IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2004

No. 04-7627

SAMUEL H. SLOAN - PETITIONER

vs.

DIANE HASLETT RUDIANO, GLADYS PEMBERTON, AARON MASLOW, HY SINGER, KING'S COUNTY REPUBLICAN PARTY, ISABELLA JEFFERSON, BROOKLYN REPUBLICANS UNITED FOR NEW LEADERSHIP, NEW YORK REPUBLICAN STATE COMMITTEE, SANDY TREADWELL, PETER S. KOSINSKI, and CAROL BERMAN, NEIL W. KELLERHER, HELENA MOSES DONOHUE and EVELYN J. ACQUILA, Commissioners of Elections, Constituting the New York State Board of Elections, and New York City Commissioners of Elections NERO GRAHAM, FREDERIC M. UMANE, WEYMAN A. CAREY, MICHAEL J. CILMI, MARK B. HERMAN, DOUGLAS A. KELLNER, TERRENCE C. O'CONNOR, NANCY MOTTOLA-SCHACHER, STEPHAN H. WEINER,

- RESPONDENTS -

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. To what extent may state governments set requirements for US Congress beyond those enumerated in the Constitution, which are only that the person must be 25 years old and have been a citizen for seven years and reside in the state?

2. Under what circumstances may a state or city or county Board of Elections kick a candidate for US Congress off the ballot, as has happened here?

Petitioner is a Candidate for Election to the United States Congress for the Tenth Congressional District of New York. The incumbent is Edolphus Towns, a Democrat, who has not faced a Republican Opponent for 14 years since 1990. Petitioner was approved as a Republican Party Candidate at a meeting of the Executive Committee of the Kings County Republican Party in Brooklyn on May 5, 2004. Subsequently, Diane Rudiano, who is both secretary of the Kings County Republican Party and Chief Clerk of the Kings County Board of Elections took a disliking to the petitioner and decided that she did not want his name on the ballot. She has ever since conducted a campaign against petitioner, using her full powers as both an election official and a party official. After substituting several alternate candidates and kicking petitioner off the ballot, she recently settled on Harvey Clarke, who, it has recently been discovered, is not eligible to serve in Congress because he only became a citizen in June, 2004 and has not been a citizen for Seven Years as is required by Article I Section 2 of the US Constitution.

An Emergency Hearing is required on this matter because the Election will be held on November 2, 2004, which is only five days from today.

In New York State, perhaps more than any other state, the candidates are controlled by the party officials. Almost all elections are uncontested. In addition, as this case demonstrates, the rules and procedures are completely ignored. Petitioner maintains that the entire procedure is unconstitutional. This case has demonstrated that it is not merely difficult but impossible to run against a party machine controlled by a handful of officials in New York State. Petitioner requests review of the entire election procedure, for reasons more fully explained in the attached motions which were filed in the US District Court and in the US Court of Appeals.

JURISDICTION

This case was brought under 42 USC 1983. On October 28, 2004, the United States Court of Appeals for the Second Circuit denied Petitioner's Emergency Motion for a Preliminary and Permanent Injunction restoring Samuel H. Sloan to the ballot and removing Harvey Clarke from the ballot. See Sloan v. Rudiano 04-5595-CV. The same motion was previously denied by Judge David G. Trager of the United States District Court for the Eastern District of New York. Petitioner has 90 days from October 28, 2004 to file this petition. There are no reported decisions.

STATEMENT OF THE CASE

This is a proceeding against the Republican Party, its Chairman, Hy Singer, and First Vice-Chairman, Diane Haslett-Rudiano, and others associated with them and against the New York State Board of Elections and the New York City Board of Elections.

The issue concerns the primary and general elections for United States Congress from the Tenth Congressional District of New York. The General Election is set for November 2, 2004.

POINT I

PETITIONER HAS A VALID-WILSON PAKULA, WHICH RESPONDENTS REFUSED TO FILE IN VIOLATION ELECTION LAW, OF THE RIGHTS OF PETITIONER AND OF THE RIGHTS OF THE VOTERS

On or about July 8, 2004, the district court held a hearing by telephone conference call. Mr. Theodore Alatsas, the new attorney for the King's County Republican Party, was on the line and argued that under the case of Montano v. Lefkowitz, 575 F.2d 378 (2d Cir. 1978) the Wilson-Pakula granted to Petitioner by the Executive Committee of the King's County Republican Party on May 5, 2004 was invalid. However, this court after hearing argument on this issue rejected the contention of Mr. Alatsas and ruled that provided that Petitioner can prove at a hearing that a majority of the residents of the Tenth Congressional District on that committee voted in his favor, Petitioner is entitled to the Wilson-Pakula.

