

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

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IN THE MATTER OF THE APPLICATION OF LOUIS
PULIAFITO,

Plaintiff,

- v -

THE BOARD OF ELECTIONS IN THE CITY OF NEW
YORK, REBECCA SEAWRIGHT

Defendant.

-----X

INDEX NO. 100432/2020
100433/2020
MOTION DATE 5/5/2020
MOTION SEQ. NO. 001, 001

**DECISION + ORDER ON
MOTION**

Upon the foregoing documents, it is

ORDERED that the motion of Bryan Jung to intervene in the Action Responses (Index No. 100435/2020 and Index No. 100436/2020) is granted; and it is further

ORDERED, ADJUDGED AND DECLARED that the applications of Petitioner-Candidate Louis Puliafito (Index No. 100432/2020 and Index No. 100433/2020) are denied; and it further

ORDERED, ADJUDGED AND DECLARED that the applications of Petitioner-Candidate Rebecca A. Seawright (Index No. 100435/2020 and Index No. 100436/2020) are granted, and this Court

- (a) Declares valid, proper, sufficient and legally effective the Designating Petition heretofore filed with Respondent Board of Elections, designating Rebecca A. Seawright, as candidate for the Public Office of Member of the New York State Assembly from the 76th Assembly District from New York County, New York State in the Democratic Party Primary Election to be held on June 23, 2020; and
- (b) Declares valid, proper, sufficient and legally effective the Designating Petition heretofore filed with Respondent Board of Elections, designating Rebecca A. Seawright, as candidate Public Office of Member of the New York State Assembly from the 76th Assembly District from New York County, New York State in the Working Families Party Primary Election to be held on June 23, 2020.

FINAL DISPOSITION

MEMORANDUM DECISION

Petitioner-Candidate Louis Puliafito (hereinafter, Puliafito) commenced this proceeding by Order to Show Cause (Index No. 100432/2020, “Action One”) seeking an order invalidating and declaring null and void the purported designating and/or nominating petition of Respondent-Candidate Rebecca A. Seawright (hereinafter, Seawright) filed with Respondent Board of Elections in the City of New York (hereinafter, Board of Elections) designating Seawright as a candidate of the Democratic Party for the public office of Member of the New York State 76th Assembly District, City and State of New York, in the Democratic Party Primary Election on June 23, 2020 (the “Democratic Party petition”). Puliafito also filed a separate petition (Index No. 100433/2020, “Action Two”) to invalidate the petition designating Seawright as a candidate of the Working Families Party for the same public office in the Working Families Primary Election on June 23, 2020 (the “Working Families Party petition”). Seawright then filed two anticipatory proceedings (Index Nos. 100436/2020 and 100435/2020, the “Action Responses”) seeking orders pursuant to Article 16 of the Election Law declaring the validity of both petitions and naming her as candidate of the Democratic and Working Families Parties. As Seawright did not name Puliafito as a Respondent in the Action Responses, Puliafito has filed a motion to intervene by Order to Show Cause in the Action Responses (Index Nos. 100436/2020 and 100435/2020). All of the above matters are consolidated for joint decision.

BACKGROUND FACTS

On or about March 19, 2020, Seawright’s petitions were filed with the Board of Elections naming her as a candidate of the Democratic and Working Families Parties for the Public Office

of Member of the New York State Assembly from the 76th District, City and State of New York in the Democratic and Working Families Primary Elections to be held on June 23, 2020 (NYSCEF doc No. 5, ¶ 23). Puliafito, a Republican Party candidate for the same office, timely moved for Seawright to be removed from both ballots on April 3, 2020 in accordance with Article 16 of the Election Law. In Action One, Puliafito argues that Seawright should be removed from the Democratic Party ballot as the Democratic Party Petition was not submitted with an accompanying cover sheet, as is required by Election Law Section 6215.1. In Action Two, Puliafito argues that Seawright should be removed from the Working Families Party ballot as no certificate of acceptance of the Working Families Party designation of Seawright was timely filed as required by Election Law Section 16-146, and Seawright is thus not a proper member of the Working Families party. (*id.* at ¶ 6)¹. Seawright's Working Families Party petition also did not contain a cover sheet, but no cover sheet was required as the petition was not a sufficient number of pages for one to be necessary per Election Law rules (NYSCEF doc No. 5, ¶ 5). Puliafito's initial Order to Show Cause argued that a cover sheet was necessary, but he later conceded this point to Seawright and withdrew that challenge (*id.*).

