

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Matter of Fochtman v. Coll

2017 N.Y. Slip Op. 06414 (2d Dep't 2017) · No. 2017-08793 · Decided September 11, 2017

SUMMARY

The Appellate Division, Second Department, reversed an order invalidating James Coll’s designating petition for Nassau County Legislator, 15th Legislative District. The court held that the description “15th District Nassau County Legislature” was sufficiently informative under Election Law § 6-132 and denied a related motion to dismiss the appeal on laches and mootness grounds.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Betsy Barros, J.; Francesca E. Connolly, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	September 11, 2017
DOCKET	2017-08793
DISPOSITION	reversed
PROCEDURAL POSTURE	James Coll appealed from a final order of the Supreme Court, Nassau County, that, after a hearing, granted a proceeding seeking, among other relief, invalidation of his designating petition. The petitioners also moved in the Appellate Division to dismiss the appeal on laches and mootness-related grounds.
STANDARD OF REVIEW	The Appellate Division reviewed the legal sufficiency of the designating petition and the lower court’s order as a matter of law.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	James Coll v. John A. Fochtman, Thomas A. Desanno

TOPICS

election contests

election law

appellate procedure

appellate jurisdiction

PRACTICE AREAS

election law

appellate procedure

QUESTIONS PRESENTED

1. Whether the description "15th District Nassau County Legislature" sufficiently stated the public office sought under Election Law § 6-132(1).
2. Whether the appeal should be dismissed based on laches or because meaningful relief could no longer be granted under the Election Law.

HOLDINGS

1. The description "15th District Nassau County Legislature" was sufficiently informative under Election Law § 6-132(1) because, when the petition was read as a whole, it precluded any reasonable probability of confusing or deceiving the signers, voters, or board of elections.
2. The motion to dismiss the appeal was denied.

KEY QUOTATIONS

"Since many public offices and party positions are susceptible to a variety of descriptions, the "description will be deemed adequate so long as the petition, read as a whole, is sufficiently informative . . . so as to preclude any reasonable probability of confusing or deceiving the signers, voters or board of elections""
(2017 NY Slip Op 06414, at *1)

"Here, the public office sought by Coll, Nassau County Legislator, 15th Legislative District, was described on the designating petition as "15th District Nassau County Legislature," which was sufficiently informative so as to preclude any reasonable probability of confusing or deceiving the signers, voters, or board of elections""
(2017 NY Slip Op 06414, at *2)

FACTUAL BACKGROUND

On July 13, 2017, James Coll filed a designating petition for the Republican nomination for Nassau County Legislator, 15th Legislative District. The petition described the office as "15th District Nassau County Legislature." John A. Fochtman and Thomas A. Desanno challenged the petition, arguing that the description failed to provide sufficient information identifying the public office sought. The court found that the description, read in the context of the petition as a whole, was sufficiently informative and did not create a reasonable probability of confusion or deception.

PROCEDURAL HISTORY

Coll filed a designating petition with the Nassau County Board of Elections for the Republican nomination for Nassau County Legislator, 15th Legislative District. Fochtman and Desanno commenced a proceeding under Election Law § 16-102 alleging, among other things, that the petition did not sufficiently identify the office sought. After a hearing, Supreme Court, Nassau County, granted the petition and invalidated the designating petition. The Appellate Division denied the motion to dismiss the appeal, reversed the final order, denied the petition, and dismissed the proceeding.

DISPOSITION

reversed

CASES CITED

- Matter of Notholt v Nassau County Bd. of Elections, 131 A.D.3d 641, 642-643
- Matter of Dunlea v New York State Bd. of Elections, 275 A.D.2d 589, 590
- Matter of Smith v Mahoney, 60 N.Y.2d 596, 597
- Matter of Packer v Board of Elections of City of N.Y., 207 A.D.2d 513, 514
- Matter of Ighile v Board of Elections in City of N.Y., 66 A.D.3d 899, 900
- Matter of Liepshutz v Palmateer, 112 A.D.2d 1101, 1101-1102
- Matter of Donnelly v McNab, 83 A.D.2d 896
- Matter of Hicks v Walsh, 76 A.D.3d 773
- Matter of Bragman v Larsen, 2017 NY Slip Op 06267 (2d Dep't 2017)
- Matter of Sears v Kimmel, 76 A.D.3d 1113
- Matter of Hayes v New York State Bd. of Elections, 32 A.D.3d 660, 661
- Matter of Bliss v Nobles, 297 A.D.2d 457
- Matter of Jacobson v Schermerhorn, 104 A.D.2d 534, 535
- Matter of Denn v Mahoney, 64 A.D.2d 1007

OPINION

PER CURIAM.

