



**Board of
Elections**

Election Law Update

State Board of Elections

July 31, 2018

Case Law

United States Supreme Court Case

Minnesota Voters Alliance v Mansky

- The Court held that a Minnesota law regulating voters' political attire violates the First Amendment.
- The Court found that Minnesota's law was too vague. Any apparel with a political message could have been banned under the Minnesota law.
- Per State Board of Elections Guidance, New York's Anti-Electioneering Statute (Election Law § 8-104 (1)) is still valid.
- Generally, a person cannot wear apparel that contains the name of a candidate, political party, independent body or direct reference to a ballot proposal on the ballot which contextually seeks votes.
- Under New York Law, persons wearing clothing or donning buttons that include political viewpoints – i.e. support of the Second Amendment, Marriage Equality, Environmental Sustainability, Immigration Reform, Support for Voter ID Laws....do not violate New York's electioneering prohibition unless the issue itself is unambiguously on the ballot in the form of a ballot proposal.

Ballot Images

Kosmider v. Whitney

- The Essex County Supreme Court ruled that electronically scanned images of ballots taken from voting machines can be obtained via FOIL without a court order.
- The Third Department affirmed in a plurality opinion.
- Essex County is appealing to the Court of Appeals.

Party Rules

Loftus-Doran v. Mayer

- Independence Party attempted to file a certificate of authorization authorizing Shelly Mayer as its candidate for State Senate.
- Trial Court ruled the certificate invalid, finding that there were several violations of the party rules.
- The Third Department affirmed, focusing on whether there was a quorum at the nominating meeting. Party rules required that four members of the Executive Committee be present, but the candidate's own papers stated that three members were present at the meeting.
- The fact that there were vacancies in the Executive Committee were there were only three members was unavailing because party rules provided for the appointment to vacant seats pending committee approval.

Auerbach v. Suffolk County Committee of Conservative Party

- After primary, several vacancies due to tie votes, or where no candidates received any votes. The Executive Committee attempted to fill these vacancies;
- The Court held the Executive Committee had no authority to fill these vacancies. The Court held that the Political party's county committee, rather than county committee's executive committee, had authority to fill vacancies in county committee;
- The statute the executive committee relied on related to filling vacancies in designations and nominations of candidates, not members of county committee, and filling of vacancies in county committee was governed by separate statute, which provided that in case of failure to elect member of committee, vacancy created would be filled by remaining members of the committee.

Nitti v. Relich

- Greece Town Judge Nitti filed a lawsuit claiming that Republican Party leaders inserted an opposing candidate, Granville, as the Republican candidate in nominating petitions after Nitti had initially received the party's endorsement. Nitti, who sought reelection as a Democrat after Granville's nomination, said the GOP's move effectively left him off the ballot.
- Trial Court agreed with Nitti, and ordered Granville off the ballot.
- 4th Judicial Department reversed, ruling that Judicial intervention in internal issues arising within a political party is warranted only upon a clear showing that a party or its leaders have violated the election law or the party's own rules, or otherwise violated the rights of party members; and
- Nitti, "failed to identify any specific provision of the Election Law or rule of the Republican Party that was allegedly violated."

Jacobi v Murray

- Court held a presumption of regularity attaches to minutes of a party meeting reciting a quorum.
- There is no burden in special proceeding for the political party to show there was a quorum. The challengers bear the burden of proof to establish there was no quorum.

Sufficiency of the Petition

Bragman v. Larsen

- Designating petition described office as: “Town Board, Town of East Hampton.”
- Second Department held that this description is insufficient
- Town Board can consist of a councilman or town supervisor.

Fochtman v Coll

- Designating petition described office as “15th District Nassau County Legislature” instead of the correct nomenclature, “Legislator.”
- Even though the description was really just the “district”, the court held the description was “sufficiently informative to preclude any reasonable probability of confusing or deceiving the signers, voters, or board of elections”
- Also of note, was the fact that the appellate court restored the candidate to the ballot only one day before this year’s primary election.

Michele Giordano v. Westchester BOE

- Candidate for receiver of taxes for town of Harrison
- Signers had listed “West Harrison” or “Purchase” as their town,
- Appellate Division validated the petition
- the Election Law provides that “[a] signature on a petition sheet shall not be deemed invalid solely because the address provided is the post office address of the signer provided that proof that such address is the accepted address of such signer is provided to the board of elections no later than three days following the receipt of specific objections to such signature” (Election Law § 6–134[12]).