Seawright filed the Action Responses on April 3, 2020, anticipating that the Board of Elections would disqualify her petitions on the aforementioned technical grounds. As anticipated, the Board ruled Seawright off the Democratic and Working Families Party ballots due, respectively, to the late filed cover sheet and late filed certificate of acceptance at a hearing held on April 21 (NYSCEF doc No. 13 at 4).

Seawright concedes that her cover sheet and certificate acceptance were technically not timely filed. However, it should be noted that deadlines for the 2020 Primary Elections were

¹ Puliafito's papers originally also included line-by-line challenges to both of Seawright's petitions, but those challenges were subsequently withdrawn (NYSCEF doc No. 7).

truncated by the Coronavirus (COVID-19) public health crisis that is currently ongoing in the state of New York. By the state legislature's passage of Chapter 24 of The Laws of 2020, and Governor Cuomo's Executive Orders 202.2 and 202.8 issued on March 18, 2020, the petition filing calendar was cut short by approximately three weeks (*id.* at 2). The orders changed the petition filing deadline to March 20 and the certificate of acceptance filing deadline to March 24 (*id.*). Seawright was also ill with COVID-19 symptoms during this time period and was quarantined during the deadlines (NYSCEF doc No. 12, ¶ 7). Seawright argues that her failure to timely file a cover sheet and certificate of acceptance should not be deemed fatal defects to her petitions as both materials were filed with the Board of Elections within the original, pre-revised, pre-Executive Order 202.2 statutory deadline of April 2, 2020 (*Id.*).

Despite initially filing both actions to remove Seawright from the ballots, Puliafito was not named as a Respondent by Seawright in the Action Responses; the Board of Elections is the sole named Respondent. Puliafito thus timely filed a motion to intervene in this matter.

DISCUSSION

Puliafito's Motion to Intervene

Before turning to the legal merits of this proceeding, the Court first addresses Puliafito's motion to intervene in the Action Responses.

"Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action" (*Yuppie Puppy Pet Prod, Inc. v. St. Smart Realty, LLC*, 77 A.D.3d 197, 201 [1st Dept 2010]); *see also Wells Fargo Bank, Nat'l Ass'n v. McLean*, 70 A.D.3d 676, 677 [2d Dept 2010] [permitting intervention "where the intervenor has a real and substantial interest in the outcome of the proceedings"]; *Patterson Materials Corp. v. Town of Pawling*, 221 A.D.2d 609, 610 [2d Dept 1995] [same]).

In opposition to Pualifto's motion to intervene, counsel for Seawright argues that Pulaifito's interests are already being addressed through the initial Actions to invalidate the Democratic and Working Families Party petitions. Seawright further argues Puliafito, as a Republican Party candidate, has no standing as he is not an aggrieved candidate. A candidate of one party normally has no standing to challenge the designating petition of another party unless the underlying challenge is to a legislatively mandated requirement of the Election Law (See Election Law §16-102(1), *Matter of Nicolai v Kelleher*, 45 AD3d 960, [3d Dept. 2007]; *Matter of Parete v. Turco*, 21 AD3d 691 [3d Dept 2005]). Seawright argues that as the challenges to her petitions are based on failure to comply with administrative Board of Elections Rules, and not legislatively mandated requirements, Puliafito is not an aggrieved candidate and lacks standing.