Since then, Mr. Alatsas has defied the order of this court and is in contempt of court because he has continued to argue before the Board of Elections, before the New York State Supreme Court and before the Appellate Division Second Department of the State Supreme Court that under Montano v. Lefkowitz, 575 F.2d 378 (2d Cir. 1978) Petitioner does not have a valid Wilson-Pakula. In addition, Mr. Alatsas has failed and refused to file the Wilson-Pakula with the New York City Board of Elections and Petitioner has been kicked off the ballot. In all this time, Mr. Alatsas has never informed these courts and that body of the contrary ruling by this court.

Mr. Alatsas is clearly wrong on the law. Montano v. Lefkowitz presented almost the opposite situation. In that case, a Wilson Pakula was not involved because Wilson-Pakulas did not exist back then. There, the Executive Committee of the Bronx County Republican Party appointed a candidate to fill a vacancy. However, the vacancy was in a predominantly Black Congressional District. Most of the committee members who voted resided outside the district and were White. A Group of Black voters petitioned the court to invalidate the choice made by the White guys as to who would represent the Black Congressional District.

In the case presented here, however, Petitioner is the outsider and the respondents are the insiders. They nominated Petitioner as their candidate. Subsequently, they changed their minds. Now, they do not want Petitioner any more. However, they did not re-vote the issue, because they realize that Petitioner has substantial support within the party and would win a revote, so they seek to invalidate the election of him by claiming that they did not follow their own rules.

Their contention is that some of the people at the Executive Committee meeting who voted for Petitioner do not reside in his Congressional District and therefore the vote was invalid. However, this court ruled that provided Petitioner can establish at a hearing that even excluding all those votes by non-residents of the Tenth Congressional District he still has a majority, then he wins anyway. Since the number of votes against him was very small and the vote in his favor was overwhelming, he is confident he can prevail on this issue. The Republicans are not even disputing this point.

More than that, the only person that anybody can remember voting against him on this issue was Marianna Blume, but Marianna Blume herself is not a resident of the Tenth Congressional District. She lives at 1661 11th Avenue, which is in the 11th Congressional District, which is Major Owens District. Marianna Blume is also fraudulently representing the 58th Assembly District, because she resides in the 44th Assembly District and District Leaders are required to reside in the district they represent.

It is established law that the State Governments may not set requirements for US Congress beyond those enumerated in the Constitution, which are only that the person must be 25 years old and reside in the state. For example, the states may not require residence in the Congressional District nor may they require length of residence, for example. This was decided in Campbell v. Davidson, United States Court of Appeals for the Tenth Circuit (1999) http://www.kscourts.org/ca10/cases/2000/11/99-1257.htm .

New York Election Law is biased in favor of the Democrats. This is not surprising because the Democrats have traditionally controlled the state government. In order to get on the primary ballot for Congress, one must get signatures of 5% of the electorate, up to a maximum of 3500 signatures. The Tenth Congressional District has the following numbers of registered voters: Republican 17636, Democratic 251608, Independence 5678, Conservative 849, Working Families 714, Blank 38,853. Total registered voters 318,387. Thus, the Republicans must get 5% of the Republican signatures, which is 882

signatures. If the Democrats were required to get 5% of the Democrat signatures, they would have to get 12,081 signatures which they would never be able to do. Instead, they only have to get 3500 signatures. As a result of this bias in the law, the Democrats have had a candidate on the ballot every election year, but the Republicans have not had a candidate on the ballot for Tenth Congressional District since 1990, when Barry Ford tried and lost. As a result, the incumbent, Ed Towns, has been in uncontested Congressional races for the last 14 years.

The Election Law also discriminates against residents of Brooklyn. The reason for this is that almost everybody who lives in Brooklyn works in Manhattan. For this reason, it is much harder to find Brooklyn voters to sign, as compared to Manhattan and other areas on New York State where most people live and work in the same place. The combined result of this is that there is only one elected official in all of Brooklyn who is a Republican. The rest are all Democrats.

