

ORDER ON EMERGENT MOTION

PASSAIC COUNTY REGULAR
REPUBLICAN ORGANIZATION, PETER
MURPHY, AS CHAIRMAN OF THE
PASSAIC COUNTY REGULAR
REPUBLICAN ORGANIZATION,
MASON J. MAHER, III, A PASSAIC
COUNTY TAXPAYER, AND AS THE
REPLACEMENT CANDIDATE FOR THE
OFFICE OF SHERIFF, WILLIAM E.
MARSALA, COUNTY COMMISSIONER
PRIMARY CANDIDATE, AND ALEX
CRUZ, COUNTY COMMISSIONER
PRIMARY CANDIDATE,
V.
PASSAIC COUNTY CLERK DANIELLE
IRELAND-IMHOF

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002588-21T2
MOTION NO. M-004656-21
BEFORE PART E
JUDGES: ALLISON E. ACCURSO
CATHERINE I. ENRIGHT

MOTION FILED: 04/26/2022

BY: DANIELLE IRELAND-IMHOF

ANSWER FILED: 04/27/2022

BY: PASSAIC COUNTY REGULAR REPUBLICAN
ORGANIZATION

SUBMITTED TO COURT: April 27, 2022

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
27th day of April, 2022, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR STAY PENDING APPEAL **GRANTED AND OTHER**

SUPPLEMENTAL: Defendant Passaic County Clerk Danielle Ireland-Imhof
moves, on our leave, for emergent relief in the form of a stay pending
appeal of Judge Caposela's order of April 25, 2022 directing her to list
Mason J. Maher, III as candidate for the Republican nomination for Passaic

County Sheriff on the Republican ballot for the June 7, 2022 primary election. Given the matter has been fully briefed – and the pressing need to print and mail the Republican ballot as soon as possible in order to allow voters to cast their mail-in votes in the primary election — we elect to decide the appeal on the merits pursuant to Rule 2:8-3(b). For reasons we briefly explain here, we affirm the April 25 order and direct the Clerk to expedite the printing and mailing of the Republican ballot which shall list Maher as candidate for the Republican nomination for Passaic County Sheriff.

The essential facts are undisputed. Troy Oswald timely filed a nominating petition to be placed on the ballot as a potential nominee for the Republican candidate for Passaic County Sheriff. The Passaic County Democratic Committee filed an objection to the petition, claiming Oswald did not satisfy the residency requirement under N.J.S.A. 40A:9-94. On April 12, 2022, having determined that Oswald was not a resident of Passaic County, the Clerk sustained the objection and declared Oswald's petition invalid.

Oswald challenged the constitutionality of the residency statute in federal district court and sought to temporarily restrain the Clerk from printing the Republican primary ballot. He also sought a preliminary injunction preventing the Clerk from enforcing the residency requirement and instructing her to list him on the ballot for the Republican primary election. Oswald v. Ireland-Imhof 2022 WL 1184804 at *2 (D.N.J. 2022).

On April 18, 2022, the district court entered a consent order enjoining the Clerk from printing the Republican vote-by-mail ballots until April 21, 2022. On April 21, 2022, the district court denied Oswald's application for temporary restraints and a preliminary injunction thereby letting stand the Clerk's decision invalidating Oswald's petition. The following day, April 22, 2022, the Third Circuit Court of Appeals denied Oswald's application for a stay pending appeal of the order.

Faced with having no candidate for Sheriff on the Republican primary election ballot, plaintiff Passaic County Regular Republican Organization held an emergency meeting the following day. The County Committee, with a quorum present, voted to allow its chairman Peter Murphy "to vet and select a replacement candidate in accordance with the statute and the [Passaic County Regular Republican Organization]'s by-laws." Murphy selected Maher to be the Organization's candidate and advised the Clerk of the Organization's new chosen candidate for Sheriff.

On Sunday April 24, 2022, plaintiffs Passaic County Regular Republican Organization, Murphy, Maher, William E. Marsala and Alex Cruz filed a verified complaint in the Law Division seeking an order directing the Clerk to place Maher's name on the primary ballot to replace Oswald as the Republican candidate for Passaic County Sheriff, relying on N.J.S.A. 19:23-5, which provides that "[c]andidates to be voted for at the primary election for the general election shall be nominated exclusively by the members of the same political party by petition in the manner herein

provided," and N.J.S.A. 19:13-20, which addresses procedures to be followed to fill vacancies "among candidates nominated at a primary election."

