SHORT FORM JUDGMENT

INDEX No. 05-15985

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 33 - SUFFOLK COUNTY

PRESENT:

Hon. THOMAS F. WHELAN
Justice of the Supreme Court

MOTION DATE 8/2/05
ADJ. DATES
Mot. Seq. # 001 - ~~MG~~ CASEDISP
Oral Applic - Denied

In the Matter of the Application of THOMAS S. MARTIN, Petitioner, For an Order pursuant to the provisions of the Election Law of the State of New York declaring invalid the petitions of the following candidates for the public office of Councilman, Town of Islip, filed by, caused to be filed by, or on behalf of KELLIE ALVEREZ and EUGENE L. PARRINGTON, as candidates for the Office of Town Council Member, Town of Islip for the Working Families Party and which purports to name JAMES A. DUNCAN, JR., BERTHA M. LEWIS and ROBERT P. MASTER, as a Committee to Fill Vacancies and JONATHAN KEST, and the SUFFOLK COUNTY BOARD OF ELECTIONS, Respondents.	JAMES A. GOWAN, ESQ. Atty. For Petitioner 90 Sequams Ln. West Islip, NY 11795 ANTHONY M. LaPINTA, ESQ. Atty. For Resps. Alverez & Parrington 35 Arkay Dr. Hauppauge, NY 11788 DANIEL L. PAGANO, ESQ. Atty. For Resps. Duncan, Lewis & Master 27 DiRubbo Dr. Cortlandt Manor, NY 10567 SUFFOLK COUNTY DEPART. OF LAW L. ADRIANA LOPEZ, ESQ. Assist. County Attorney Atty. For Suff. Cty. Board of Elections H. Lee Dennison Bldg. 100 Veterans Memorial Hwy. P.O. Box 6100 Hauppauge, NY 11788

Upon the following papers numbered 1 to 19 read on this Election Law Application ; Notice of Motion/Order to Show Cause and supporting papers 1 - 5 ; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 6-7; 8-11; 12-13 ; Replying Affidavits and supporting papers ; Other 14 (correspondence 8/4/05); 15 (correspondence 8/5/05); 16 (Memorandum); 17-18 (Affirmation); 19 (Affirmation in reply) ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that this combined Election Law §16-102 proceeding and Article 78 proceeding (#001) seeking an Order declaring, among other things, invalid the designating petitions of respondents Kellie Alverez and Eugene L. Parrington for the public office of Councilman, Town of Islip, of the Working Families Party, to be voted on at the primary election to be conducted on September 13, 2005, is granted; and it is further

ORDERED that the oral application by respondents, Jonathan Kest and Bertha Lewis, seeking an order dismissing this proceeding on the grounds of failure to join a necessary party, is denied; and it is further

ORDERED AND ADJUDGED that respondent, Suffolk County Board of Elections, is enjoined, restrained, and prohibited from printing and placing the names of respondents, Kellie Alverez and Eugene L. Parrington, as candidates for the public office of Councilman, Town of Islip, of the Working Families Party in the upcoming primary election to be held on September 13, 2005; and it is further

ORDERED AND ADJUDGED that respondent, Suffolk County Board of Elections, is directed to remove the names of respondents, Kellie Alverez and Eugene L. Parrington, from the ballot for the public office of Councilman, Town of Islip, of the Working Families Party in the upcoming primary election to be held on September 13, 2005; and it is further

ORDERED AND ADJUDGED that this constitutes the decision and judgment of the Court.

By determinations dated July 28, 2005, the respondent, Suffolk County Board of Elections, declared valid the designating petitions of respondents, Kellie Alverez and Eugene L. Parrington, for the public office of Councilman, Town of Islip, of the Working Families Party, after a review of the specification of objections, which were timely filed by the petitioner. Since the respondent-candidates are not registered voters of the Working Families Party, certificates of authorization are required from the political party in order to permit their candidacy in the upcoming primary election.

The challenge to the designating petitions is two-fold; there is a challenge to the individual signatures contained in the petitions and a challenge to the certificates of authorization. As for the petition challenge, the Court conducted a line-by-line examination of the designating petitions at the offices of the respondent, Suffolk County Board of Elections. There were 35 signatures submitted on the petitions, with 26 signatures needed to qualify as a candidate. Upon an examination of the petition, the Court found four (4) signatures to be invalid, that is, p 3, line 1; p 5 lines 2 and 4; and p 12 line1.

The Court reserved decision on objections to the five (5) signatures on page 7 and the two (2) signatures on page 8. Petitioner challenges, under the heading "Residence" on the petition, the lack of hamlet of the signatories, following the house number and the street name. However, petitioner's post-hearing submission concedes that the omission is not fatal (*see* ***Matter of Grancio v Coveney***, 60 NY2d 608, 467 NYS2d 195 [1983]; ***Matter of Cheevers v Gates***, 230 AD2d 948, 646 NYS2d 726 [3d Dept 1996]; *compare* ***Matter of Lane v Meisser***, 24 AD2d 720, 721, 263 NYS2d 151[2d Dept 1965]).

The Court also reserved decision on objections to the five (5) signatures on page 10 and the five (5) signatures on page 11. The Court previously invalidated the one (1) signature on page 12. Petitioner challenges, in the Statement of Witness, the incomplete residence address of the subscribing witness, in particular, the lack of hamlet or county following the house number and the street name. On each sheet, the residence address of the subscribing witness is listed as only "69 Gates Ave # 6."

The respondent candidates rely upon a recent Second Department case for the holding that the failure of a subscribing witness to include his apartment number, town or city, county, and postal zip code as part of his residence on the statement of witness is not fatal to the petition (*see* ***Matter of Tully v Ketover***, 10 AD3d 436, 780 NYS2d 795 [2d Dept 2004]). The Second Department found that "the subscribing witness provided a correctly-stated street name and house number for the address of his residence in compliance with Election Law § 6-132 (2) (citations omitted). In addition, he properly indicated his city and county in the 'Witness Identification Information' section of the petition sheet (citations omitted)."

Here, the respondent, Suffolk County Board of Elections, was able to identify the subscribing witness by obtaining a voter registration card (buffcard) from the Brooklyn Board of Elections. A review of the buffcard discloses that the witness did correctly list his street name and house number and that the information set forth under the Witness Identification Information section of the petition also properly indicated his city and county.

While this Court believes that it would be more in keeping with Election Law § 6-132 (2) to require a complete residence address of a subscribing witness, who is attesting to the signatures that have been obtained, particularly where a witness does not live within the political subdivision or even the county wherein he or she is gathering signatures (here, the witness lives in Brooklyn and he is collecting signatures in the Town of Islip, Suffolk County), the Second Department has taken a more liberal construction of the statute (*see* ***Matter of Barrett v Brodsky***, 196 AD2d 603, 602 NYS2d 397 [2d Dept 1993]; ***Matter of Goldstein v Ross***, 196 AD2d 615, 602 NYS2d 398 [2d Dept 1993]; ***Matter of Feldman v Gold***, 196 AD2d 611, 601 NYS2d 820 [2d Dept 1993]; ***Matter of Loeb v Rivera***, 196 AD2d 617, 601 NYS2d 706 [2d Dept 1993]; *see also* ***Matter of Berkowitz v Harrington***, 307 AD2d 1002, 763 NYS2d 513 [2d Dept 2002]; ***Matter of Vekiarelis v Del Villar***, 286 AD2d 464, 730 NYS2d 443 [2d Dept 2001]; *but see* ***Matter of Kemp v Monroe County Bd. of Elections***, 129 Misc2d 491, 493 NYS2d 529 [Sup Ct, Monroe County 1985]).