Van Der Water v Czarny

- Voter's power of attorney signed a petition in witness' presence. POA initialed the signature.
- Court held the voter's signature is invalid but not the entire page absent any indication of intent to "confuse, hinder or delay any attempt to ascertain or to determine identity, status of any signatory or witness." Remaining signatures witnesses by witness not impaired.

Marcionda v Casella

- The court held when evidence adduced at hearing indicates candidate moved from address listed on petition months prior to petition circulation, the petition is to be invalidated.
- Court also held notary that did not provide title of office but did provide his identification number and date his office expires, was sufficient to prevent invalidation of notary's witness statement.

Hatch Act

Cardinale v Turco

- Candidate, postal worker, was informed by her union that running for a partisan election is prohibited by the Hatch Act on September 28th
- Tried to decline. Past the statutory deadline.
- Court kept her on the ballot
- Distinguished with Hunt v. Parte; the BOE did not split, and Hunt got a letter from United States Office of the Special Counsel.
- Also found that declinations filed cannot be interpreted as “disqualifications.”

Chapter Laws of 2017

Chapter Law 293, Amends Election Law § 3-400

- Previously, the Election Law only allowed “half day” shifts. This law allows local boards at their option to authorize shorter or longer “split” shifts.

Chapter Law 307, Adds Election Law § 4-123

- Requires the NYS Board of Elections to publish directory of candidate websites as provided by the candidates for certain offices.

Chapter Law 210, Repeals Election Law § 3-400

- Repeals Election Law § 2-126, related to the use of party funds in primaries, because the provision has been declared unconstitutional.

Chapter Law 106, Amends Election Law §§ 6-132, 6-140, 6-204, 6-206 & 15-108

- Repeals statutory language requiring that a witness to a party designating petition or independent nominating petition must reside in the district in which the office is to be voted for and to add language that such a witness may not have signed a petition for another candidate for the same office.

Chapter Law 173, Amends Election Law § 7-116

- Establish a process by which county boards of election or the New York City Board of Elections will choose whether to place the male or female candidates first on the ballot in a contest for political party positions that requires separate elections of male and female candidates for the party position.
- Chosen by lot

Chapter Law 176, Amends Election Law §§ 6-132, 6-140, 6-204, 6-206 & 15-108

- Adds the language “district number, if applicable” to the office description to designating and independent nominating petitions.

Chapter Law 310, Amends Election Law § 4-122

- Removes the need for public office candidates to provide their residence in county newspapers before an election.

Chapter Law 396, Amends Election Law § 5-508

- Permits victims of domestic violence to get confidentiality of registration records orders from county court or family court, in addition to supreme court.

Chapter Law 367, Amends Election Law § 8-100

- Extends hours for voting for primary elections in Dutchess county from 12:00 pm - 9:00 pm to 6:00 am - 9:00 pm.

Chapter Laws of 2018

Chapter Law 3, Amends Election Law § 4-117

- Requires that the Fall 2018 primary election be held on Thursday, September 13, 2018;
- Requires the voter mail check to include conspicuous notice, in all capital letters and bold font notifying the voter of the primary date.

Chapter Law 59, Part JJJ Amends Article 14 of the Election Law

- Enacts the Democracy Protection Act;
- Expands the definition of “independent expenditure” to include “paid internet or digital” advertisements targeted to 50 or more people;
- Bans foreign nationals from making independent expenditures in any state or local election campaign;

Cont. Chapter Law 59, Part JJJ, Amends Article 14 of the Election Law

- In addition to the current weekly requirement to disclose contributions of \$1,000 or more and expenditures of \$5,000 or more, any expenditure for “paid internet or digital advertisements” over \$500 must now also be reported;
- The State Board must “make available online for public inspection” in “machine readable format” a record of any independent expenditure “in the form of a paid internet or digital advertisement”;

Cont. Chapter Law 59, Part JJJ, Amends Article 14 of the Election Law

- Provides that upon the purchase of a communication in the form of an independent expenditure “each television or radio broadcast station, provider of cable or satellite television, or online platform” shall require that the independent expenditure committee “making such purchase” file with such station, provider or platform “a copy of the registration form filed by such committee with the state board of elections”;
- Provides that the State Board define the term “online platform.”