

STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA

In the Matter of
RICH AMEDURE,
ROBERT SMULLEN, WILLIAM FITZPATRICK,
NICK LANGWORTHY
THE NEW YORK STATE REPUBLICAN PARTY
GERARD KASSAR,
THE NEW YORK STATE CONSERVATIVE PARTY,
CARL ZEILMAN,
THE SARATOGA COUNTY REPUBLICAN PARTY,
RALPH M. MOHR, and ERIK HAIGHT,

DECISION & ORDER ON
INTERVENTION

Index No. 2022-2145

RJI No. 45-1-22-1029

Petitioners / Plaintiffs,

-against-

STATE OF NEW YORK, BOARD OF ELECTIONS
OF THE STATE OF NEW YORK, GOVERNOR
OF THE STATE OF NEW YORK, SENATE OF THE
STATE OF NEW YORK, MAJORITY LEADER AND
PRESIDENT PRO TEMPORE OF THE SENATE OF
THE STATE OF NEW YORK, MINORITY LEADER
OF THE SENATE OF THE STATE OF NEW YORK,
ASSEMBLY OF THE STATE OF NEW YORK,
MAJORITY LEADER OF THE ASSEMBLY OF THE
STATE OF NEW YORK, MINORITY LEADER OF
THE ASSEMBLY OF THE STATE OF NEW YORK,
SPEAKER OF THE ASSEMBLY OF THE
STATE OF NEW YORK,

Respondents / Defendants.

and

THE NEW YORK CIVIL LIBERTIES UNION,
COMMON CAUSE NEW YORK, KATHARINE BODDE
DEBORAH PORDER, TIFFANY GOODIN,

Proposed Intervenors
Respondents / Defendants.

PRESENT: HON. DIANNE N. FREESTONE
Supreme Court Justice

APPEARANCES:

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New York Civil Liberties Union Foundation
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Plaintiffs Richard Amedure, Robert Smullen, William Fitzpatrick, Nick Langworthy, the New York State Republican Party, Gerard Kassar, the New York State Conservative Party, Carl Zeilman, the Saratoga County Republican Party, Ralph M. Mohr and Erik Haight (hereinafter referred to as the “Plaintiff”) commenced the within hybrid proceeding pursuant to Article 16 of the New York State Election Law and declaratory judgment action pursuant to Section 3001 of the New York State Civil Practice Law and Rules on September 27, 2022 by filing a verified petition/complaint with the Saratoga County Clerk’s Office and sought expedited intervention of the Court by Order to Show Cause which was signed and dated by the Court on September 29, 2022.¹

¹ On or about October 7, 2022, this matter was converted to E-Filing (see NYSCEF Document No. 2).

The Court originally made the instant Order to Show Cause returnable on October 13, 2022, but this is a proceeding under the New York State Election Law and as such has statutory preference (see, NYS Election Law Section 16-116) over all matters on the Court's calendar given the incredibly short statute of limitations associated therewith. Therefore, by letter dated September 29, 2022 the Court advised counsel for the Plaintiff that the return date for the instant Order to Show Cause had been rescheduled for Wednesday, October 5, 2022 and directed that a copy of the rescheduling notice be provided along with service of the Order to Show Cause. On or about September 29, 2022, copies of the Order to Show Cause, Verified Petition and September 29, 2022 Scheduling Letter were served by representatives of the Plaintiffs upon representatives of the individual Respondents/Defendants, respectively. The matter thus was scheduled for an initial appearance and return on the Plaintiffs' Order to Show Cause for Wednesday, October 5, 2022 at 1:00 p.m.

Thereafter, on October 4, 2022 the Court was contacted by a representative of the New York Civil Liberties Union (NYCLU) and was advised that the NYCLU sought to be included in the action and would be filing a Motion to Intervene and likewise attending the October 5, 2022 return on the Plaintiff's Order to Show Cause. The Court advised the NYCLU that given the immediacy of the timelines associated with this matter that any Motion to Intervene would not be able to be heard in the context of the October 5, 2022 return date but would be considered in an expedited manner by the Court. Thereafter, by Notice of Motion and Memorandum of Law with accompanying Attorney Affirmation and Affidavits filed on October 5, 2022 with the Saratoga County Clerk's Office the NYCLU, Common Cause New York, Katharine Bodde, Deborah Porder and Tiffany Goodin (hereinafter "Intervenor NYCLU") sought leave to intervene as named parties

in the instant action.² The proposed intervenors identify as two (2) non-profit organizations whose members may include registered voters who have applied for absentee ballots and three (3) registered voters who have applied for absentee ballots. Copies of the moving papers filed by Intervenor NYCLU were provided to all parties at the October 5, 2022 return date. During oral argument on the instant Order to Show Cause, counsel for the Petitioners acknowledged receipt of the Notice of Motion for intervention on behalf of Intervenor NYCLU. Counsel for the Petitioners objected to the formal intervention of these parties but stated its consent to have them remain as “friends of the Court” and be permitted to file any amici briefs to advance their position. At the same proceeding, Counsel for Intervenor NYCLU rejected the proposal for “friend of the court” status and urged the Court to consider its papers and grant intervention.³ Thereafter, by letter dated October 7, 2022 the Office of the New York State Attorney General on behalf of the State of New York and New York State Governor Hochul advised the Court that it takes “no position” with respect to either the Motion to Intervene or the alternative request by the Petitioners for Intervenor NYCLU to be designated as a “friend of the Court.” By letter dated October 7, 2022, counsel for the Plaintiffs restated its opposition to the granting of an Order of Intervention on behalf of Intervenor NYCLU and likewise its consent for the Court to designate Intervenor NYCLU as a “friend of the Court.” Thereafter, on October 11, 2022 Intervenor NYCLU furthered its contentions regarding intervention by submitting a Supplemental Attorney Affirmation, Reply