This year alone, a large number of Republican candidates in Brooklyn have been kicked off the ballot by the New York City Board of Elections, in many cases because of "Cover Sheet Errors". These Cover Sheet Errors are being blamed on Theodore Alatsas, Counsel for the Republican Party. If an attorney specializing in Election Law makes mistakes which keeps his clients off the ballot, what chance do the rest of us have?

If the Republicans are finding it difficult, independent non-enrolled voters are finding it impossible. The petitioner here, Samuel H. Sloan, was nominated by the Libertarian Party as a candidate for the Tenth Congressional District, but gave up because of the impossible-to-meet 3500 signature requirement.

In this year alone, none of the others who tried have succeeded, and they all had substantially greater resources than Petitioner had. On Tuesday, September 7, 2004, the New York City Board of Elections kicked off the ballot Paul Rodriguez who was the candidate for the School Choice Party for the 12th Congressional District (He is also the Republican Party candidate for that District) and it kicked off Peter Hort who was the Progressive Party Candidate for the 8th Congressional District (He is also the Republican Party candidate for that District) .

Commissioner Terrance O'Connor, who is a Democratic Party Representative on the Board of Elections, moved that the Board of Election refer these matters to the NYC Department of Investigations for criminal prosecution of Mr. Hort and Mr. Rodriguez, but these motions failed by a 4-4-1 tie vote.

At a previous hearing by the Board of Elections, John Daniel, the Republican Party Candidate for the 11th Congressional District, was kicked off the ballot. According to an article in the Brooklyn Heights Courier, a neighborhood newspaper, this has been blamed on cover sheet errors committed by Theodore Alatsas, the attorney appearing in this case, who replaced Aaron Maslow, who was forced to resign as Chairman and is now said to be resigning from the Republican Party altogether.

The conclusion is that New York State Election Law is unconstitutional as applied, since it makes it impossibly difficult for candidates to get on the Congressional Ballot.

In the case presented here, Petitioner collected signatures and was put on the ballot. Then, the Kings County Republican Party filed general objections and then specific objections with the New York City Board of Elections. At a hearing on Wednesday, August 4, 2004, the New York City Board of Elections kicked Petitioner off the ballot. Petitioner then filed a petition to validate with the King's County Supreme Court on August 9, 2004. An order to show cause was signed and given to Petitioner by the Clerk's Office at 4:55 PM that day. This order to show cause required Petitioner to serve the respondents to that proceeding by Midnight that night, which Petitioner did with great difficulty. However, at the hearing the following morning, Judge Joseph Levine summarily dismissed the petition on the ground that Petitioner had failed to file affidavits of service by 9:30 AM. He did not only dismiss Petitioner's petition, but he dismissed all but one of the other 42 petitions pending on that date on substantially the same grounds. In each case, Judge Joseph Levine was nit-picking affidavits of service, even though the opposing parties were present in the courtroom and had made no such objection. (Several of these summary dismissals have since been reversed by the Appellate Division). Petitioner then petitioned for a rehearing. Petitioner's rehearing was granted but upon rehearing was denied on the ground that Petitioner had served the attorneys involved myself and not through a process server.

Judge Joseph Levine is a Democrat who says that he served for 35 years in the New York State Assembly. Almost all of the candidates he kicked off the ballot on affidavit of service grounds were not Democrats or were Democrats who had not been endorsed by Tammany Hall and the Democrat Party Machine. Altogether, 42 candidates were kicked off the ballot by Judge Levine. These include State candidates, not merely Congressional Candidates. Petitioner submits that the due process of law rights of himself and all of these other candidates were violated by Judge Levine, since nobody could meet his strange and bizarre "affidavit of service" requirements. For example, Judge Levine dismissed petitions because the affidavit of service failed to note the eye color or the hair color of the person served. He also allowed arguments from attorneys who refused to reveal the names of the clients they were representing.

Petitioner appealed these two decisions by Judge Joseph Levine. Fortunately, these election cases are put on an exceptionally fast track and are heard almost immediately. Petitioner's appeal was heard by the Appellate Division Second Department and the decision of the State Supreme Court was affirmed on the ground that Petitioner had served the papers himself. (That court made no mention of the reason given for the first decision, which was Petitioner's failure to file affidavits of service before 9:30 AM.)

Petitioner then filed a petition for leave to appeal with the New York Court of Appeals. Petitioner went to Albany to argue Petitioner's petition on "Election Day", which is the only day of the year when the New York Court of Appeals hears oral argument on

petitions for leave to appeal. Petitioner's petition for leave to appeal was denied, along with all of the other approximately 15 petitions argued by various attorneys on that day.

