

STATE OF NEW YORK
SUPREME COURT: STEUBEN COUNTY

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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,

NOTICE OF APPEAL

Index No.:
E2022-0116CV

Petitioners,

-against-

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

Respondents.

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PLEASE TAKE NOTICE that the PARENT PARTY Intervenors hereby appeal to the Appellate Division, Fourth Department of the Supreme Court of the State of New York, from the Decision and Order of the Honorable Patrick F. McAllister, A.J.S.C. annexed hereto and entered in the Steuben County Clerk’s Office on June 1, 2022 [NYSCEF Doc. No. 692]. This appeal is taken from each and every part of the Order, as well as from the whole thereof.

Dated: New York, New York
June 6, 2022

Brain Injury Rights Group, Ltd.

/s/ Rory J. Bellantoni

Rory J. Bellantoni, Esq.

Attorneys for Parent Party Intervenors

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To: All Counsel (via NYSCEF)

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 26th day of May 2022

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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
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Respondents.

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

These potential intervenors, the Parent Party, Tyrell Ben-Avi, Mark Braiman, Upstate Jobs Party and Unite New York are generally seeking to extend the time period for gathering signatures and decreasing the signature requirements for the upcoming election. The court heard oral argument on May 26, 2022 and reserved decision. Aaron Foldenauer, Esq. argued on behalf of the candidate intervenors of the Parent Party; no one appeared on behalf of potential intervenors Upstate Jobs Party and Unite New York; Tyrell Ben-Avi appeared *pro se*; Gary Donoyan, Esq. Appeared for Mark Brainman; George Winner, Esq. argued on behalf of the Petitioners; Alice Reiter, 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, Michelle Crain argued on behalf of Governor Houcul; and Brian Quail, Esq. argued on behalf of the New York State Board of Elections.

Discussion:

These potential intervenors are potential candidates or political parties attempting to assist candidates to be on the ballot. The intervenors are generally 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.

Tyrrel Ben-Avi presents a novel issue. Tyrrel Ben-Avi sought to be a Republican candidate for the U. S. Senate. He was gathering signatures to be on the June primary ballot but has been informed by the Board of Elections that the Democrats and the Republicans each just selected a candidate to run for the position of U.S. Senate, thus foreclosing him from being a primary candidate. Further he alleges that he was misled in his efforts to gather signatures by the Board of Election notice that congressional elections were on hold pending the completion of the redistricting maps. Tyrrel Ben-Avi argues that "congressional" would include both the Senate and House of Representative elections.

Attorney Foldenauer argues that there will be no delay, no timeliness issue and no harm as a result of extending the time for candidates to gather signatures. Further he drew the court's attention to Justice Trautman's recent dissenting opinion that candidates that were not of the two major political parties would be most disadvantaged by changing the primary dates and signature gathering periods. He stated that Mr. Knowle went to the Board of Elections on May 3rd and was told he would have to wait for the court's decision. Attorney Foldenauer also pointed out that under the old system the petitioning process was different for candidates running for state offices verses federal offices.

Candidate Brainard seeks to change the filing dates, reduce the number of signatures and that the court and the Board of Elections should honor all signatures gathered during the April - May signing period as well as the later signing period.

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 to 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.

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

The court would note that in its Decision and Order dated March 31, 2022 it repeatedly used the term "congressional" when referring to the elections for the 26 congressional districts for the House of Representatives. A reading of that order would have been clear the Decision and Order was not affecting the U.S. Senate race.

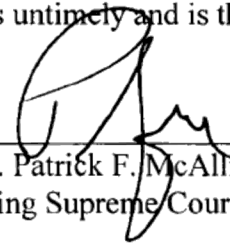
NOW, therefore, upon consideration of all papers and proceedings heretofore had herein, and after due deliberation, it is

ORDERED, ADJUDGED, and DECREED that the Intervenor's 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.; and it is further

ORDERED, ADJUDGED, and DECREED that the Intervenor's motion to create a primary for the U.S. Senate for August 23, 2022 be, and hereby is denied; and it is further

ORDERED, ADJUDGED, and DECREED that the *amicus curiae* submission in support of the Upstate Jobs Party and Unite New York who in turn is in support of the Libertarian Party, whose motion to intervene was denied last week is untimely and is therefore denied as untimely.

Dated: May 31, 2022



Hon. Patrick F. McAllister
Acting Supreme Court justice

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