This argument, however, is contrary to Court of Appeals precedent, which has dictated a general rule that nonparty voters are aggrieved parties who may challenge designating petitions of candidates for public office for failure to follow the statutory requirements (*Matter of Scoville v Cicora*, 65 NY2d 972 [1985]). The Court thus finds intervention is permissible as Puliafito is challenging Seawright's petitions for failure to follow statutory requirements. He clearly has an obvious bona fide and substantial interest in the outcome of the Action Responses given that he is the one that commenced this proceeding. Furthermore, neither the Board nor Seawright would be prejudiced if the motion to intervene were granted, but Puliafito could suffer substantial prejudice were the motion denied. For instance, were this Court to determine the Board was correct in finding Seawright's petitions to be invalid, the only way to preserve Puliafito's right to be heard on a potential appeal from a judgment invalidating the petition would be if the Court were to grant the instant motion to intervene (CPLR 5511).

Puliafito is therefore added as a Respondent to the Action Responses, and the Court now turns to the merits of this proceeding.

Seawright's Untimely Certificate of Acceptance and Cover Sheet

Election Law § 6-146(1) states that

"if designated or nominated for a public office other than a judicial office by a party of which he is not a duly enrolled member . . . such person shall, in a certificate signed and acknowledged by him, and filed as provided in this article, accept the designation or nomination as a candidate of each such party or independent body other than that of the party of which he is an enrolled member, otherwise such designation or nomination shall be null and void."

Election Law § 6-158(2) provides that "[a] certificate of acceptance or declination of a designation shall be filed not later than the fourth day after the last day to file such designation."

Pursuant to Chapter 24 of the Election Laws of 2020, the last day to file a designating petition for the Primary Election was March 20, 2020, meaning that all Certificates of Acceptance must have been filed by March 24 (NYSCEF doc No. 13 at 4).

Regarding the cover sheet, Section 6-134(2) of the Election Law states, in pertinent part, that:

"[s]heets of a designating petition shall be delivered to the board of elections in the manner prescribed by regulations that shall be promulgated by the state board of elections . . . Such regulations shall be no more restrictive than is reasonably necessary for the processing of such petitions by the board . . . When a determination is made that a designating petition does not comply with such regulations, the candidate shall have three business days from the date of such determination to cure the violation."

Board of Elections Rule C.1 states that a "cover sheet must be filed for all petitions containing ten or more sheets in one volume or consisting of more than one volume." Here, Seawright's Democratic Party Designating Petition consisted of two volumes each longer than ten pages, meaning a cover sheet was required. (NYSCEF doc No. 6, ¶ 28).

At the April 21 hearing, the Board of Elections found that the failure to timely file a cover sheet and certificate of acceptance were fatal defects and Seawright's Designating Petitions were thus invalid. The Board of Elections noted that the failure to timely file a cover sheet where one is required is a fatal defect not subject to cure (*Armwood v McCloy*, 109 A.D. 3d 558 [2d Dep't 2013]), as is the failure to timely file a certificate of acceptance (*Plunkett v Mahoney*, 76 N.Y.2d 848 [1990])).

While Seawright's certificate of acceptance and cover sheet were not timely filed under the revised primary election calendar, the Court notes that "the People's will should not be fettered by technicalities requiring precise compliance." (*Rosen v McNab*, 25 N.Y. 2d 789 [1969]). Therefore, "[i]n the absence of allegations of fraud substantial compliance with the Election Law is sufficient." (*Id.* at 799 [validating petitions which are not properly numbered as per the Election Law requirements]). A requirement of strict compliance rather than substantial compliance, even if requested by the Board of Elections, does not assist the Board in any way, nor does it play a role in preventing fraud. Election Law rules "are to be liberally construed ... where there has been substantial compliance and there is no evidence of confusion either by potential voters or the Board." (*Matter of Siems v Lite*, 307 AD2 1016 [2d Dept 2003]).

Upon review, the Court finds that the Board's reliance on *Armwood* regarding Seawright's late cover sheet for her Democratic Party petition is misplaced as unlike in that case, here the Board failed to properly notify the candidate of any defects pursuant to Election Law §6-134(2) and 9 NYCRR 6215.7 (NYSCEF doc No. 13 at 7). *Armwood* did not factually occur during a public health emergency that abruptly truncated filing deadlines. It also has never been cited by any New York court for any Election Law proposition at any time other than in another

Second Department case, *Balberg v NYC Board of Elections*, 109 AD3d 910 [2d Dept. 2013], which addressed completely unrelated circumstances (NYSCEF doc No. 13 at 8). The Court further notes that *Armwood* is a Second Department precedential case, but its value is limited in the instant case.

