

**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

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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