

At a Special Election Part 1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 12th day of March, 2007.

P R E S E N T:

HON. JOSEPH S. LEVINE,

Justice.

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ROBERT CONROY, ET AL

Petitioners,

- against -

Index No. 700012/07

STATE COMMITTEE OF THE INDEPENDENCE PARTY
OF NEW YORK, ET AL

Respondents.

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The following papers numbered 1 to 4 read on this motion:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	<u>1, 2</u>
Opposing Affidavits (Affirmations) _____	<u>3</u>
Reply Affidavits (Affirmations) _____	_____
_____ Affidavit (Affirmation) _____	_____
Other Papers <u>Memorandum of Law</u> _____	<u>4</u>

Upon the foregoing papers, petitioners, by way of an order to show cause, seek to invalidate certain amendments to the New York State Independence Party rules which were adopted by its State Committee. Respondents, the State Committee of the Independence Party, move for an order dismissing the petition for failure to name necessary parties and on the ground that the court should refrain judicial intervention into the internal affairs of a political party.

Background

On January 28, 2007, the State Committee held its annual winter meeting in Albany. Various amendments to the State Committee rules were adopted at the meeting. Petitioners seek to invalidate several of these amendments arguing that the amendments are unenforceable and illegal.

Petitioners first point to the amendment to Article XII which is entitled "Removal and Recall". This section has been amended to permit the removal and replacement of any officer or member of any county committee in the State without cause and also to remove and replace any member of the State Committee without cause. Petitioners also seek to invalidate an amendment to Article IV, entitled "State Committee Quorum Requirements" which would permit the State Committee to regulate the use of proxies by county committees.

Respondents' Motion

Respondents seek to dismiss the petition arguing that petitioners failed to name and serve necessary parties. Specifically, respondents contend that only four of the officers of the party were named in the petition, yet 23 members of the Executive Committee, who voted for the rules amendment, were not named.

Petitioners, in commencing the instant proceeding, named the following parties: the State Committee of the Independence Party of New York, Frank Mackay, the Chairman of the State Committee and its Executive Committee; William Bogardt, the Secretary of the State Committee and its Executive Committee, Thomas Connolly, Vice Chairman of the

State Committee and a member of its Executive Committee, Frank Morano, a member of the Executive Committee and the New York State and City Boards of Election and their respective commissioners.

Discussion

The failure to join a necessary party in an election proceeding is jurisdictional and requires dismissal of the petition (*Matter of Quis v Putnam County Board of Elec.*, 22 AD3d 585 [2005]; *Matter of Cornicelli v Scannell*, 307 AD2d 1006 [2003]).

Who constitutes a necessary party is governed by CPLR § 1001(a), which provides in pertinent part that necessary parties are those “[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action . . .”

In support of their position, respondents point to several cases, including *Greenspan v O'Rourke* (27 NY2d 846 [1970]), in which the court held that the failure to join three officers elected at an organizational meeting in a petition seeking to void the election of said officers was a fatal defect requiring dismissal. Next, respondents cite *Quis v Kings County Independence Party Committee* (22 AD3d 585 [2005]), which involved a challenge to certain actions taken at a reorganization meeting. However, the decision of the Appellate Division fails to indicate exactly what actions were being challenged. The *Quis* court did hold that the failure to name two officers, deemed to be necessary parties was a fatal defect. However, the decision does not specify why these officers were deemed necessary.

Respondents also cite to this court's holding in *Coello v Independence Party Committee*, Index No. 29537/06 (Sup. Ct. Kings County [2006]), which also involved a challenge to the election of officers at an organizational meeting. In *Coello*, this court found that the those persons whose election was being challenged were necessary parties and that the failure to name them was a fatal defect.

The court finds that the facts of the instant case are readily distinguishable from those cases cited by respondents. Here, the challenged actions do not involve the election of any particular individual whose rights would be adversely affected by the failure to join them. Rather, this case merely involves a challenge to certain rules amendments that were voted on by the entire Executive Committee of the State Independence Party, which the court notes was named in this petition (see *Schaffer v Withers*, 186 AD2d 836 [1992] [holding that in a challenge to the propriety of actions taken by the Executive Committee of the Suffolk County Committee of the Conservative Party that said Executive Committee was a necessary party]; *Rizzo v Withers*, 158 AD2d 497, 498 [1990] [holding that the Executive Committee of the Suffolk County Committee of the Conservative Party was a necessary party in a challenge to the authority and jurisdiction of the Executive Committee]; see also *Curcio v Wolf*, 133 AD2d 188 [1987]; *Matter of Oberle v Caracappa*, 133 AD2d 241 [1987]).

Based upon the foregoing, the court finds that petitioners failure to name each of the 23 officers of the Executive Committee individually is not a fatal defect requiring dismissal.

Next, respondents maintain that the by-laws, as amended, were filed with each and every Board of Election, yet only the New York City and New York State Boards were named and served. Respondents argue that the failure to serve the other 57 state-wide boards is a fatal defect requiring dismissal. As discussed above, CPLR 1001 (a) provides that a party is necessary (and therefore required to be named and served) "if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action . . ." The court finds that a judgment in this action will not inequitably affect the rights of the other 57 state-wide Boards of Election and such entities are therefore not necessary parties in this action.

