

At a Regular Motion Term of the Supreme Court held in and for the County of Steuben in the Village of Bath, New York on the 19th day of May 2022

STATE OF NEW YORK
SUPREME COURT : STEUBEN COUNTY

Index No. E2022-0116CV

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEVEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEWPHEW,
SUSAN ROWLEY, JOSEPHINE THOMAS, and
MARIANNE VOLANTE,

Petitioners,

-against-

DECISION and ORDER

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

PRESENT: Hon. Patrick F. McAllister
Acting Supreme Court Justice

These potential intervenors, Larry Sharpe, Diane Sare and William Cody Anderson are seeking to extend the time period for gathering signatures and decreasing the signature requirements. The court heard oral argument on May 19, 2022 and reserved decision. Jonathan O'Brien, Esq. argued on behalf of the intervenors; George Winner, Esq. argued on behalf of the Petitioners; Alexander Goldenberg, Esq. argued on behalf of Senate Majority Leader Andrea Stewart-Cousins; Craig Bucki, Esq. argued on behalf Speaker of the Assembly of Carl Heastie, Assistant Attorney General Heather McKay argued on behalf of Governor Houcul; and Brian Quail, Esq. argued on behalf of the New York State Board of Elections.

In support of the potential intervenors motion the court received and reviewed the following submissions:

Order to Show Cause Regarding Larry Sharpe, Diane Sare and William Cody Anderson as Chair and de facto President of the Libertarian Party of New York's Emergency Motion for Leave to Intervene dated May 13, 2022;
Affidavit of Larry Sharpe in Support of Request for Leave to Intervene sworn to May 10, 2022;
Affidavit of Diane Sare sworn to May 10, 2022;
Affidavit of William Cody Anderson in Support of request for Leave to Intervene sworn to May 10, 2022;
Larry Sharpe, Diane Sare and William Cody Anderson as Chair and de facto President of the Libertarian Party of New York's Emergency Memorandum of Law in Support of Their Motion to Intervene and Additional Cause of Action to Modify Election Law Provisions for Independent Statewide Candidates; and
Witness Affidavit of Mark Braiman in Support of Request for Leave to Intervene sworn to May 10, 2022 with attachment.

In opposition to the intervenor's motion the court received and reviewed the following submissions:

Affidavit of Kristen Zebrowski Stavisky sworn to May 18, 2022;
Respondent New York State Board of Elections Memorandum in Opposition to Intervention; and
Letter by Steven Salcedo dated May 18, 2022.

Discussion:

These potential intervenors are all potential candidates and are seeking to extend the time period for gathering signatures and for the court to decrease the signature requirements. Thus they meet the standing requirement. Further, unlike some of the prior potential intervenors these intervenors are not seeking to add a new action to this case or to delay the upcoming primaries. What they seek is for the court to extend the time for the gathering of signatures for Independent nominating petitions from the May 31, 2022 deadline.

The long publicized deadline for gathering signatures to run for governor and other statewide elections on an Independent nominating petition has been May 31, 2022. However, as a result of the Petitioners' action in this matter the court threw out the Congressional and State Senate maps. Thus by Order of this court a new primary date was established for the Congressional and State Senate primaries and a new time frame was established for the collection of signatures. For Congressional and State Senate candidates the signing period now runs from May 21, 2022 through July 5, 2022. This leaves only a few days of overlap between the signature gathering period for other statewide offices and the Congressional and State

Senate Candidates. Many potential candidates for statewide office rely on local candidates, Congressional candidates, and State Senate candidates to simultaneously circulate petitions for each other. With differing time frames now the potential intervenors contend that it will be much more difficult, if not impossible, for them to obtain the necessary signatures.

The candidates via independent nominating petition have further been compromised by not knowing the various boundaries of the 26 congressional districts. Until the new congressional maps are finalized as a result of this case no one knows the congressional boundaries. However, as a candidate for a statewide office the potential candidates are required to gather at least 500 signatures from at least 13 different congressional districts. This counts toward their overall total of at least 45,000 signatures that are required. Since the candidates will not learn the boundary locations until just days before the May 31, 2022 deadline they are asking for some kind of relief. They would like either an extension of the signing period; and/or a waiver of the 500 signatures per district requirement; and/or a decrease in the total number of signatures. Former Governor Coumo lowered the signature requirement in 2020 because of the COVID pandemic. Since there has been a recent uptick in COVID cases statewide the potential intervenors would like the court similarly lower the total number of signatures required this year.

Election Law §6-138(4) prescribes a six week petitioning period for Independent nominations. To add to that time frame would contravene that law. The candidates for statewide office will have had their full six week time frame to gather signatures.

A reduction in the Independent nominating signature requirement would be in contravention of Election Law §6-142(1). A similar reduction in signatures was requested in a case last year, Libertarian Party of N.Y. v. New York Bd. of Education; 539 F.Supp 3rd 310 (So. Dist. of New York 2021). That court denied a similar motion to reduce the signature requirements. “The Commission’s recommendation of 45,000 signatures amounts to 0.74 percent of the voters who voted in the 2018 New York gubernatorial election and only 0.33 percent of the New York’s 13.55 million registered voters.” Libertarian Party of N.Y. v. New York Bd. of Education; (*supra*. at 317).

The entire purpose of requiring a number of signatures is to show that a candidate has widespread support. Similarly, the requirement that a candidate be able to garner at least 500 signatures from at least ½ of the congressional districts is an indication of widespread support. The court is not inclined to decrease the signature requirement or to waive the 500 signatures per district requirement.

This court issued an advisory opinion on May 5, 2022 to warn potential candidates that were seeking to get on the November ballot via an Independent nominating petition that she/he should continue collecting signatures as the court was not inclined to change the signature period for those persons. Six weeks is six weeks. However, if for some reason the new congressional map is not able to be released as scheduled on May 20, 2022 then the court would


reconsider an application to extend the time for filing. For a similar reason the court will not foreclose oral argument concerning the potential Intervenor motions scheduled for May 26, 2022. Further, some of those potential Intervenors may have additional issues which need to be considered.

Respondents further object to the Intervenors motion as being untimely since this action has been pending since early February and they waited until now to bring the motion.

NOW, therefore, upon consideration of all papers and proceedings heretofore had herein, and after due deliberation, it is

ORDERED, ADJUDGED, and DECREED that the Intervenors motion to be permitted to intervene in this action and to have the signature requirements for the filing of Independent nominating petitions be extended and/or that the number of signatures be reduced, and/or that the court waive the 500 signatures per district requirement be, and hereby is, denied.

Dated: May 19, 2022



Hon. Patrick F. McAllister
Acting Supreme Court justice

ENTER