 11501.

15 THE COURT: All right. We're here today because
16 an Order To Show Cause in support of a complaint providing
17 me with the specifics, were served by Ms. Fellows at about
18 five to five yesterday, and this court, being on
19 miscellaneous duty, was notified of the service around
20 nine o'clock. I've had an opportunity to look at some of
21 the papers here, and I understand that when Judge
22 Feuerstein's clerk -- it was originally filed with Judge
23 Feuerstein and she'll retain the case, but for today I
24 have full authority to act on it.

25 In any event, I understand you went to Judge

1 Feuerstein's chambers, courtroom rather, and waited there,
2 and if you want to stay in business you really have to get
3 a receptionist or an answering machine that can take the
4 volume of calls you got, because we notified you, we
5 wanted to speak to you, see if the parties were served,
6 see what time you could be here, and process this as early
7 as possible. So we were trying to get it on for 11:00,
8 and finally were able to get in touch with you, I guess it
9 was around 11 o'clock.

10 MS. FELLOWS: Your Honor, we apologize. Our
11 firm is currently on sabbatical. My partner here is
12 running for Congress. So we are right now just we've
13 handed in our election signatures and we're just trying
14 to --

15 THE COURT: I'm just telling you what the Court
16 is faced with.

17 So I did some research today, and one of the
18 things we did do was review what's available to these
19 voters. And I'm not going to be the one to make a
20 determination in terms of the final, whether there's going
21 to be a TR0 granted today, I'll make that determination,
22 or more likely I will put it over for a hearing next week
23 before Judge Feuerstein. But let me just ask you a simple
24 question. Were any of these folks, did they go down and
25 attempt to vote? Because under New York State law,

1 there's a pretty simple process to get it done. One is to
2 show up early in the morning and you say to the people in
3 the polling place "I want to vote." They go through their
4 list and they say you're not registered. And then they
5 say you can go over to the Supreme Court, there's a bank
6 of election law lawyers generally, at least in my
7 recollection of the area, and you can talk to them. And
8 they'll present your issue to a judge and generally get an
9 affidavit or court order that directs the polling place to
10 let you vote. Isn't that the way this works?

11 MS. FELLOWS: Your Honor, our allegations are
12 that there were voters purged from the roll, and under the
13 National Voter Reg Act, enacted in 1993 by then President
14 Bill Clinton, the registration roll, purged roll are
15 supposed to be readily available for two years, and this
16 morning Bill DiBlasio went to the media and verified that
17 over a hundred thousand residents in Brooklyn have been
18 purged from the rolls and the New York City Board of
19 Elections had stated that they have not updated the roll
20 since November, which is a violation of New York election
21 law where multiple boards of elections must keep records
22 or purged voters updated once a month and keep the records
23 of purged voters in alphabetical order on readily
24 available computer database.

25 THE COURT: Okay. But you have several groups

1 of plaintiffs here. Some of them are registration, they
2 allege, switched without their knowledge, they were
3 republican or rather, democrat and someone switched it an
4 awhile ago, or an untimely switch or registration or first
5 time registration. Then you have purged registrants, at
6 least one person from the Bronx, then you have a variety
7 of miscellaneous issues.

8 So my first question is, I don't know if the
9 National Voting Rights Registration Act is the vehicle you
10 need to get accomplished what these variety of plaintiffs
11 want.

12 I also really would find it a lot more
13 convenient for your group of voters who want to vote today
14 if they went or at least have this action brought in
15 Brooklyn, because they're appear to be a number of people
16 in Brooklyn. The Eastern District covers Staten Island,
17 Brooklyn, Queens, Nassau and Suffolk. You have people
18 from the Bronx, you have them all over the state.

19 Let me just ask Mr. Pernick, what, if any,
20 response do you have on this.

21 MR. PERNICK: I have several, your Honor.

22 First of all, one of these voters can go to the
23 polls and if the party registration information is
24 incorrect they can file an affidavit ballot and part of
25 that process includes filing an affidavit under oath --

1 and I'm reading one that I took this morning from the
2 State Board of Elections website, and one of the
3 categories is box checked off for primary elections only,
4 I am enrolled in the political party stated in the section
5 above, but the poll book does not reflect my correct
6 enrollment. That seems to be the situation of these
7 particular plaintiffs, four of them by my count knew in
8 March what the situation was with respect to their -- the
9 records concerning them.

10 In addition, the purging is not done at the
11 state level. It's done by county boards, none of whom are
12 named as parties here. And in addition, one of the things
13 that they asked for is for the Court to rewrite the state
14 election law by changing the primaries so they're older
15 primaries, I'm a member of party A, I can vote in the
16 primary for the candidate from some other party.

17 The parties are not -- the political parties are
18 not parties to the lawsuit either. Here we are, this was
19 filed a day before the primary. I'm informed that the
20 election is underway, I voted this morning, there are
21 5,300 polling sites administered by 3500 poll workers in
22 the state, and that indicated, that is one indication of
23 how late minute'ish this eleventh hour application is.

24 The Court already stated that there are various
25 state remedies that are available.

1 And I would also indicate for the Court's
2 benefit that the complaint appears to cite to the
3 incorrect section of the election law. They refer to
4 8-330.

5 THE COURT: It's 302.

6 MR. PERNICK: And it's 302, correct, your Honor.
7 With respect to the federal statute they refer to, that
8 deals with military ballots and none of these people
9 allege that he fall within that category.

10 THE COURT: The one about notice and the right
11 to bring the lawsuit is 205.10.

12 MR. PERNICK: And the statute also says -- I'm
13 told the statute is Section 16-206 subdivision 2, which
14 authorizes anybody to sue over the canvas of their ballot.
15 I think when you add up all the infirmities here that this
16 case, whatever its ultimate merits may be determined to
17 be, certainly should not be the subject of any stay at
18 this point. It would simply be impossible to comply today
19 with only a few more hours left when the polls are still
20 open to accomplish anything without mass confusion.

21 So my bottom line is that no stay should be
22 issued today and the Order to Show Cause itself should be
23 made returnable with no stay at a date convenient to Judge
24 Feuerstein.

25 THE COURT: Yes.

1 MS. FELLOWS: Your Honor, our position is that
2 the right to do that, to get a court order is not
3 affected. A lot of the disenfranchised voters are working
4 families, some of them are minorities and under 1983 their
5 rights are being violated. And under New York Election
6 Law 8-302 2 subsection B, we are asking for simple remedy,
7 and that remedy comes with evidence with why they are not
8 going to count the provisional ballot, rather than doing
9 it behind the closed doors tonight, violating the voters
10 rights to due process.

11 THE COURT: Has any of your voters consulted
12 like the New York State Women's League of Voters, with the
13 variety of remedies that are set out simply, have any of
14 them contacted their respective Board of Elections to
15 see -- let me ask you the first question, anyone review
16 what's on the website, New York State Women's League of
17 Voters or any of the other multiple Web sites with respect
18 to counties or Board of Election.

19 MS. FELLOWS: Your Honor, a substantial number
20 of our -- well, 15 of our plaintiffs and the unsworn
21 affidavit --

22 THE COURT: I'm not looking at unsworn
23 affidavits.

24 MS. FELLOWS: This case overlaps on Saturday,
25 which why we --

1 THE COURT: How did you gather up the customers.

2 MS. FELLOWS: Working with the group of people
3 on social media and they took down names and numbers of
4 individuals, they vetted them, and all of the people in
5 our lawsuit have filed before, switched parties before the
6 October 19, 2015 deadline or were nearly registered voters
7 before the March 25, 2016 deadline.

8 We have reports coming in to people in my social
9 media group suggesting that 450 people had to vote by
10 provisional ballot who are in fact registered democrats
11 who have been purged.

12 THE COURT: You don't have a problem with the
13 provisional ballot, do you? I mean, essentially if it
14 happened, you know --

15 MS. FELLOWS: Our position is that, they don't
16 get counted, they're purged. Our solution is that rather
17 than denying these voters of their right to due process,
18 that we determine on a later date what votes should be
19 counted. And we don't think that this is an undue
20 hardship on the Board of Elections considering they should
21 have purged rolls for the past few years. And I just, I
22 did do the New York State Board of Elections and in their
23 official capacity and I presented all commissioners of the
24 county Board of Elections New York State, it would have
25 been far too onerous to name every single Board of

1 Elections county in all of New York State.

2 THE COURT: But you're asking me to take
3 jurisdiction and take whatever votes you find should be
4 taken. That's a little bit onerous on the Boards of
5 Election, isn't it, at 2:35?

6 MS. FELLOWS: Well, under Carpenter -- upon
7 information and belief, they are the ones that have purged
8 the voters, the New York State Board of Elections.

9 MR. PERNICK: Frankly, the statute indicates
10 that is simply incorrect. That is done at the county
11 level.

12 THE COURT: What does the statute say,
13 Ms. Fellows?

14 MS. FELLOWS: What statute are you referring to?

15 THE COURT: It's in the state statute, isn't it,
16 Mr. Pernick?

17 MR. PERNICK: Yes, your Honor. First of all,
18 under election law 5-614 sub 4, only the local board that
19 can make changes to the voter registration records, and
20 the state board does not canvas those results as provided
21 under 9-209.