Finally respondents, citing §13 of the General Association Law, claim that the failure to name Maclain Nichols, the Party Treasurer, is a fatal defect requiring dismissal of the petition. The court notes that section 13 of the General Associations Law provides that actions against unincorporated associations may be brought against the president or treasurer of the association. In the instant case, Frank MacKay, the Chair of the State Committee was named. The court finds that this is sufficient to satisfy the requirements of General Associations Law §13 (see *Brodsky v Friedlander*, 191 Misc 2d 459, 461 [2002] [in which the court held that the naming of a chief executive officer clearly satisfies the statutory intent when it refers to naming the "president"]).

Based upon the foregoing, respondents' motion to dismiss the petition is denied.

Petitioners' Motion

The court now turns to petitioners' order to show cause seeking to invalidate certain amendments to the New York State Independence Party rules which were adopted by its State Committee.

"The New York State Legislature manifested an intent of general noninterference with the internal affairs of political parties when it authorized party committees to formulate their own rules and organize themselves" (*Bloom v Notaro*, 67 NY2d 1048, 1049 [1986]). Courts have consistently held that "[i]nternal issues arising within political parties are best resolved within the party organization itself and judicial involvement should only be undertaken as a last resort" (*Bachmann v Coyne*, 99 AD2d 742 [1984]; see *Bloom*, 67 NY2d at 1049). However, although political parties are afforded wide latitude in adopting rules for party governance, such rules cannot conflict with statutory directives (*Matter of Kahler v McNab*, 48 NY2d 625 [1979]; see *Matter of Independence Party State Comm. of the State of New York v Berman*, 28 AD3d 556 [2006]; *Keukelaar v Monroe County Bd. of Elections*, 307 AD2d 1073, 1074 [2003]; *Bachmann v DeFronzo*, 164 AD2d 926, 928 [1990]; *Matter of Lugo v Board of Elections*, 123 Misc 2d 764 [1984]).

The County Committee is a creature of statute subject to regulation under the Election Law (see Election Law § 2-104; *Terenzi v Westchester County Comm. Conservative Party of N.Y. State*, 171 Misc 2d 93, 96 [1996]; *Matter of Littig v Democratic County Comm.*, 179 Misc 520 [1942]; see also *Matter of Battipaglia v Executive Comm.*, 20 Misc 2d 226, 228

[1959]; *Matter of Casey v Nuttall*, 62 Misc 2d 386, 389 [1970]). Election Law §2-116 provides in pertinent part that “[a] member or officer of a party committee may be removed by such committee for disloyalty to the party or corruption in office after notice is given and a hearing upon written charges has been had.” Additionally, § 2-118 delineates the procedure for filling a vacancy in such committees.

The amendments adopted by the State Committee allows the State Committee to initiate a recall against a member or officer of the County Committee without cause and also provides a mechanism for filling the resulting vacancy. Both of these amendments conflict with existing Election Law and are therefore invalid (*see Terenzi*, 171 Misc 2d at 95 [which annulled amendments which added qualifications for party offices in contravention of Election Law § 2-112]; *Matter of Hammer v Curran*, 203 Misc 417, 422 [Sup Ct, Albany County 1952] [holding that a rule adopted by a County Committee “imposing upon the eligibility of candidates for membership limitations more restrictive than the statutory provision is invalid”]). The petition is therefore granted to the extent the amendments to article XII of the Rules and By-Laws of the Independence Party of New York are annulled.

Petitioners also seek to annul the amendments to Article IV insofar as they purport to regulate the use of proxies by county committees. Petitioners contend that it is within the province of the voters of the county and the county committee members they elected to determine whether and by what rules proxy voting should be allowed, provided such rules do

not violate constitutional or other legal norms. This amendment allows members of county committees and interim county committees to vote via proxy and further provides that:

No proxy executed prior to the last day to file designating petitions for the subject party position either State Committee or County Committee shall be valid. All proxies validly obtained shall remain in full force and effect for all meetings of the State Committee, County Committee or Interim County Organization, through the entire term of the issuer, unless revoked as below in (b).

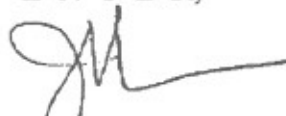
"[I]t is firmly established that except where expressly governed by legislation, the internal organization and authority of a political party is governed by the party rules" (*Donnelly v Curcio*, 284 AD2d 460 [2001]; *Matter of Bachmann*, 164 AD2d at 928, citing Election Law § 2-114). A review of the Election Law reveals that there is no provision related to the use of proxies by political committees. Accordingly, the court declines to annul the amendment related to this issue as it is an internal party matter.

Conclusion

Respondents' motion to dismiss is denied in its entirety. Petitioners' motion is granted only to the extent that the amendments to article XII of the Rules and By-Laws of the Independence Party of New York are annulled.

The foregoing constitutes the decision and order of the court

E N T E R,



J. S. C.