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REGULAR UNION COUNTY,
DEMOCRATS; and candidates
for County Committee

Plaintiff,

v.

UNION COUNTY CLERK, UNION
COUNTY BOARD OF ELECTIONS
ROSELLE MUNICIPAL CLERK

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY

Civil Action

VERIFIED COMPLAINT

Plaintiffs Regular Democratic Organization of Union County, Ins, as and for their Verified Complaint in lieu of Prerogative Writs against Defendants, herein allege as follows:

NATURE OF THE ACTION

1. This is an emergent action seeking to remove several names, on the primary election ballot for the offices of members of the Democratic County Committee. The accompanying Order to Show Cause with Temporary Restraints seeks to restrain printing of the ballots for the Borough of Roselle until this matter can be resolved.

PARTIES

1. The Regular Democratic Organization of Union County (RDO), is the Democratic organization at 1508 E. St. George Avenue, 1st Floor, Linden, New Jersey.

2. Defendant Municipal Clerk of the Borough of Roselle is the election official charged with accepting and determining the sufficiency of nominating petitions for the office at issue in this matter, for approving the form of ballot for races in the Borough of Roselle, and for certifying that form to the County Clerk of the County of Union.

3. Defendant Union County Clerk is the official charged with determining the appearance of the primary election ballot, and with printing the ballots for the primary election in Union County, including the Borough of Roselle.

4. Garrett Smith and Shirley D. McLean are candidates certified to appear on the ballot for the primary election for the office of member of the County Committee Member. Candidate Garrett Smith's signed verification appears to be false.

FACTS

5. The primary election for State, County, and Municipal offices will be held in Union County, including the Borough of Roselle, on June 4, 2019 (the "Primary").

6. In accordance with N.J.S.A. 19:23-6, the RDO filed with the Borough Clerk nominating petitions signed by the requisite number of qualified voters, and that were subsequently certified as candidates to seek the nomination of the Democratic Party in the Primary Election.

7. Upon information and belief, other candidates did likewise.

8. By letter, dated April 15, 2019, Christopher Burgess, through counsel, wrote to the Roselle Municipal Clerk, seeking to object to the inclusion of two of the candidates' petitions.

9. The request was denied, and Plaintiffs were advised that a court order would be required to invalidate the petitions that were submitted by the potential candidates set forth herein.

10. Plaintiffs have been advised by the County Clerk that printing of the ballots are scheduled to begin tomorrow.

COUNT ONE

11. Plaintiffs repeat the allegations contained in the foregoing paragraphs of this Verified Complaint, and reallege them as if set forth at length herein.

12. Upon information and belief, the signature exemplars of the following individuals appended hereto are not the signatures for the individuals who they purport to be. N.J.S.A. 19:13-5 sets forth the amount of signatures required for candidacy.

13. The undersigned has personally reviewed the signatures and they do not appear to be the signatures of the people they purport to be.

14. In accordance with the requirements set forth in N.J.S.A. 19:23-13, Plaintiffs have retained a handwriting expert for the purpose of invalidating several signature exemplars that do not resemble the signatures of the people that they purport to represent.

15. Plaintiffs, therefore, have retained a handwriting expert, pursuant to which, the signature exemplars on file in the County must be compared to the Petition signatures so that an expert analysis may be performed in order to determine whether the signatures are representative of the signatories they purport to represent. The expert will employ the use of magnifiers, lights, and equipment to aid in his evaluation. As such, a release of the signatures for the limited use the expert and attorneys only for the purpose of his evaluation and for use in the litigation herein, at the conclusion of which, the signature exemplars will be promptly destroyed.

16. Plaintiff has received notice that the Attorney General's Office, in representation of the Union County Superintendent of Elections, does not object to the release of said signatures on this limited basis and for this limited purpose.

17. The ballots are scheduled to begin printing. Upon information and belief, a short delay in printing will not prejudice the election officials in their preparation for the election.

18. However, if the County Clerk is permitted to commence printing the ballots for the Borough of Roselle prior to resolution of this dispute, the damage to Plaintiffs will be irreparable.

19. The candidates including Garrett Smith and Shirley D. McLean should not be afforded an opportunity to run in the Primary despite their failure to adhere to the petition requirements of candidacy requiring that their candidacy be invalidated.

20. The RDO candidates ensured that each signature was authentic by witnessing the signing and affirmed to this in good faith will be prejudiced if Candidates that did not witness the signed but nonetheless affirmed to have witnessed it are permitted to qualify for candidacy despite their disregard for the petition requirements and for their affirmation.

COUNT TWO

21. Plaintiffs repeat the allegations contained in the foregoing paragraphs of this Verified Complaint, and reallege them as if set forth at length herein.

22. Candidates Garrett Smith and Shirley D. McLean should have their candidacy invalidated as in violation of both the affidavit of circulation and the certificate of acceptance, both of which require a candidate to be a member of the Democratic party. Garrett Smith was not and could not have been a member of the Democratic party particularly as he circulated the petition. The candidate affirmed, however, that as the circulator they, "belonged to the political party named in said petition."

23. The Candidate, therefore, affirmed upon his/her oath that he was a member of the Democratic party as he circulated the Petition. He was, in fact, an unaffiliated voter. Furthermore, following the completion of the signing of the Circulator section, the candidate signed the acceptance certifying for a second time that he was a member of the Democratic Party. At all times relevant herein, he was not a member of the Democratic party. The candidate, therefore, was not truthful and in fact signed under oath affirming membership to the Democratic party when he was not affiliated with any party.

24. If these candidates are permitted to pursue Candidacy, the voters in their Ward and District will be faced with an option to elect candidates that hold little to no regard for their own veracity and who accomplished their candidacy through a Petition affirmed under oath and affirming what was not and could not have been truthful at the time of their signing.

25. Further, the RDO candidates who ensured truthful affirmations and pursued the proper party affiliation in accordance to the oath that they signed, will be prejudiced if the requirements set forth in the statute and for which they adhered to is disregarded and the candidate who have failed to adhere to the statutory requirements is not invalidated.

WHEREFORE, Plaintiff seeks an order from this court:

A. Requiring Defendant, the Union County Board of Elections to release the signatures of certain named signature exemplars listed on the Petitions for the limited purpose of the use and analysis of a handwriting expert. The signatures requested include the following:

Shirley D. McLean
Lee C. McLean

617 Prosper Ave., Roselle, New Jersey
617 Prosper Ave., Roselle, New Jersey

Said signatures shall be kept confidential and for use by the expert and attorneys only and will be destroyed pending the full resolution of the matter herein; and further,

B. Compelling Defendants to reject the petitions of Garrett Smith and Shirley D. McLean, as the Candidates are not affiliated with the Democratic party as contrary to their affirmation under oath as both candidates and as circulators; and further,

C. Temporarily restraining the County Clerk from printing only those ballots for the Primary Election to be used in the Borough of Roselle until the matters herein have been adjudicated.

D. Granting such other relief as the Court deems equitable and just.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1(c), Katie Mocco, Esq., is hereby designated as trial counsel for Plaintiffs

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned certifies that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding. I further certify that I have no knowledge of any contemplated action or arbitration proceeding regarding the subject matter of this action and that I am not aware of any other parties who should be joined in this action.

DECOTIIS, FITZPATRICK, COLE & GIBLIN, LLP
Attorneys for Plaintiffs

By: 
Katie Mocco, Esq.

Dated: April 15, 2019