Feeling that there was substantial error, Petitioner filed a motion to reargue in the New York Appellate Division Second Department. This motion for reargument was denied on September 8, 2004.

Throughout all this time, Petitioner felt that Petitioner would really win in the State Court System and Petitioner would not have to come back to this federal court for relief. Petitioner can now see that Petitioner was wrong. Petitioner have exhausted Petitioner's remedies in the State Court system, thereby satisfying the "exhaustion requirement".

Petitioner believes that the reason Petitioner cannot win in state court in spite of having winning arguments on the merits is that the judges of that court were elected through exactly the same system that Petitioner is challenging. Perhaps it is too much to expect them to put themselves out of a job. (Most of the other cases filed in State Supreme Court before Judge Joseph Levine concerned challenges to nominees to the Judicial Conference.)

POINT II

THE ACTUAL OBJECTORS TO THE PETITIONER ARE THE CHAIRMEN OF A PARTY COMMITTEE, WHO ARE BARRED BY STATUTE FROM OBJECTING.

It is completely clear that the New York State Law specifically prohibits the Chairman of a Party Committee, any party, even a different party, from objecting to a petition when that objection would result in a primary election being cancelled.

Election Law Section 16-102 states:

> S 16-102. Proceedings as to designations and nominations, primary elections, etc. 1. The nomination or designation of any candidate for any public office or party position or any independent nomination, or the holding of an uncontested primary election, by reason of a petition for an opportunity to ballot having been filed, or the election of any person to any party position may be contested in a proceeding instituted in the supreme court by any aggrieved candidate, or by the chairman of any party committee or by a person who shall have filed objections, as provided in this chapter, except that the chairman of a party committee may not bring a proceeding with respect to a designation or the holding of an otherwise uncontested primary.

The operative words in the above paragraph are: "except that the chairman of a party committee may not bring a proceeding with respect to a designation or the holding of an otherwise uncontested primary."

In Soda v. Dahlke, decided August 18, 2004, http://www.courts.state.ny.us/reporter/3dseries/2004/2004_06380.htm , the Appellate Division - Fourth Department ruled that the Chairman of the Democratic Party could not object to a petition with respect to a candidate in the Republican Party.

In each of Petitioner's cases the objector was not an opposing candidate, since there was no opposing candidate except for Ed Towns who did not object, but rather the Chairman of the party through the Party Counsel. Mr. Theodore Alatsas representing the Republican Party objected to the Republican Party petition and Mr. Gary Sinawski representing the King's County Republican Party objected to the Republican Party Petition.

In the case presented here, the nominal objector did not appear. Only the General Counsel to the Kings County Republican Party appeared. Who paid the fees of this attorney? Did the nominal objector pay? I doubt it, since the nominal objector did not come to the hearing. If the Republican Party paid, this may constitute a criminal offense of misuse of party funds.

The nominal objector was just a front. He is not a candidate and has no reason to object. However, the Chairman wants to keep control of his party by making sure that only the persons he designates gets on the ballot and no primary election is held. It is precisely because the Chairman of a Party would want to keep the party under his personal control to the exclusion of the voters and the other members of his party that New York State Law prohibits the Chairman of any Party Committee from objecting to a Petition, if the result is that there is no primary election. The relevant case law is: Davis v. Dutchess County Board of Elections 153 AD 2d 716, 544 NYS 2d 683 (1989 2d Dept.), Matter of Crawley v Board of Elections of County of Rensselaer, 218 AD2d 914, 915, lv denied 86 NY2d 704; Matter of Maltese v Anderson, 264 AD2d 457; Matter of Grogan v Conservative Party of N.Y. State, 77 AD2d 736, 736-737), Soda v. Dahlke, decided August 18, 2004, http://www.courts.state.ny.us/reporter/3dseries/2004/2004_06380.htm . In short, the actual objector is the Party Chairman. The Party Chairman and his counsel have committed a fraud on the other members of his party, on the Board of Elections and ultimately on the voters by putting up this front person to play the role of objector, when the Chairman, who is barred from this activity, is the real objector.

POINT III

PETITIONERS CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED AND NEW YORK STATE ELECTION LAW AS APPLIED IN THIS CASE IS UNCONSTITUTIONAL

Attached to the Petition as Exhibit A is the official candidates list printed out from the Board of Elections website last month. Please note that under Tenth Congressional District appears the name of Sam Sloan as a candidate for the Republican Party and the Republican Party. Also, note that an OTB candidate appears for the Conservative Party and the Working Families Party. (An OTB candidate is essentially a write-in candidate).

Now compare that with the current Candidates List on the Board of Elections website at http://vote.nyc.ny.us/pdf/documents/boe/2004PrimaryElection/CandidacyList.pdf . It can be seen that the name of Sam Sloan has disappeared and one of the two OTB Candidates has disappeared. (Also, note that the Republican Party no longer has a candidate for the 11th Congressional District just below it).

The Courier Life Chain of Newspapers which includes the Brooklyn Heights Courier and Flatbush Life has followed Petitioner's efforts to get on the ballot and has mentioned Petitioner's name almost every week. These weekly articles can be seen at http://www.lidbrooklyn.org/bp.htm . (Look at the list at the bottom of that website).

These articles state that Petitioner's case has proven that it is impossible, not merely difficult but IMPOSSIBLE, for a candidate not supported by the major parties to get on the Congressional Ballot. This raises a constitutional question because the state clearly is not allowed to impose requirements so difficult as to make it impossible to get on the ballot.

It is noteworthy that the local press has commented on this situation. For example, Flatbush Life for August 23, 2004, page 10 states:

> "Sloan's effort was an example of how impossible it can be for a non-lawyer to run for office and navigate the legal system on his own."

Similarly, an article dated July 19, 2004 appearing in Bay News, page 10 and at http://www.lidbrooklyn.org/bp.htm states the following:

> "A federal judge said he was inclined to agree with Sam Sloan's argument that Sloan received a valid Wilson-Pakula from the Republican Party, qualifying him to seek ballot access on the Republican line. Unfortunately for Sloan, the case was heard just a week before the petition deadline, leaving him with the impossible task of getting valid signatures from 886 registered Republicans in the 11th Congressional District by midnight on July 15."

Please note the repeated use of the word IMPOSSIBLE to describe Petitioner's situation. This raises issues of Constitutional proportions.

It has been established in decisions by the federal courts that the states may not add additional requirements to the qualifications for United States Congress beyond those enumerated in the Constitution, which are only that the person must be 25 years old and reside in the state. This was decided in Campbell v. Davidson, United States Court of Appeals for the Tenth Circuit (1999) http://www.kscourts.org/ca10/cases/2000/11/99-1257.htm . Since April, Petitioner has worked full time, 14 hours a day, days a week, trying to get on the ballot, and knowing that he will win election if he ever does get on the ballot.

Petitioner has exhausted his state remedies and still cannot get on the ballot.

Without repeating the arguments above, it is obvious that petitioners Constitutional Rights have been violated and his due process rights have been violated. More importantly, THE RIGHTS OF THE VOTERS HAVE BEEN VIOLATED, because the result of this will be an uncontested election and there has been no contested election for the Tenth Congressional District since 1990.

CONCLUSION

For all of the reasons set forth above, this writ must be granted and this court must issue a temporary restraining order and a preliminary and permanent injunction granting the following:

1. A preliminary and permanent injunction requiring that the name of the Petitioner be placed on the ballot as a candidate for Congress for the Tenth Congressional District.

2. A preliminary and permanent injunction requiring that the name of the Petitioner be placed on the ballot in the General Election in November as a candidate for Congress from the 10th Congressional District.

3. An Order declaring valid, proper and legally effective the designating petitions heretofore filed in the office of the Board of Elections of the City of New York designating the petitioner herein, Samuel H. Sloan, as a candidate in the Republican to be held on September 14, 2004 for election to the Office of Congressman in the United States Congress representing the 10th Congressional District of Brooklyn New York; and

4. An Order directing, requiring and commanding the Board of Elections in the City of New York to place and print the name of the petitioner herein on the ballot as a candidate for election to the United States Congress from the Tenth Congressional District in the Republican to be held on September 14, 2004; and

5. An order enjoining and restraining the said Board of Elections in the City of New York from printing, issuing or distributing for use during said Election in the Tenth Congressional District any official ballot upon which the name of the petitioner does not appear as a candidate for election to the United States Congress.

6. Such other and further relief as may be just and equitable.

Dated: October 28, 2004

Respectfully Submitted,

Samuel H. Sloan