22 The fact that it may be difficult for the
23 plaintiffs to have named all of the county boards of
24 elections, frankly, is their problem. They are seeking
25 relief that affects them with respect to a task that the

1 statute assigns the counties, they should be named and
2 served. And simply stating that complaint and I see in
3 the caption that 2 -- the 2 co-executive directors of the
4 state board are named in official capacity, capacities as
5 co-executive directors of the state board and
6 representative all commissioners of the county boards of
7 elections in New York State. That doesn't make it so.

8 County boards certainly have the right to come
9 in here and be heard. As do the political parties with
10 respect to this claim that the Court should rewrite the
11 statute and declare that New York today should have an
12 open primary.

13 In terms of due process, the statute gives them
14 the process their due. Everything that I hear at this
15 point is upon information and belief. I don't know what
16 the information is. I don't know what the belief is. I
17 have to presume that there's a basis for it, just as I
18 have to presume that government, at a minimum government
19 entities are presumed to do the right thing in terms of
20 obeying the law.

21 I don't subscribe to any social media, but I did
22 pull up on the Web and he see statements to the effect
23 that the Court was having a hearing today at nine a.m.
24 Your Honor, I don't know where that information comes from
25 and there's certainly nothing here that indicates this is

1 upon information and belief. This is a blatant attempt,
2 giving the Court no real opportunity to get into this
3 technical area of the law at a moment's notice. It's
4 simply unfair, it's unfair to the Court, it's unfair to
5 the defendants, who were named, and it's unfair to
6 nonparties. There shouldn't be any stay granted.

7 THE COURT: As you know, Mr. Pernick, life can
8 be unfair at times.

9 However, I'm a court of law and I'm trying to
10 ascertain the appropriate jurisdiction, and I have the
11 parties that should be included in the lawsuit, and the
12 ultimate relief that you're seeking is what Mr. Pernick is
13 saying, Ms. Fellows, and that is an open primary.

14 MS. FELLOWS: Your Honor, that was one of our
15 alternative forms of relief.

16 However, if our primary form of relief we are
17 asking is that the votes of purged democrats be counted.
18 That is the relief that we are requesting. That was an
19 alternative relief. And we're asking for an equitable
20 remedy so we would hope that --

21 THE COURT: Let's suggest for a moment that I
22 say okay, all purged democrats, whether they're plaintiffs
23 or not, they should have the opportunity to vote today.
24 That's what you're telling me you ask for. What if some
25 of these people no longer live here, changed their

1 addresses, could care less about voting, and they become
2 ardent republicans or independents. There has to be some
3 orderly process.

4 MS. FELLOWS: Okay. Your Honor, what we were
5 asking is that the Board of Elections show proof of
6 provisional ballots that they are rejecting at a hearing
7 at a later date. I don't know where this nine a.m.
8 circulation of a hearing at nine a.m. and an open primary
9 came about, I did not -- that happened on social media.
10 Our lawsuit is about the disenfranchised voters who were
11 turned around at the ballot, some of them, who do not have
12 time to seek a Court order. In fact, I don't see how the
13 Court order today is in effect a solution considering the
14 judge would be looking at the roll, the same roll that
15 they got purged from. And I spoke to someone today and
16 they registered Democrat in 2012 and they have not changed
17 address and they were denied a court order.

18 THE COURT: That may be. But there's a study
19 you referred to Mayor DiBlasio making a statement
20 concerning the disenfranchised voters, there's another
21 study that shows something like all the investigations so
22 far have indicated voter error with respect to motor
23 vehicle law that permits you to register to vote and
24 people inadvertently checked off the American party
25 independents is another section that you can vote, in

1 California.

2 But I mean there's a variety of errors. My
3 reading of the National Voter Registration Act is that it
4 requires the state to do -- the states and, therefore, the
5 counties Board of Elections to do a number of things.

6 So I'm going to deny your TRO and your stay
7 because I do not believe that there's really any likely
8 success on the merits.

9 However, I will allow the stay and if you want
10 to amend your complaint and bring in the counties you can
11 do that, Judge Feuerstein said that she had available any
12 day next week to hear this case, and I would suggest
13 perhaps Thursday of next week. Does that work for Judge
14 Feuerstein? I'll put it down for that time and when are
15 you getting in your responsive papers?