After hearing argument, Judge Caposela entered the April 25 order directing the Clerk to list Maher on the Republican Ballot for the June 7 Primary Election and staying the printing of ballots until Maher was listed. The judge concluded:

Including Maher's name on the Republican Primary Ballots will preserve the two-party system and avoid voter confusion. In addition, the public has a right to know who the [Passaic County Regular Republican Organization] is endorsing. Leaving the designation on the Republican Primary Ballots blank does not further that purpose. For the same reasons, the fact that Maher did not obtain one hundred [signatures] and was not nominated by a full [committee] vote should not preclude Maher's name from being included on the Republican Primary Ballot.

Judge Caposela yesterday temporarily stayed his order pending our disposition of this emergent appeal.

The Clerk argues because Oswald's petition was rejected, there was "no valid petition for Republican candidate," and thus the procedure the Passaic Regular Republican Organization undertook to fill Oswald's "vacancy" pursuant to N.J.S.A. 19:23-12 is not available for that purpose. She contends because N.J.S.A. 19:23-12 is only applicable when "the candidate for primary dies or resigns or [is] otherwise unable to proceed," the Passaic Regular Republican Organization could not rely on "the committee on vacancies . . . to select a replacement candidate as no

petition was ever filed for a Republican candidate for the position of sheriff."

The Clerk maintains that because she rejected Oswald's petition, a decision she notes "was upheld by both the District Court and the Third Circuit . . . there was no valid petition filed for the office of sheriff." And even if N.J.S.A. 19:23-12 was applicable, "same would have required a meeting of the County Committee, not simply the decision [of the] chairman of the [Passaic County Regular Republican Organization]" as was set forth in the verified complaint. The Clerk contends voters are not disenfranchised and plaintiffs not irreparably harmed because Maher can appear on the General Election ballot if he receives one hundred write-in votes in the Primary Election.¹

Plaintiffs counter that because the Republican mail-in ballots have yet to be printed, there is no harm to anyone in adding Maher's name as a candidate for Sheriff in this uncontested primary. Further, they contend the controlling case law requires the liberal interpretation of our

¹ The Clerk's position is echoed in a proposed amicus brief filed by the Passaic County Democratic Committee. The Committee argues there were no petitions for any Republican candidate for Sheriff and thus no candidate who would appear on the ballot to replace. It contends a committee on vacancies could not select and file a replacement candidate "because there were no petitions filed." The Committee further argues the Passaic County Regular Republican Organization attempted "a bastardization of the statutory process for filling a candidate vacancy for a candidate nominated at a primary election" pursuant to N.J.S.A. 19:13-20(a)(2). It contends that even if the statute applied, "it was not followed" because the County Committee did not meet. While we grant the Committee's motion for amicus status by separate order, we reject its arguments for the same reasons we reject the Clerk's arguments.

election laws to the end of "preserv[ing] the two-party system and . . . submit[ting] to the electorate a ballot bearing the names of candidates of both major political parties as well as of all other qualifying parties and groups." Kilmurray v. Gilfert, 10 N.J. 435, 441 (1952).

Plaintiffs further argue they and the County's Republican voters will be harmed by the Clerk's refusal to add Maher's name to the ballot. They contend a write-in campaign is no substitute for Republican voters of the County "being made aware of the nominee of the [Passaic County Regular Republican Organization]." And they raise the specter of "the potential for hijacking," i.e., unaffiliated voters selecting someone "not aligned with Republican values" who would then be "foisted upon the party" by write-in ballot. See Stevenson v. Gilfert, 13 N.J. 496, 501 (1953) (noting the essence of a primary is its being limited to "those who are in sympathy with the ideas of the political party" holding it, "[o]therwise the party holding the primary would be at the mercy of its enemies, who could participate for the sole purpose of its destruction, by capturing its machinery or foisting upon it obnoxious candidates or doctrines" (quoting State ex rel. Labauve v. Michel, 46 So. 430, 435 (La. 1908))).

Having weighed the parties' positions, we are convinced plaintiffs have the better argument. We are guided here by our Supreme Court's advice in N.J. Democratic Party, Inc. v. Samson, that the Legislature did not "intend[] to limit voters' choice in a case where there is sufficient time to place a new candidate on the ballot and conduct the election in an

orderly manner." 175 N.J. 178, 194 (2002). Because the Republican mail-in ballots have yet to be printed and forty-one days remain before the Primary Election, there is adequate time to accomplish "the dual interests of full voter choice and an orderly administration of the election" by directing the Republican ballots be printed with Maher's name as candidate for Sheriff on the Passaic County Regular Republican Organization's line. See id. at 195.