As no party has submitted First Department caselaw addressing a missing cover sheet, the Court applies by analogy First Department cases addressing cover sheet errors. The caselaw regarding petition cover sheets with errors advise that said petitions are deemed to still be in substantial compliance “unless the errors in cover sheets are so grievous as to constitute failure to comply with the requirements of the Election Law as to content and substantial compliance to the form.” (*Powell v Marchi*, 153 Ad3d 540 [1st Dept 1989], citing *Farrell v Morgan* 112 Ad2d 882 [1st Dept 1985]). Here, neither the Board of Elections nor Puliafito have demonstrated that Seawright’s error of a late submission is so egregious that it demonstrates a lack of substantial compliance.

Regarding the certificate of acceptance, the Court finds that the Board’s reliance on *Plunkett* was also misplaced as that case is factually inapplicable to the circumstances here. The Court of Appeals there found that the untimely cover sheet was a defect, but the Respondent Candidate was provided an “opportunity to ballot” as an appropriate alternative remedy. Furthermore, the Court of Appeals has also made it explicitly clear that courts have the discretion to direct a Board of Elections to receive a late certificate of acceptance as sufficient in form and timely (*Battista v Power*, 10 NY2d 867 [NY 1961]), especially when “no harm can come to any party and the election machinery in other respects will be in no way affected” (*Mellen v Board of Elections*, 262 NY 422 [NY 1933]).

Here, given that Seawright rectified her errors and submitted her certificate of acceptance for her Working Families Party petition and cover sheet for her Democratic Party petition on April 2, the Court finds that Seawright has substantially complied with Election Law requirements and the Board of Elections thus erred in deeming Seawright's untimely submissions to be fatal to her candidacy. The Court is not inclined to invalidate the petitions as Seawright's untimely submissions do not constitute an egregious failure to comply with Election Law requirements. The Court is also not inclined to penalize Seawright for committing clerical errors while an unprecedented and catastrophic health crisis was enveloping the state. There is no claim by any party that Seawright's errors "defrauded or misled public" or were "used for any improper purpose" and thus the errors do not implicate policy considerations that override "the right of electorate to fully exercise its franchise" (*Flacks v Bd. of Elections in City of New York*, 109 AD3d 423 [2013]). There is no prejudice associated with the Court directing the Board of Elections to accept the late filed certificate and cover sheet under the unusual circumstances presented. Therefore, Seawright's applications to validate her petitions are granted and Puliafito's applications to invalidate said petitions are denied.

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion of Bryan Jung to intervene in the Action Responses (Index No. 100435/2020 and Index No. 100436/2020) is granted; and it is further

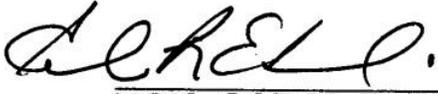
ORDERED, ADJUDGED AND DECLARED that the applications of Petitioner-Candidate Louis Puliafito (Index No. 100432/2020 and Index No. 100433/2020) are denied; and it further

ORDERED, ADJUDGED AND DECLARED that the applications of Petitioner-Candidate Rebecca A. Seawright (Index No. 100435/2020 and Index No. 100436/2020) are granted, and this Court

- (c) Declares valid, proper, sufficient and legally effective the Designating Petition heretofore filed with Respondent Board of Elections, designating Rebecca A. Seawright, as candidate for the Public Office of Member of the New York State Assembly from the 76th Assembly District from New York County, New York State in the Democratic Party Primary Election to be held on June 23, 2020; and
- (d) Declares valid, proper, sufficient and legally effective the Designating Petition heretofore filed with Respondent Board of Elections, designating Rebecca A. Seawright, as candidate Public Office of Member of the New York State Assembly from the 76th Assembly District from New York County, New York State in the Working Families Party Primary Election to be held on June 23, 2020.

This constitutes the decision and order of the Court.

5/8/2020
DATE


HON. CAROL R. EDMED, J.S.C.
J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE