

SUPREME COURT - STATE OF NEW YORK  
TRIAL/SPECIAL TERM, PART XXXII, SUFFOLK COUNTY

DECISION

PRESENT: HON. MARY M. WERNER  
JUSTICE OF THE SUPREME COURT

-----X  
DOROTHY KLEIN, BRIAN SCHNECK,  
MICHELE LYNCH ERNEST K. WESSBERG,  
SHARIN THOMSON, HERBERT D. BIBLO,  
  
Petitioner(s),

- against -

ROBERT L. GARFINKLE, ANITA S. KATZ  
COMMISSIONERS, constituting the Suffolk  
County Board of Elections, and

the purported;

WORKING FAMILIES PARTY COUNTY  
COMMITTEE OF SUFFOLK COUNTY and  
THE EXECUTIVE COMMITTEE OF THE  
SUFFOLK COUNTY WORKING FAMILIES PARTY  
COUNTY COMMITTEE, CHARLES J. POHANKA, III,  
CHAIRMAN, DONNA LENT, SECRETARY, and  
DOROTHY WEISSGERBER, TREASURER OF  
SAID COUNTY COMMITTEE,

Respondent(s).

-----X

DANIEL L. PAGANO, ESQ.  
Attorney for Petitioners  
2649 Strang Boulevard, Suite 104  
Yorktown Heights, New York 10598

VINCENT J. MESSINA, JR., ESQ.  
Attorney for Respondents  
Working Families Party County  
Committee of Suffolk County and  
Charles J. Pohanka, III, Chairman  
320 Carleton Avenue, Suite 3200  
Central Islip, New York 11722

CHRISTINE MALAFI, ESQ.  
Suffolk County Attorney  
Attorneys for Respondents  
Robert L. Garfinkle, Anita S. Katz  
Commissioners, constituting the  
Suffolk County Board of Elections  
By: Andrew G. Tarantino, Jr., Esq.  
400 Carleton Avenue  
Post Office Box 9062  
Central Islip, New York 11722

NEIL H. TIGER, ESQ.  
Attorney for Respondent  
Donna Lent  
33 McGregor Drive  
Southampton, New York 11968

JOHN J. LEO, ESQ.  
Attorney for Respondent  
191 New York Avenue  
Huntington, New York 11746

Upon the Verified Petition dated October 4, 2004, the Verified Answers of Respondents, the Decision and Order of the Court dated October 15, 2004, which dismissed the petition; the Decision and Order of the Appellate Division, Second Judicial Department dated November 18, 2004 which reinstated the petition and remanded for an evidentiary hearing; the Decision and Order of the Court denying summary judgment dated May 11, 2005; the evidentiary hearing held May 11, 2005; the Joint Brief of Respondents dated May 31, 2005; the Post Trial Brief of Petitioners dated June 12, 2005; and prior decisions of the Court; it is

**ORDERED** that the petition (seq. #001) pursuant to Election Law § 16-102 on the grounds that the purported Organizational Meeting of the Suffolk County Working Families Party Committee held September 27, 2004 is null and void and that the filing with the Suffolk County Board of Elections on September 27, 2004 of the election of officers and Rules and Regulations generated from the meeting are null and void is granted, upon findings of the Court and respondents' concessions that said organizational meeting was null and void due to respondents' use of invalid proxies and the lack of a quorum.

By Verified Petition pursuant to Election Law § 16-102 dated October 6, 2004 petitioners challenged the validity of the purported Organizational Meeting of the Suffolk County Working Families Party Committee held September 27, 2004 on the grounds that the meeting was not properly noticed, called and/or convened; that no quorum was present; that fraudulent/non-existent proxies were used by respondents; that no roll call was conducted or taken as required; that there was a failure to conduct voice voting fairly; and that there was a failure to follow Roberts Rules of Order. Following appeal of the Court's dismissal of the petition on October 15, 2004, the matter was remitted to this Court for further proceedings including an evidentiary hearing on the merits of the petition. Matter of Klein v. Garfinkle, 12 A.D.3d 604, 786 N.Y.S.2d 77 (2<sup>nd</sup> Dep't, 2004). Following an appearance before the Court on January 5, 2005 regarding discovery applications, the parties agreed upon February 18, 2005 for the hearing. The hearing was further adjourned to May 11, 2005 and petitioners filed a motion for summary judgment. Petitioners' motion for summary judgment was denied by Decision and Order dated May 11, 2005.

The evidentiary hearing on the petition commenced on May 11, 2005. The Court heard testimony by a number of individuals whose proxies the candidate respondents relied on declaring that both a quorum was present and that respondents Charles J. Pohanka, III, Chairman, Donna Lent, Secretary, and Dorothy Weissgerber, Treasurer were duly elected. These individuals flatly denied ever signing the proxy in their name. Following a recess, respondents conceded that the subject organizational meeting was invalid due to a lack of quorum. Having reviewed the evidence submitted upon the motion for summary judgment, and having heard the testimony plainly demonstrating that the purported proxies held by the candidate respondents were fraudulently

demonstrating that the purported proxies held by the candidate respondents were fraudulently executed, the Court questioned the parties on the impact of the Second Department decision in Matter of Fischer v. Peragine, 10 A.D.3d 620; 781 N.Y.S.2d 768 (2<sup>nd</sup> Dep't, 2004) wherein the Court upheld disqualification of two party candidates from seeking any position in the subject political party "based upon their active involvement in the fraudulent activities" relating to the designating petition which was held to be "permeated with fraud". *Id.* The parties request for time to submit briefs on this issue was granted and their further request for additional time for said submissions was likewise granted.

It is well settled that "except where expressly governed by legislation, the internal organization and authority of a political party is governed by the party rules" Matter of Bachmann v. DeFronzo, 164 A.D.2d 926; 559 N.Y.S.2d 586 (2<sup>nd</sup> Dep't, 1990); see, Election Law § 2-114. Where a meeting is held in contravention of the subject party rules any action taken thereat is invalid. *Id.*; see also, Matter of Firestone v. MacKay 306 A.D.2d 346, 760 N.Y.S.2d 548 (2<sup>nd</sup> Dep't, 2003). A Court "is bound to give effect to applicable rules of a political party, both as a matter of federal constitutional law and as a matter of clear statutory intent". Lugo v. Board of Elections, 123 Misc. 2d 764, 474 N.Y.S.2d 910 (Sup. Ct., N.Y. Co., 1984). The Court may direct the reassembling of an organizational meeting notwithstanding party rule limitations on the time for conducting such a meeting. Election Law § 16-102, see, Town of Islip Town Committee of the Conservative Party of New York State v. Leo, 71 A.D.2d 624, 418 N.Y.S.2d 148 (2<sup>nd</sup> Dep't, 1979).

Having read the submissions of the parties, the Court has reflected upon the serious impact such fraudulent activities (as demonstrated by both the submissions on the motion and the evidence at the hearing on the petition) have upon the fundamental rights of citizens to participate in the political process. The Court is deeply troubled by the circumstances of this case. In view of the concession of the respondents, there was no testimony before the Court regarding the names of the individuals who actually engaged in the forgery of the proxies and the extent of the knowledge of the named respondents in this fraud. While petitioners urge the Court to bar respondents from participating in any future Working Families organizational meetings, the Court finds that disqualification of respondents is not warranted at this juncture. (*c.f.* Fischer v. Peragine, *supra*; see, In the Matter of Villafane v. Caban, 104 A.D.2d 579, 479 N.Y.S.2d 282 [2<sup>nd</sup> Dep't, 1984]). The Court observes the lengthy delay in the resolution of this matter, albeit it upon the consent and request of the parties, has deprived the members of the Suffolk County Working Families Party from political leadership throughout this period.

Petitioners maintain that no new organizational meeting can be convened and alternatively seek judicial intervention to prevent a repeat of the circumstances which

led to this extended judicial proceeding. Pursuant to Election Law § 16-102 (3) the Court is empowered to order the reconvening of the subject organizational meeting upon a finding, such as is made here, that "there has been such fraud or irregularity as to render impossible a determination as to who rightfully was nominated or elected." See, Ryan v. Grimm, 15 N.Y.2d 921, 258 N.Y.S.2d 843, 206 N.E.2d 867 (1965). Further, it is well established that "absent inconsistent statutory directives, the duly adopted rules of a political party should be given effect. Kahler v. McNab, 48 N.Y.2d 625, 421 N.Y.S.2d 53, 396 N.E.2d 200 ( 1979); Steward v. Fossella, 243 A.D.2d 715, 664 N.Y.S.2d 567 (2<sup>nd</sup> Dep't, 1997). Equally well settled is the absence of judicial authority to intervene in the internal affairs of a political party by appointment of either a supervisor or parliamentarian to supervise a party meeting even where there is a "history of confrontation" between the members. Bloom v. Notaro, 67 N.Y.2d 1048, 504 N.Y.S.2d 90, 495 N.E.2d 353 ( 1986). "The New York State Legislature manifested an intent of general noninterference with the internal affairs of political parties when it authorized party committees to formulate their own rules and organize themselves. The courts should be most reluctant to interfere with the internal affairs of a political party." *Id.*

The candidate respondents are plainly fully aware of the consequences of their failure to abide by the Rules and Regulations of their Party in conducting the subject organizational meeting and are reminded that participation in the political process is a constitutional privilege and that a repetition of such acts as were presented to the Court in this proceeding, which prevent true representation of the party members by duly elected Committeemen and Committeewomen, will not be countenanced. The Suffolk County Working Families Party Rules and Regulations (hereinafter "SCWFP rules") specifically provide that an organizational meeting is a County Committee meeting at which "the Chairman of the outgoing County Committee shall preside until a Chairman of the new County Committee is elected." (Article III § 4). Accordingly, it is

**ORDERED** that the outgoing Chairman of the County Committee is directed to re-notice and reconvene an Organizational Meeting of the Suffolk County Working Families Party Committee in accordance with Suffolk County Working Families Party Rules and Regulations within thirty days of the date of this order.

A copy of this decision (or order) shall accompany any proposed order/counter order or judgment submitted to the court.

Dated: 6/29/05



MARY M. WERNER, J.S.C.

FINAL DISPOSITION

NON-FINAL DISPOSITION

SCAN

DO NOT SCAN