The Court does note that § 6-132 was amended to delete from the Statement of Witness the requirement of the post office address of the subscribing witness (*see* L. 1996, c 197, §1, eff Dec. 1, 1996).

Accordingly, the Court sustains the determination of the respondent, Suffolk County Board of Elections, with regard to this objection to the designating petitions and finds that there are 31 valid signatures, which is more than the minimum signature requirement.

With regard to the certificates of authorization, the challenge is set forth in the second cause of action of the verified petition, wherein it is alleged that respondents, Jonathan Kest and Bertha Lewis, are the Secretary and Chairperson/Presiding Officer of the Executive Committee of the New York State Working Families Party (*see* Verified Petition, pars 6; 17). On or about July 12, 2005 they caused to be filed with the respondent, Suffolk County Board of Elections, two Certificates of Authorization, dated July 8, 2005, claiming to permit the candidacy of the respondent candidates in the upcoming primary election (*see* Verified Petition, pars 7; 8 ; 17). In their verified answer, respondents admit the allegations of paragraphs 6, 7, and 8 concerning their actions as Secretary and Chairperson/Presiding Officer of the New York State Working Families Party. Paragraphs 7 and 8 reference the certificates of authorization, which are annexed to the verified petition.

Petitioner claims that the only body or officers who may issue such Certificates of Authorization are those of the Suffolk County Working Families Party, a duly organized, constituted committee pursuant to Election Law §2-104 and which has caused bylaws to be filed with the respondent, Suffolk County Board of Elections, governing the authorization of non-party candidates as candidates of the Working Families Party within Suffolk County (*see* Verified Petition, pars 13 [h]; 18).[1]

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[1] Although it appears that respondents mailed their Memorandum of Law, with its attached exhibits, to the Court by overnight mail delivery on August 8, 2005, it was not received by the Court until August 12, 2005. Thereafter, the Court received an affirmation from petitioner's counsel on August 15, 2005 and a affirmation in reply from respondents' counsel, by fax transmission, on August 17, 2005 at 5:29 pm.

Election Law §6-130(3) unequivocally requires that a certificate of authorization of a nonparty candidate be filed with the Board of Elections. It states, in pertinent part:

> The members of the party committee representing the political subdivision of the office for which a designation or nomination is to be made, unless the rules of the party provide for another committee, in which case the members of such other committee, and except as hereinafter in this subdivision provided with respect to certain offices in the city of New York, may, by a majority vote of those present at such meeting provided a quorum is present, authorize the designation or nomination of a person as candidate for any office who is not enrolled as a member of such party as provided in this section. In the event that such designation or nomination is for an office to be filled by all the voters of the city of New York, such authorization must be by a majority vote of those present at a joint meeting of the executive committees of each of the county committees of the party within the city of New York, provided a quorum is present at such meeting.... The certificate of authorization shall be signed and acknowledged by the presiding officer and the secretary of the meeting at which such authorization was given.

Based upon the language "unless the rules of the party provide for another committee," respondents Jonathan Kest and Bertha Lewis argue that the only party committee authorized to issue certificates of authorizations, or, as they are more commonly known, Wilson-Pakula certificates, is the State Committee of the Working Family Party, and not the Suffolk County Committee. They contend that the State Committee has reserved the power to issue Wilson-Pakula certificates to itself and, therefore, has not delegated such power to the local committees.

Such not only misinterprets this and other provisions of the Election Law and turns upside down the political party system devised by the State Legislature, it also fails to accurately state the current bylaws of the State Committee.

State Rules Expressly Exclude Town Offices from the Wilson-Pakula Power of the State Committee

The New York State Working Families Party Rules and Regulations states, in pertinent part, under Section 1 of Article VIII, which is entitled "Nominations for Public Office," the following:

> The nomination, designation and/or authorization (as such authorization is permitted under Section 6-120 of the Election Law) of candidates for any office to be filled by the voters of the entire state shall be made by the State Committee. Substitution of such candidates shall be made by the State Executive Committee. The nomination, designation and/or authorization (as such authorization is permitted under Section 6-120 of the Election Law) of candidates for any county, city or local office, ***excluding citywide offices of New***

> ***York City and offices of towns and villages***, shall be made by the State Committee, or by the State Executive Committee when the State Committee is not convened ... (emphasis added).