Matter of Fochtman v Coll (2017 NY Slip Op 06414) Matter of Fochtman v Coll 2017 NY Slip Op 06414 Decided on September 11, 2017 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on September 11, 2017 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

BETSY BARROS FRANCESCA E. CONNOLLY LINDA CHRISTOPHER, JJ. 2017-08793 (Index No. 3137/17) [*1]In the Matter of John A. Fochtman, et al., petitioners- respondents, vJames Coll, respondent-appellant, et al., respondent. DECISION & ORDERIn a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition designating James Coll as a candidate in a primary election to be held on September 12, 2017, for the nomination of the Republican Party as its candidate for the public office of Nassau County Legislator, 15th Legislative District, James Coll appeals from a final order of the Supreme Court, Nassau County (Bogle, J.), entered August 16, 2017, which, after a hearing, granted the petition, inter alia, to invalidate the designating petition.ORDERED that the final order is reversed, on the law, without

costs or disbursements, the petition, inter alia, to invalidate the designating petition is denied, and the proceeding is dismissed. On July 13, 2017, James Coll filed a petition with the Nassau County Board of Elections designating him as a candidate in a primary election to be held on September 12, 2017, for the nomination of the Republican Party as its candidate for the public office of "15th District Nassau County Legislature."

It is undisputed that the public office sought by Coll is Nassau County Legislator, 15th Legislative District. On July 25, 2017, John A. Fochtman and Thomas A. Desanno commenced this proceeding, inter alia, to invalidate the designating petition, contending, among other things, that the designating petition failed to set forth sufficient information to identify the public office being sought.

After a hearing, the Supreme Court granted the petition, inter alia, to invalidate the designating petition. Coll appeals. "Election Law § 6-132 (1) requires that each sheet of a designating petition state the public office or party position sought by the candidate" (Matter of Notholt v Nassau County Bd. of Elections, 131 AD3d 641, 642, quoting Matter of Dunlea v New York State Bd. of Elections, 275 AD2d 589, 590; see Matter of Smith v Mahoney, 60 NY2d 596, 597; Matter of Packer v Board of Elections of City of N.Y., 207 AD2d 513, 514).

Since many public offices and party positions are susceptible to a variety of descriptions, the "description will be deemed adequate so long as the petition, read as a whole, is sufficiently informative... so as to preclude any reasonable probability of confusing or deceiving the signers, voters or board of elections" (Matter of Notholt v Nassau County Bd. of Elections, 131 AD3d at 642-643, quoting Matter of Ighile v Board of Elections in City of N.Y., 66 AD3d 899, 900; see Matter of Liepshutz v Palmateer, 112 AD2d 1101, 1101-1102; Matter of Donnelly v McNab, 83 AD2d 896). Here, the public office sought by Coll, Nassau County Legislator, 15th Legislative District, was described on the designating petition as "15th District Nassau County Legislature," which was sufficiently informative so as to preclude any reasonable probability of confusing or deceiving the signers, voters, or board of elections (see Matter of Hicks v Walsh, 76 AD3d 773; cf. Matter of Bragman v Larsen, ____ AD3d ____, 2017 NY Slip Op 06267 [2d Dept 2017]; Matter of Sears v Kimmel, 76 AD3d 1113; Matter of Hayes v New York State Bd. of Elections, 32 AD3d 660, 661; Matter of Bliss v Nobles, 297 AD2d 457; Matter of Dunlea v New York State Bd. of Elections, 275 AD2d 589; Matter of Jacobson v Schermerhorn, 104 AD2d 534, 535; Matter of Denn v Mahoney, 64 AD2d 1007).

Accordingly, the Supreme Court erred in granting the petition, inter alia, to invalidate Coll's designating petition. DILLON, J.P., BARROS, CONNOLLY and CHRISTOPHER, JJ., concur. 2017-08793 DECISION & ORDER ON MOTION In the Matter of John A. Fochtman, et al., petitioners-respondents, v James Coll, respondent-appellant, et al., respondent. (Index No. 3137/17) Motion by the petitioners-respondents to dismiss an appeal from a final order of the Supreme

Court, Nassau County, entered August 16, 2017, on the grounds that the appeal is barred by the doctrine of laches, and it would be impossible, if this Court were to entertain the merits, to render meaningful relief in accordance with the Election Law. Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the argument of the appeal, it is ORDERED that the motion is denied. DILLON, J.P., BARROS, CONNOLLY and CHRISTOPHER, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court