16 MS. FELLOWS: Your Honor, can I request an order
17 that the Board of Elections preserves their provisional
18 ballots and not --

19 MR. PERNICK: That's the role of the counties.

20 THE COURT: You don't have the right person here
21 for me to give that order to. I mean if you had at least
22 included the counties involved and their respective boards
23 of elections, then I could understand. And many of these
24 folks claimed -- this is some people that showed up at the
25 polls today and find out they're not properly registered

1 to the party that may want to vote in this election but
2 many of these people knew they were not eligible to vote
3 weeks ago, months ago, and they didn't do anything about
4 it.

5 I mean there is a process. There are judges
6 that sit in New York Supreme to issue these orders and
7 people are advised to go to the judges, sometimes you have
8 not only the Board of Elections being represented by
9 counsel but you have independent counsel that advises
10 voters what they can to get these court orders and allow
11 people to vote. And none of that is included in here. I
12 don't have the ability to issue those kind of orders,
13 because the responsible parties aren't before me. Nor
14 have they been notified of anything.

15 So that's your dilemma. Perhaps you can resolve
16 some of these issues with Judge Feuerstein if there's a
17 basis.

18 I'm going put the matter over until Thursday,
19 let me just double-check with her law clerk. Mr. Pernick,
20 do you know if any of the Board of Elections are required
21 to keep the ballots that voters are attempting to seek?

22 MR. PERNICK: My understanding is that that's
23 the responsibility of --

24 THE COURT: The question is do you know.

25 MR. PERNICK: No, I do not.

1 THE COURT: And do you know?

2 MS. FELLOWS: No.

3 THE COURT: All right. I just communicated with
4 Judge Feuerstein and she decided that she doesn't want a
5 hearing at this time. She believes that she can resolve
6 it on papers. So responsive papers I'll give you until
7 not next week, but the following week to get those in and
8 if she needs oral argument -- it's got to be simultaneous
9 submission of papers, and if she needs oral argument,
10 she'll let you know.

11 MS. FELLOWS: Can we amend our complaint?

12 THE COURT: Sure.

13 MS. FELLOWS: Okay.

14 THE COURT: I would amend it to include the
15 proper parties. Get those down.

16 MS. FELLOWS: Anyone have idea how many counties
17 there are in New York?

18 THE COURT: I think something like 68.

19 THE CLERK: 62.

20 MS. FELLOWS: So we have that time to --

21 MR. PERNICK: To handle the counties in which
22 the plaintiffs are all within the metropolitan area.

23 THE COURT: You don't know what's going to turn
24 up on their social media website.

25 MS. FELLOWS: It's not my social media website.

1 It's groups that are disbursing information online, not to
2 the advice of me. I'm not including any information or
3 making any statement.

4 THE COURT: Okay. But if you're going to rely
5 on, it get plaintiffs from it, I'm sure you have been
6 vetting the plaintiffs.

7 MS. FELLOWS: Yes, I have vetted all 15 of my
8 plaintiffs.

9 MR. PERNICK: Point of information. Did Judge
10 Feuerstein indicate a due date for our responsive papers.

11 THE COURT: I think what she wants is a
12 simultaneous exchange of papers and if she needs oral
13 argument, she'll have that.

14 THE LAW CLERK: The opposition is filed
15 simultaneously.

16 THE COURT: So next week is the 25th and if I
17 make it the following week that will be May 2nd. Thursday
18 of that week would be May 5th.

19 MS. FELLOWS: Is there any way to advance the
20 date?

21 MR. PERNICK: Your Honor, I will be out of town
22 on vacation from the 26th.

23 THE COURT: Folks, this isn't my case.

24 MS. FELLOWS: Okay.

25 MR. PERNICK: Okay.

1 THE COURT: I'm trying to make it as simple as
2 possible. How much time do you need to amend your
3 complaint, get these parties served, and make an argument
4 as to why you're entitled to a Preliminary Injunction or
5 an injunction, period.

6 MS. FELLOWS: A week, a week from today.

7 THE COURT: You can do that by April the 26th,
8 that is what you're saying.

9 MS. FELLOWS: Yes.

10 THE COURT: Getting all of that done and your
11 papers, too.

12 MS. FELLOWS: Yes.

13 THE COURT: That's before your vacation.

14 THE COURT: Let's go with the bundle procedure.
15 You get with yours in on the 26th and you get with your
16 response in before you leave on vacation, so it should be
17 the 29th. And then if she wants oral argument she'll let
18 you know.

19 File everything on the 29th. Judge Feuerstein
20 does hers differently than I do mine. I let you do what
21 you want, get it in, and that's why I get all the motions
22 on my list.

23 The amended complaint you have to get in by the
24 26th along with your papers.

25 MS. FELLOWS: Okay.

1 THE COURT: And good luck to you, sir.

2 MR. CLARKE: Thank you.

3 MS. FELLOWS: Thank you.

4 (Matter concluded.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25