Section 8 of Article VIII states in pertinent part:

> ***Except to the extent otherwise provided herein*** and by law with respect to certain offices to be filled by all the voters of the City of New York, the State Executive Committee shall authorize the delegation, nomination or substitution of a person as a candidate for any office who is not enrolled as a member of the Working Families Party, as permitted By Section 6-120 of the Election Law ... (emphasis added).

Article XII, which is entitled "County Organizations," states in pertinent part:

> ... ***Except to the extent otherwise provided herein*** and by law with respect to certain offices to be filed by all the voters of the City of New York, the Working Families Party shall not authorize any County Committee to nominate, designate, or authorize any candidates for public office. That power is reserved for the State Committee and the State Executive Committee. (emphasis added).

When read together, it is obvious that the State Committee, when it adopted the above Rules and Regulations, expressly excluded town and village offices from the power and control of the State Committee or the State Executive Committee, when faced with the issue of authorization for nonparty candidates under Section 6-120 of the Election Law. The failure to abide by the rules and regulations of a party has lead to the invalidation of certificates of authorization and nomination (*see* ***Matter of Keukelaar v Monroe County Bd. of Elections (Green)***, 307 AD2d 1073, 763 NYS2d 514 [4th Dept 2003]; ***Matter of Keukelaar v Monroe County Bd. of Elections (Elliotto)***, 307 AD2d 1074, 763 NYS2d 515 [4th Dept 2003]; ***Matter of Hervey v Greene County Bd. of Elections***, 166 AD2d 743, 563 NYS2d 110 [3d Dept 1990]; ***Matter of Francisco v Borden***, 153 AD2d 786, 545 NYS2d 401 [3d Dept 1989]; ***Matter of McAuliffe v Senn***, 97 AD2d 745, 467 NYS2d 913 [2d Dept 1983]).

Here, the respondents Kellie Alverez and Eugene L. Parrington are seeking the public office of Councilman, Town of Islip, of the Working Families Party. As such, by express party rules, the State Executive Committee has no authority to issue Wilson-Pakula certificates. The case of ***Matter of New York Working Families Party v Berman***, 11 AD3d 646, 764 NYS2d 557 (2d Dept 2004) did not resolve this issue. First, the public office in question in that case was that of County Legislator - not a town office. As a county office, it is not an excluded office under Section 1 of Article VIII. Secondly, that case focused upon Election Law § 6-114, which holds that in the case of special elections, nominations are made in the manner prescribed by the rules of the party. The instant case involves a primary election - not a special election. The State Committee Rules and Regulations expressly state that "[n]ominations for public office to be filled at a special election shall be made by the State Executive Committee" (Section 5 of Article VIII).

Therefore, the certificates of authorization are null and void, having been issued by an unauthorized party committee of the political party. The certificates of authorization dated July 8, 2005, signed by respondents Jonathan Kest and Bertha Lewis, as Secretary and Chairperson/Presiding Officer of the Executive Committee of the New York State Working Families Party, are void ad initio.

State Rules are Contrary to Statutory Authority and to the Original Intention of the Wilson-Pakula Law

The Working Families Party received status as an official party in New York State when its candidate for Governor in 1998 received more than 50,000 votes (*see* Election Law §§1-104[3]; 6-128). With the primary election in 2002, the Suffolk County Working Families Party County Committee was constituted as duly organized county committee pursuant to Election Law § 2-104, the only organized county committee of the Working Families Party in New York State. When the Working Families Party reorganized two years later, at the primary election in 2004, a County Committee for Suffolk County was once again constituted. At the reorganization meeting of the State Committee in September of 2004, the above noted Rules and Regulations were adopted in an effort to either frustrate "disloyal and self-serving individuals who do not share the philosophy of the party they claim to represent" (Respondents Memorandum of Law, unnumbered fourth page) or render any organized County Committee outside the five counties of New York City, without authority to nominate, designate, or authorize candidates.

At issue is the intent of the State Legislature in enacting Election Law §6-120. The primary consideration of courts in interpreting a statute is to "ascertain and give effect to the intention of the Legislature" (McKinney's Cons. Laws of N.Y., Book 1, Statutes § 92[2], at 177). As stated by the Court of Appeals in ***Matter of ATM One, LLC, v Landaverde***, 2 NY3d 472, 779 NYS2d 808 (2004):

> In matters of statutory and regulatory interpretation, we have repeatedly recognized that
>
> > "legislative intent is the great and controlling principle, and the proper judicial function is to discern and apply the will of the [enactors]. Generally, inquiry must be made of the spirit and purpose of the legislation, which requires examination of the statutory context of the provision as well as its legislative history" (***Mowczan v Bacon***, 92 NY2d 281, 285 [1998] [internal quotation marks and citations omitted]; *see* ***Matter of Sutka v Conners***, 73 NY2d 395, 403 [1989]).

The Second Department has recently held, in ***Matter of Astoria Gas Turbine Power, LLC, v Tax Commission of City of New York***, 14 AD3d 553, 788 NYS2d 417 (2d Dept 2005):

> In ascertaining the purpose and applicability of a statute, it is proper to consider the legislative history of the act, the circumstances surrounding the statute's passage, and the history of the times (*see* McKinney's Cons. Laws of N.Y., Book 1, Statutes § 124).

Application of these principles leads to the conclusion that respondents' construction of the statutory language is contrary to the legislative intent.

As noted above, based upon the language "unless the rules of the party provide for another committee" found in Election Law § 6-120(3), respondents believe that they have the right to deprive duly organized and constituted county committees of the power to nominate, designate, and authorize nonparty candidacies for public offices within the constituted county. They also believe that State Committees can delegate to "subordinate" County Committees the power to nominate, designate, or authorize candidates within their counties. They believe that the only exception to the absolute power of the State Committee is

with regard to certain city-wide offices within New York City, as set forth in Election Law §6-120(3).

Such, however, is contrary to the intent of the Wilson-Pakula Law and the statutory scheme establishing political parties. Article 2 of the Election Law sets forth New York State's statutes governing political parties. Under Article 2, only two statutory committees can be created, that is, the state committee and county committees (*see* Election Law §§2-102; 2-104; 2-106). All other party committees are creatures of the bylaw or rules and regulations of these statutory parties (*see* Election Law §§2-100; 2-110[1]). The time in which each committee is to meet and organize by electing officers is set forth in Election Law §2-112. Importantly, Election Law §2-114 (1) states, in pertinent part, that "[e]ach committee may prepare rules for governing the party within its political unit."

In light of the statutory scheme set forth in Article 2, it is apparent that respondents are misinterpreting Election Law §6-120(3). Read in its entirely and in light of the provisions of Article 2, particularly §2-114(1), the phrase "[t]he members of the party committee representing the political subdivision of the office for which a designation or nomination is to be made,"is either the state committee for state-wide offices or, in counties that have constituted county committees, the county committee is "the party committee representing the political subdivision of the office for which a designation or nomination is to be made."

The key to what is contemplated by Election Law §6-120(3) is an examination of what committee *represents* the political subdivision. Courts have always looked to see if there is a duly organized county committee that represents the political unit at issue. In ***Matter of Miller v Meisser***, 22 NY2d 318, 292 NYS2d 656 (1968), the issue involved a political unit, that is, a congressional district, that encompassed only part of Nassau County. Contrary to the holding by the lower courts that the statute conferred upon a committee within the smaller political subdivision the right to authorize the designation of a person not enrolled in the party, the Court of Appeals held (22 NY2d at 320):

> The statute merely requires that the designating committee *represents* the political subdivision. No one can question the fact that the Nassau County Republican Committee represents the Republican party within the Fifth Congressional District. Moreover, the Nassau County Republican Committee unquestionably had the authority under [the statute] to delegate the power of designation to a lesser committee such as an executive committee within the Fifth Congressional District. Having chosen not to so delegate its authority, the Nassau County Republican Committee unquestionably retained unto itself the power to designate candidates within the Fifth Congressional District (citations omitted) (emphasis in original).

The statutory committee that represents the smaller political unit, the congressional district, is the county committee, if one is organized pursuant to the dictates of Article 2 of the Election Law. If an organized county committee exists, it would make a mockery of the statutory scheme set forth in Article 2 to say that the county committee does not represent the political subdivisions within its confines, but that such political units are represented by the state committee. The definition of committee set forth in Election Law §1-104(6) also speaks of representing the political unit.

The above is demonstrated by the holding in ***Matter of Langley v Lomenzo***, 30 AD2d 711, 290 NYS2d 719 (3d Dept 1968), *affd* 22 NY2d 781, 292 NYS2d 694 (1968), where the court found "dispositive of each case the fact that there existed no party committee 'representing the political subdivision', i.e., the senatorial district" due to the fact that no Conservative Party County Committee existed in Schoharie County. Such enabled the state executive committee to authorize the designation.

The phrase in Election Law §6-120(3) relied upon by respondents, that is, "unless the rules of the party provide for another committee," contemplates the normal situation where the members of the state and county committee may select "another committee," such as each committees' executive committee, to act, instead of calling meetings of the entire committee to conduct the business of "the party within its political unit" (*see* Election Law §2-114[1]). As set forth under Election Law §1-104(6), "[t]he term 'committee' means any committee chosen, in accordance with the provisions of this chapter, to represent the members of a party in any political unit." Respondents interpretation of §6-120(3) would eliminate the ability of the county committee to govern "the party within its political unit"as authorized by §2-114(1).

This Court's reading of the statute is supported by the provision of §6-120(3) that governs "an office to be filled by all the voters of the city of New York," wherein "a joint meeting of the executive committees of each of the county committees" is required to authorize the candidacy of a nonparty candidate. Such makes sense, since the city-wide public office sought is beyond the political unit of each county committee. Importantly, the statute defers the authority to issue such Wilson-Pakula certificates to the county committees and not to the state committee.

This Court's reading of the statute is further supported by an examination of the legislative bill jacket collection for the Wilson-Pakula Law, in particular, Chapter 432 of 1947. The bill, which the National Lawyers Guild called, in its March 8, 1947 letter to then Governor Thomas E. Dewey "the most dangerous and harmful piece of legislation now pending in Albany," was opposed by many organizations as an attack upon the Fusion movement and bipartisan nominations, was intended to stop the party raiding by such individuals as then Congressman Vito Marcantonio and his American Labor Party associates.

State Senator Malcolm Wilson, one of the authors of the law, explained the law in a March 18, 1947 letter to Charles D. Breitel, the Counsel to the Governor:

> It limits designees for nomination at party primaries (subd. 1) candidates before state conventions, state committees or other committees created by party rules (subd. 2) designees or nominees named by a committee to fill vacancies, (subd. 3) and nominees made to fill vacancies in office to be filled at a special or general election (subd. 3) to enrolled members of the party involved, unless the appropriate party committee in the political subdivision involved, authorizes the designation, or nomination of a candidate not so enrolled (subd. 4).

State Senator Irwin Pakula, the other author of the law, explained it in identical language in a March 25, 1947 letter to the Counsel to the Governor, and noted that fusion candidates are possible since the law "permits this to be accomplished by action of the appropriate party committee. Thus this bill not only makes Fusion possible, but provides a core democratic means through the duly elected committee of the party, rather than through party leaders."

Other letters, pro or con, though-out the bill jacket, discuss the fact that the appropriate governing party committee of the political subdivision for which a nomination may be made are authorized to make such designation or nomination of a non-enrolled member of the party. Governor Dewey signed the bill into law on March 25, 1947. Since that date, the statute as been interpreted by all the political parties affected by the law, as reflected in caselaw, as described by State Senator Wilson, that is, "the appropriate party committee in the political subdivision involved, authorizes the designation, or nomination of a candidate not so enrolled."

Since 1947, the statute has not been interpreted as advocated by respondents. Apparently, the passage of time has helped to mask the intention of the statute's authors, Mr Wilson and Mr. Pakula.

Respondents reference ***Matter of Kahler v McNab***, 48 NY2d 625, 421 NYS2d 53 (1979) for the proposition that the State Committee's rules should be given deference. In that case, the Court of Appeals "reiterated the principle that, absent inconsistent statutory directives, the duly adopted rules of a political party should be given effect (see Election Law §§ 2-110- - 2-114; [citations omitted])." The Court cited to the provisions of the Election Law that provide for County Committee creation and rules for governance, which respondents ask this Court to ignore.

As shown from all of the above, the applicable State Committee Rules and Regulations are inconsistent with statutory directives. Where party rules are inconsistent with the Election Law, courts are not reluctant to hold that the rules can not be enforced (*see* ***Matter of Steward v Fossella***, 243 AD2d 715, 663 NYS2d 634 [2d Dept 1997]; ***Matter of Grancio v Coveney***, 96 AD2d 917, 466 NYS2d 102 [2d Dept 1983]; ***Matter of Terenzi v Westchester County Comm. of the Conservative Party of New York State***, 171 Misc2d 93, 653 NYS2d 483 [Sup Ct, Westchester County 1996]). It is the clear responsibility of the Court to enforce the provisions of the Election Law and to uphold considerations of public policy as reflected in judicial decisions. The Court defers to the public policy statement expressed in ***Matter of Baker v Jensen***, 30 AD2d 969, 971, 295 NYS2d 283 (2d Dept 1968), *affd* 22 NY2d 959, 295 NYS2d 331 (1968):

> The entire philosophy of our party system of nominations and elections is intended to reserve to the units of election the right to make nominations to fill vacancies. It is not in the interest of the democratic process that a State Committee meeting in Albany, or somewhere else, should have the power to select the candidates for local offices in the various cities, villages, towns and counties in the State, as against the wish of the members of the party resident in the units which are to be served by the public officials sought to be nominated.

Here, respondents are seeking judicial approval of rules that misinterpret and turn upside down the democratic process set forth in the Election Law and in case law. Democracy in New York State is a bottom-up, and not a top-down process. According Article 2 of the Election Law the reasonable construction intended by the State Legislature, and in light of the discussion above, the Court agrees with petitioner's contention that the State Committee has no authority in statute or common law to authorize non-party candidates in the local unit of a county where there is a duly constituted County Committee, with adopted rules that employ the dictates of §6-120(3). The State Legislature did not devise Article 2 of the Election Law, which created county committees as one of only two separate statutory committees, with the intention of rendering a county committee powerless and without authority to nominate, designate, or authorize candidates outside the city-wide public offices which encompass the five counties of New York City.

<u>Service of Process upon the Secretary and Chairperson/Presiding Officer was Sufficient</u>

Respondents argue that the failure of petitioner to name the State Executive Committee, as a necessary party, constitutes a fatal defect to the proceeding. The Court is well aware of the caselaw that supports that position (*see* ***Matter of Cornicelli v Scannell***, 307 AD2d 1006, 763 NYS2d 510 [2d Dept 2003]; ***Matter of Flores v Kapsis***, 10 AD3d 432, 780 NYS2d 798 [2d Dept 2004]; ***Matter of Barbuto v Sarcone***, 275 AD2d 424, 713 NYS2d 128 [2d Dept 2000]; ***Matter of Jenkins v Board of Elections of City of New York***, 270 AD2d 436, 705 NYS2d 64 [2d Dept 2000]; ***Matter of Schaffer v Withers***, 186 AD2d 836, 589 NYS2d 518 [2d Dept 1992]; ***Matter of Curcio v Wolf***, 133 AD2d188, 518 NYS2d 694 [2d Dept 1987]).

However, a review of the above cases reveals that in each case, unlike the instant case, where Jonathan Kest and Bertha Lewis, as Secretary and Chairperson/Presiding Officer of the Executive Committee were named as respondents and served with process, the Secretary and Presiding Officer of the challenged meeting were not made parties to the proceeding. Moreover, as noted above, the respondents in the instant case admit in their verified answer the allegations of the petition concerning their activities on the Executive Committee and the resulting Wilson-Pakula certificates. Such distinguishes the above cited case, such as ***Matter of Cornicelli v Scannell***, 307 AD2d 1006, *supra*, where a review of the lower court determination by the Hon. John P. Dunne, Supreme Court, Nassau County, dated August 8, 2003 (Index No. 03-11317), discloses that the petitioner therein failed to join James Kapsis as the purported President and Michael J. Camardi as the purported Secretary.

To the contrary, in ***Matter of Keukelaar v Monroe County Bd. of Elections (Green)***, 307 AD2d 1073, *supra*, where petitioners did name as respondents and served with process, the Secretary and Presiding Officer of the challenged meeting, the court rejected respondents' contention that petitioners failed to join necessary parties. A review of the lower court determination by the Hon. John J. Ark, Supreme Court, Monroe County, dated August 12, 2003 (Index No. 03-8674), discloses that the petitioners therein joined Blanca Colon as the Presiding Officer and Walter Schiemann as the Secretary of the challenged meeting, but not the Nominating Committee itself (*see also* ***Matter of Delmont v Kelly***, 172 AD2d 1067, 571 NYS2d 390 [4th Dept 1991] [where, although the Erie County Conservative Party was not joined as a necessary party, the fact that persons claiming to be elected were made parties, was held to be sufficient]).

The reason for naming and serving the Secretary and Presiding Officer is found in the statute, which states "a certificate of authorization shall be signed and acknowledged by the presiding officer and the secretary of the meeting at which such authorization was given" (Election Law §6-120[3]).

Normally, the failure to join a necessary and indispensable party is a fatal defect because of the failure to serve before the expiration of the exceedingly short statute of limitations period (*see* Election Law §16-102[2]). However, in the instant case, where the certificates of authorization are of no legal effect and the documents are void ad initio, caselaw in the Second Department holds that challenges to Wilson-Pakula certificates that are not issued by the appropriate committee of the party will not be dismissed as time-barred (*see* ***Matter of Conservative Party of State of New York v New York State Bd. of Elections***, 231 AD2d 481, 646 NYS2d 891 [2d Dept 1996], *aff* 170 Misc2d 885, 652 NYS2d 463 [Sup Ct, Westchester County 1996]; *leave to appeal denied by* 88 NY2d 998, 648 NYS2d 868[1996]).

Since, under the above-stated authority, a challenge to the void ad initio Wilson-Pakula certificates is not time-barred, petitioner could simply, even at this time, amend the caption to add the Executive Committee. Moreover, the Court finds that where, as here, the Secretary and Chairperson/Presiding Officer of the Executive Committee were named as respondents and served with process, any claim that a necessary party was not joined must fail.

Accordingly, the Court grants the relief requested in the combined Election Law §16-102 proceeding and Article 78 proceeding and denies the oral application to dismiss the proceeding, for all of the reasons set forth above. This constitutes the decision and Judgment of the Court.

DATED: 8/19/05

THOMAS F. WHELAN, J.S.C.