Pursuant to N.J.S.A. 19:23-5: "Candidates to be voted for at the primary election for the general election shall be nominated exclusively by the members of the same political party by petition in the manner herein provided." For county positions, such as Sheriff, 100 signatures are required on the petition, N.J.S.A. 19:23-7 and -8, with petitions to be filed at least sixty-four days before the Primary Election. N.J.S.A. 19:23-14. It is undisputed that Oswald, the Passaic County Regular Republican Organization's initial candidate for Sheriff, met both requirements.

The procedure to substitute a candidate nominated for an office prior to a primary election is set out in N.J.S.A. 19:23-12, which provides in pertinent part:

The signers to petitions for . . . any county office may name three persons in their petition as a committee on vacancies.

This committee shall have power in case of death or resignation or otherwise of the person indorsed as a candidate in said petition to fill such vacancy by filing . . . with the county clerk in the case of

officers to be voted for by the voters of the entire county. . . a certificate of nomination to fill the vacancy.

Such certificate shall set forth the cause of the vacancy, the name of the person nominated and that the person is a member of the same political party as the candidate for whom the person is substituted, the office for which the person is nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee is authorized to fill vacancies and such further information as is required to be given in any original petition of nomination.

The certificate so made shall be executed and sworn to by the members of such committee, and shall upon being filed at least 56 days before election have the same force and effect as the original petition of nomination for the primary election for the general election and there shall be annexed thereto the oath of allegiance prescribed in R.S.41:1-1 duly taken and subscribed by the person so nominated before an officer authorized to take oaths in this State. The name of the candidate submitted shall be immediately certified to the proper municipal clerks

Although in their brief on appeal, plaintiffs contend "the creation of a committee on vacancies . . . was done on Oswald's petition," it seems clear plaintiffs did not scrupulously comply with the procedure in N.J.S.A. 19:23-12 in attempting to fill the vacancy created by Oswald's disqualification. But we cannot accept the Clerk's position that the Passaic County Regular Republican Organization had no ability to fill the vacancy caused by Oswald's disqualification because "no petition was ever filed for a Republican candidate for the position of Sheriff." That is simply a fiction. Oswald plainly filed the required number of signatures

on his nominating petitions. He was disqualified because he failed to meet the residency requirement, not because his petitions were lacking.

Accordingly, we see no reason the Passaic County Regular Republican Organization could not fill the vacancy "in case of death or resignation or otherwise of the person indorsed as a candidate in said petition." N.J.S.A. § 19:23-12 (emphasis added). While we acknowledge plaintiffs failed to rigorously adhere to the procedure for filing the vacancy, we have no doubt Maher is the county committee's choice to fill Oswald's vacancy. As the Court explained in Samson, "[e]lection laws are to be liberally construed so as to effectuate their purpose. They should not be construed so as to deprive voters of their franchise or so as to render an election void for technical reasons." 175 N.J. at 186 (quoting Kilmurray, 10 N.J. at 440-41).

The teaching of Kilmurray v. Gilfert and Samson have been applied to primary as well as general elections. See Schundler v. Paulsen, 340 N.J. Super. 319, 328-29 (App. Div.), aff'd o.b., 168 N.J. 446 (2001), and In re Chirico, 87 N.J. Super. 587, 592-93 (App. Div. 1965). As we said in Chirico:

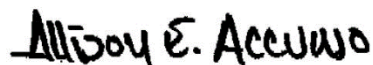
As we read the Election Act, and particularly those provisions relating to primaries, we perceive an evident legislative purpose to afford the electorate maximum opportunity to vote on those whose names have been put forward by nomination. The opportunity of voters to express their choice at a primary election should not be diminished by too narrow a reading of chapter 23 of Title 19.

[87 N.J. Super. at 592-93.]

We heed that advice here, bearing in mind we are dealing "with the arcane subject of New Jersey's election laws . . . highly detailed statutes . . . not easy to digest" and thereby "provid[ing] a fertile field for highly technical challenges sometimes impeding rather than advancing the essential aim of our electoral process. Schundler, 340 N.J. Super. at 328. Because that essential aim is "to afford voters the maximum opportunity to make a choice," ibid., we affirm Judge Caposela's order and direct the Clerk to expedite the printing and mailing of the Republican ballot for the June 7 primary, which shall list Maher as candidate for the nomination for Sheriff.

We hereby dissolve the stay entered by Judge Caposela and enter our own stay for twenty-four hours only to permit the Clerk a petition to the Supreme Court should she wish to file one.

FOR THE COURT:



ALLISON E. ACCURSO, J.A.D.

PAS-L-1011-22 PASSAIC
ORDER - REGULAR MOTION
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