

STATE OF NEW YORK  
SUPREME COURT COUNTY OF SARATOGA

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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

DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE (DCCC),  
JACKIE GORDON, THE NEW YORK STATE DEMOCRATIC PARTY  
NEW YORK STATE DEMOCRATIC COMMITTEE CHAIR JAY JACOBS,  
THE WYOMING COUNTY DEMOCRATIC COMMITTEE,  
WYOMING COUNTY DEMOCRATIC COMMITTEE CHAIR CYNTHIA APPLETON  
DECLAN TAINTOR, HARRIS BROWN, CHRISTINE WALKOWICZ,

Proposed Intervenors  
Respondents / Defendants.

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PRESENT: HON. DIANNE N. FREESTONE  
Supreme Court Justice

APPEARANCES:

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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.<sup>1</sup>

The Court originally made the instant Order to Show Cause returnable on October 13, 2022, but this is a proceeding under the New York State Election Law and as such has statutory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 Attorney Peluso and was advised that the DCCC 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 Attorney Peluso 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 Order to Show Cause for Expedited Leave to Intervene as Respondents and Memorandum of Law with accompanying Attorney Affirmation and Affidavits filed on October 5, 2022 with the

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

Saratoga County Clerk's Office the Democratic Congressional Campaign Committee (DCCC), Jackie Gordon, the New York State Democratic Party, New York State Democratic Committee Chair Jay Jacobs, the Wyoming County Democratic Committee, Wyoming County Democratic Committee Chair Cynthia Appleton, Declan Taintor, Harris Brown, Christine Walkowicz, (hereinafter "Intervenor DCCC") sought leave to intervene as named parties in the instant action. The proposed intervenors identify as a political committee with the mission to elect Democratic candidates to the U.S. House of Representatives, a Democratic congressional candidate, the New York State and Wyoming County Democratic Committees and New York voters who intend to cast absentee ballots and members of the Democratic Party. Copies of the moving papers filed by Intervenor DCCC were provided to all parties at the October 5, 2022 return date. During oral argument on the Petitioner's Order to Show Cause, counsel for the Petitioners acknowledged receipt of and motion for intervention on behalf of Intervenor DCCC. 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 DCCC rejected the proposal for "friend of the court" status and urged the Court to consider its papers and grant intervention.<sup>2</sup> The Court has signed the Order to Show Cause of Intervenor DCCC and made same returnable on Wednesday, October 12, 2022 at 10:00 a.m. to be heard contemporaneously with the continued argument of Petitioner's Order to Show Cause. 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

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<sup>2</sup> By reference, in its October 5, 2022 Notice of Motion counsel for Intervenor DCCC 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 DCCC.

alternative request by the Petitioners for Intervenor DCCC 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 DCCC and likewise its consent for the Court to designate Intervenor DCCC as a “friend of the Court.” This matter now comes before the Court for decision on the motion of Intervenor DCCC 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 DCCC 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 DCCC may be considered timely, its reliance upon NYS CPLR 1012 and 1013 as grounds that the Intervenor DCCC is entitled to either permissive intervention (1013) or as a matter of right (1012) is misplaced. Again, while timely filed, Intervenor DCCC 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.

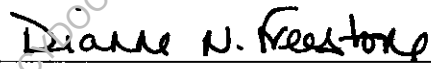
There is no question that the named Respondent parties are represented by a host of qualified and capable counsel including the New York State Attorney General's Office, Counsel for the Board of Elections as well as both public and private counsel. While the Court recognizes and appreciates the substantial interests that Intervenor DCCC 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 DCCC 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 DCCC.

Based on the foregoing, the motion of Intervenor DCCC seeking to be included in the instant action is denied. The Court will, however, grant Intervenor DCCC 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 14<sup>th</sup> day of October, 2022, at Saratoga Springs, New York.

  
HON. DIANNE N. FREESTONE  
Supreme Court Justice

ENTER