² The Court notes that although a Notice of Motion was filed by Intervenor NYCLU seeking intervention, no formal Motion or Order to Show Cause accompanied the October 5, 2022 moving papers. The Court advised counsel for Intervenor NYCLU of the deficiency in moving papers and as this date an Order to Show Cause was filed to the NYSCEF system. Although filed too late for the Court’s execution of same before the October 12, 2022 return on this matter the Court will nevertheless consider the underlying request for intervention.

³ By reference, in its October 5, 2022 Notice of Motion counsel for Intervenor NYCLU states that the Democratic Commissioners of the New York State Board of Elections, the Assembly of the State of New York, the Speaker of the Assembly of the State of New York and Majority Leader of the Assembly of the State of New York did not object to the intervention of Intervenor NYCLU.

Memorandum of Law Supplemental Affidavit of Deborah Porder. This matter now comes before the Court for decision on the motion of Intervenor NYCLU for intervention and to be included as a named party/respondent in the instant matter

At the outset, the Court notes that this is a special proceeding brought under both the New York State Election Law and the New York State Civil Practice Law and Rules. Section 401 of the New York State Civil Practice Law and Rules (CPLR) sets forth that “the party commencing a special proceeding shall be styled the petitioner and any adverse party the respondent. After a proceeding is commenced, no party shall be joined or interpleaded and no third-party practice or intervention shall be allowed, except by leave of the Court.” NYS CPLR Section 401 limits the number of parties to a special proceeding and the usual CPLR devices allowing for free joinder of parties after the commencement of an action are rendered inoperative by NYS CPLR Section 401. Indeed, leave of the Court is required to join additional parties by way of interpleader (NYS CPLR Section 1006(b)), third-party practice (NYS CPLR Section 1007) or otherwise (NYS CPLR Section 3019(d)). The limitation upon additional parties is appropriate in a special proceeding given the immediacy under which these proceedings are to be brought and thus the Court is given “control over parties necessary to preserve the summary nature of the proceeding, but is still able to utilize [joinder devices] to prevent an undesirable multiplicity of suits.” New York Advisory Committee on Practice and Procedures, Third Preliminary Report, Legislative Document No. 17, P. 155 (1959). As set forth in the plain language of this statute, there is a general statutory preference against the allowance of intervention although ultimately left to the discretion of the Court.

Here, Intervenor NYCLU has moved for intervention and to be included as a named party/respondent in this action. Initially the Court notes while the filings of Intervenor NYCLU may be considered timely, its reliance upon NYS CPLR 1012 and 1013 as grounds that the

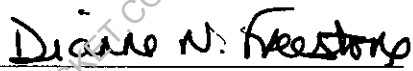
Intervenor NYCLU is entitled to either permissive intervention (1013) or as a matter of right (1012) is misplaced. Again, while timely filed, Intervenor NYCLU has not shown with due sufficiency the entitlement by right to intervene under NYS CPLR Section 1012 nor that the rights of its members would not be sufficiently represented by the parties and counsel already in this action. Further, while NYS CPLR 1013 does allow for permissive intervention in certain matters, this is a special proceeding and as such leave to intervene shall be left to the discretion of the Court under NYS CPLR Section 401.

There is no question that the named Respondent parties are represented by a host of qualified and capable counsel including the New York State Attorney General's Office, Counsel for the Board of Elections as well as both public and private counsel. While the Court recognizes and appreciates the substantial interests that Intervenor NYCLU and its members have in the instant litigation, the Court likewise finds that these interests are substantially and adequately represented through the panoply of named Respondents including the New York State Board of Elections, the New York State Senate and New York State Assembly as well as the Governor of the State of New York. In view of the same, the Court does not find that Intervenor NYCLU is entitled to intervene as a matter of right under NYS CPLR Section 1012, or permissively under NYS CPLR Section 1013. The Court likewise does not find sufficient cause under NYS CPLR Section 401 to grant leave for intervention on behalf of Intervenor NYCLU.

Based on the foregoing, the motion of Intervenor NYCLU seeking to be included in the instant action is denied. The Court will, however, grant Intervenor NYCLU status as a "friend of the Court" and as such may submit any amicus filings for the Court's consideration in this matter.

The foregoing constitutes the Decision and Order of the Court. Any of the other relief that the parties have sought in this matter, but has not been specifically addressed herein, is denied. The Court is hereby uploading the original Decision and Order into the NYSCEF system for filing and entry by the County Clerk. Counsel is still responsible for serving notice of entry of this Decision and Order in accordance with the Local Protocols for Electronic Filing for Saratoga County.

Signed this 14th day of October, 2022, at Saratoga Springs, New York.


HON. DIANNE N. FREESTONE
Supreme Court Justice

ENTER