

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS****DAVID STEIN, JORGE MUNIZ-REYES,
ERNESTINA MONTEIRO, AARON
OUYANG, NAOMI RABEEYA, DAVID
GOLDBERG, ERIC KUN, ELANA
EHRENBERG, WILLIAM VEGA,
PHYLLIS ELLINGTON, JANICE
HENDERSON****Plaintiff[s],****- against -****KINGS COUNTY DEMOCRATIC
COUNTY COMMITTEE****Defendant[s].**

Index No. _____

VERIFIED COMPLAINT

Plaintiffs **DAVID STEIN, JORGE MUNIZ-REYES, ERNESTINA MONTEIRO, DAVID STEIN, AARON OUYANG, NAOMI RABEEYA, DAVID GOLDBERG, ERIC KUN, ELANA EHRENBERG, WILLIAM VEGA, PHYLLIS ELLINGTON, JANICE HENDERSON, AND THOSE SIMILARLY SITUATED** (hereinafter referred to collectively as “PLAINTIFFS”), upon information and belief, upon personal knowledge as to their experiences and based on the investigation conducted by and through their attorneys, alleges as follows:

PRELIMINARY STATEMENT

1. That **KINGS COUNTY DEMOCRATIC COUNTY COMMITTEE**, (hereinafter as “DEFENDANT”) plans to deny and diminish the rights and responsibilities of the position of

Member of the Kings County Democratic County Committee for all members of that body duly elected at the June 23rd, 2020 Democratic primary election in violation of PLAINTIFFS' rights, Election Law § 2-112, Election Law § 2-118, Article 2 §3 of the Rules for The Government of The Kings County Democratic County Committee as Amended on September 29, 2020, and the custom and practice of the Kings County Democratic County Committee.

2. That DEFENDANT acting through the Executive Committee of the Kings County Democratic County Committee [hereinafter "Executive Committee"] has purported to amend the Party Rules in a manner that is clearly substantive, by filling County Committee vacancies without a vote by the full County Committee in violation of PLAINTIFFS' rights, Election Law § 2-112, Election Law § 2-118, Article 2 §3 of the Rules for The Government of The Kings County Democratic County Committee as Amended on September 29, 2020, and the custom and practice of the Kings County Democratic County Committee. On November 29, 2020 the Executive Committee passed a rule amendment adding a new §3a to Article II of the Rules for the Government of the Kings County Democratic County Committee, attached herein as Exhibit A. This new rule amendment unlawfully gives power to the Executive Committee to fill vacancies to the County Committee on its own, and prior to the organizational meeting of the County Committee, to deem such new appointments seated with voting rights at the next organizational meeting.

3. On December 2, 2020, the Executive Committee met and voted to fill vacancies of the County Committee, appointing hundreds of new members to the County Committee and deeming them seated with voting rights at the next organizational meeting of the County Committee.

4. That DEFENDANTS plan to grant voting rights on all matters at the biennial

organizing meeting of the Kings County Democratic County Committee to purported members of the Kings County Democratic County Committee unlawfully appointed by the Executive Committee in violation of PLAINTIFFS' rights, Election Law § 2-112, Election Law § 2-118, Article 2 §3 of the Rules for The Government of The Kings County Democratic County Committee as Amended on September 29, 2020, and the custom and practice of the Kings County Democratic County Committee.

JURISDICTION AND VENUE

5. Venue is proper in the Supreme Court of the State of New York, County of Kings as all PLAINTIFFS and all DEFENDANTS reside in Kings County and all events underlying the claims herein took place or are planned to take place in Kings County.

PARTIES

6. Plaintiffs DAVID STEIN, JORGE MUNIZ-REYES, ERNESTINA MONTEIRO, DAVID STEIN, AARON OUYANG, NAOMI RABEEYA, DAVID GOLDBERG, ERIC KUN, ELANA EHRENBERG, WILLIAM VEGA, PHYLLIS ELLINGTON, JANICE HENDERSON, are Members of the Kings County Democratic County Committee duly elected at the June 23rd, 2020 Democratic primary.

7. Defendant THE KINGS COUNTY DEMOCRATIC COUNTY COMMITTEE is a political party recognized as the official organization of the Democratic Party of the State of New York with offices at 16 Court Street, Suite 1016 Brooklyn, NY 11241.

STATEMENT OF FACTS

8. The relief requested is necessary to prevent irreparable harm to the PLAINTIFFS.

9. On June 23rd, 2020, a primary election was held at which all persons enrolled in

the Democratic Party and residing in Kings County were entitled to vote for the election of Members of the Kings County Democratic County Committee.

10. Prior to such primary election, PLAINTIFFS campaigned for election to the position by expenditure of capital and efforts including, but not limited to, gathering designating petition signatures in their election districts, printing designating petitions, attending meetings and trainings, and binding and submitting designating petitions to the Board of Elections in the City of New York.

11. On June 23rd, 2020, PLAINTIFFS were duly elected to the County Committee at the Democratic primary election.

12. On August 4th, 2020 the Board of Elections in the City of New York certified the results of said election.

13. One major function of the organizational meeting is to fill remaining vacancies on the county committee, with the newly appointed County Committee members having voting privileges at the next subsequent meeting of the County Committee.

14. Subsequently, DEFENDANT refused to conduct an organizational meeting of the County Committee between September 17th, 2020 and October 6th, 2020 as required by Election Law § 2-112, Article 3 §1 of the Rules for The Government of The Kings County Democratic County Committee as Amended on September 29, 2020 (Exhibit B).

15. On October 27th, 2020, DEFENDANT was ordered by this Court to conduct an organizational meeting of the County Committee before December 11th, 2020. *Ellington v. Kings Cty. Democratic Cty. Comm.*, 2020 NY Slip Op 20281 (Sup. Ct.).

16. Under Article 3 §2(b) of the Rules for The Government of The Kings County Democratic County Committee as Amended on September 29, 2020 DEFENDANTS are required

to send notice of the organizing meeting of the County Committee at least five days before the date of the meeting.

17. December 6th, 2020 is the latest possible date at which Defendants can send notice of the organizing meeting in compliance with both Article 3 §2(b) of the Rules for The Government of The Kings County Democratic County Committee as Amended on September 29, 2020 and this Court's order of October 27th, 2020.

18. On November 29th, 2020 the Executive Committee purported to adopt rules permitting Members of the Executive Committee, comprised of elected Democratic State Committee Members (also known as District Leaders) to directly appoint members of the County Committee to all vacant positions for that position prior to the organizing meeting of that body.

19. Upon information and belief, on December 2nd, 2020, the Executive Committee accepted and purported to appoint some hundreds of new members of the County Committee pursuant to the purported rules adopted on November 29th, 2020.

20. Upon information and belief, DEFENDANTS plan to grant such unlawfully appointed purported members of the County Committee full voting rights on all matters at the organizing meeting of the County Committee to be held before December 11th, 2020 including the adoption of governing rules, election of officers of that body, and parliamentary matters with intent to diminish the voting power of PLAINTIFFS and other duly elected Members of the County Committee.

21. Upon information and belief, Frank Seddio, immediate past Chair of the Executive Committee (also known as County Leader) stated at the public meeting of the Executive Committee on December 2nd, 2020 that **"We need all of the County Committee members we can**

get to overcome these [expletive] progressives in the [organizing] meeting.”¹

22. The biennial organizing meeting of the Kings County Democratic County Committee has been held every even-numbered year and been composed exclusively of Members of the Kings County Democratic County Committee duly elected at the most recent Democratic primary election.

23. Upon information and belief, no notice of a meeting of the Kings County Democratic County Committee has been sent subsequent to the June 23rd, 2020 primary election.

24. Plaintiffs seek declaratory and injunctive relief pursuant to CPLR §6301, and declaratory judgment pursuant to CPLR §3001 together with such other and further relief as this Honorable Court may deem just and proper, to enjoin the adoption of the new amendment to the Rules of Government of the Kings County Democratic County Committee in that the new amendment Article II §3a is in violation of the Election Law, and that the newly filled vacancies of County Committee members by the Executive Committee is unlawful and in violation of the Election Law.

ARGUMENT

I. THE COURT MUST GRANT A TEMPORARY RESTRAINING ORDER BECAUSE THE DEFENDANTS’ PLANNED ACTIONS ARE IMMINENT, UNLAWFUL, AND WILL CAUSE IRREPERABLE HARM TO THE PLAINTIFFS.

A. NOTICE OF THE BIENNIAL ORGANIZING MEETING MUST BE MAILED ON OR BEFORE DECEMBER 6TH, 2020, MAKING DEFENDANTS’ UNLAWFUL PLANNED ACTION IMMINENT

¹ <https://streamable.com/t/sd2ieu> (video clip of Frank Seddio’s comments from the Executive Committee meeting held on December 2, 2020).

25. Defendants plan to take imminent, irretrievable action which would constructively deny and diminish Plaintiffs' rights to exercise their positions as Members of the County Committee. Under this Court's order of October 27th, 2020, the biennial organizing meeting must be held on or before December 11th, 2020. Pursuant to Article 3 §2(b) of the Rules for The Government of The Kings County Democratic County Committee as Amended on September 29, 2020 defendants must send notice of the biennial organizing meeting "at least five days before such meetings." As such, notice must be mailed on or before December 6th, 2020, and could be mailed on any day prior.

26. Given such a short timeframe, absent a Temporary Restraining Order, plaintiffs' harm will be irreparable.

B. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS

1. Plaintiffs are likely to succeed on their claims because defendants' planned actions unambiguously violate New York State Election Law and Party Rules.

27. New York Election Law is unambiguous that Party County Committees and only Party County Committees may fill County Committee vacancies. Pursuant to Election Law §2-118, vacancies in the County Committee "shall be filled by the remaining members of the committee." See *Matter of Brocato v. Tinari*, 157 A.D.3d 782, 69 N.Y.S.3d 347 (2nd Dept. 2018) *leave denied* 31 N.Y.3d 907, 79 N.Y.S.3d 96 (2018). (Stating that "The filling of vacancies in a political party's county committee is governed by Election Law § 2-118, which provides, in pertinent part, that, in the case of a failure to elect a member of the committee, the vacancy created thereby shall be filled by the remaining members of the committee. Therefore, only the ... County Committee had the authority to fill the subject vacancies.") See also *Mazur v. Kelly*, 566 N.Y.S.2d

180, 170 A.D.2d 1037 (4th Dept. 1991), *Matter of Auerbach v. Suffolk Cty. Comm. of the Conservative Party*, 2019 NY Slip Op 02515, 171 A.D.3d 731, 96 N.Y.S.3d 323 (App. Div. 2nd Dept.).

28. Similarly, under Article 2 §3 of the Rules for The Government of The Kings County Democratic County Committee as Amended on September 29, 2020 “Vacancies in the membership of the County Committee existing at the time of the organizational meeting shall be filled for the unexpired term by the County Committee.”

29. Despite this clear authority vested in the County Committee, on November 29, 2020, the Executive Committee of the Kings County Democratic Committee unlawfully purported to pass an amendment to Article II of the Rules for the Government of the Kings County Democratic County Committee. This amendment purported to create a number of vacancies within the County Committee, and to authorize the Executive Committee - **not** the full membership of the County Committee - to fill those vacancies in advance of the County Committee meeting.

2. Injunctive relief is also warranted because the Defendants’ purported amendments violate this Court’s October 27 order.

30. This Court clearly explained that the Governor’s Executive Orders do not allow the Executive Committee to indefinitely postpone the required County Committee meeting, nor may the Executive Committee “act in the stead of the county committee on any substantial matter.” *Ellington v. Kings Cty. Democratic Cty. Comm.*, 2020 NY Slip Op 20281, ¶¶ p.15, n.7 (Sup. Ct.). Filling vacancies on the County Committee is unequivocally a substantial matter. *Matter of Brocato v. Tinari*, 157 A.D.3d 782, 69 N.Y.S.3d 347 (2nd Dept. 2018) *leave denied* 31 N.Y.3d

907, 79 N.Y.S.3d 96 (2018); *Mazur v. Kelly*, 566 N.Y.S.2d 180, 170 A.D.2d 1037 (4th Dept. 1991). The purported amendment also improperly gave County Committee members' votes to District Leaders to "act in their stead," at least during the pandemic.

3. **The Executive Committee is a Subcommittee established by the County Committee and as such may not set rules for the County Committee unless and until authorized to do so by the County Committee at its organizing meeting.**

31. Upon the election of a new County Committee in a Primary election, the previous body becomes " functus officio" and "no rule of the old county committee could extend the authority of its executive committee to continue to exercise functions in substantial matters after their successors as a county committee had been elected." *Mazur v Kelly*, 170 AD2d 1037, 1038 (4th Dep't 1991).

32. In *McDonald v Heffernan*, the Court of Appeals affirmed that a party "Executive Committee had no power to act after the term of office of the County Committee of which it was a subcommittee had expired." 300 NY 488 (1949). Immediately upon a primary election, County Committee Members' terms of office terminate, and they hold no voting or other powers of the position. *Brocato v. Tinari*, 157 A.D.3d 782, 784 (2d Dep't 2018). (Stating "With the election of the 2016 County Committee in the primary election, the 2014 County Committee had no further official authority").

C. **The Balance of Equities Tips Decidedly In Favor of Plaintiffs**

33. This is a case where the balance of equities clearly tips decidedly in favor of Plaintiffs. Plaintiffs have done nothing wrong. To the contrary, Plaintiffs did everything right, and

were successfully elected to the office of Members of the Kings County Democratic County Committee.

34. After being ordered by this Court to conduct a biennial meeting they sought to avoid, Defendants seek to undermine Plaintiffs' elections and unfairly, unlawfully, and unjustly influence the results of elections for officers and the adoption of rules.

35. There is simply no justification for Defendants' plan to diminish and deny Plaintiffs and the citizens who voted for and nominated them their undiluted vote at the Kings County Democratic County Committee biennial organizing meeting. Defendants' planned misconduct must be prevented so that Plaintiffs may retain their rights and fulfill their obligations as Members of the Kings County Democratic County Committee. The balance of equities tips undoubtedly and decidedly in favor of Plaintiffs.

D. The Public Will Not Be Disserved if Plaintiffs' Motion Is Granted

36. The public certainly will suffer no disservice if Plaintiffs' motion is granted. To the contrary, voters will be disserved if their elected party representatives are denied exercise of substantive responsibilities of the offices to which they were elected.

E Plaintiffs Are Entitled To An *Ex Parte* Temporary Restraining Order

37. Plaintiffs are entitled to their Temporary Restraining Order ("TRO"). "A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had." CPLR 6301

38. The immediate and irreparable injury to Plaintiffs is clear. As demonstrated at length above, if this Court does not issue a temporary restraining order Plaintiffs will be denied the right to exercise the offices to which they have been duly elected.

39. Under these circumstances, this Court should use its power to issue a temporary restraining order and restore the *status quo* pending a preliminary injunction hearing, since Plaintiffs will sustain immediate and irreparable harm in the absence of such an order. As discussed above, Plaintiffs have shown likelihood of success on the merits, the need for equitable relief, irreparable harm, and the absence of any harm to the public. A temporary restraining order is therefore in order to ensure that Plaintiffs rights can survive to litigate its motion for a preliminary injunction and, ultimately, the lawsuit itself.

CONCLUSION

40. For the reasons set forth above, Plaintiffs respectfully request that the Court grant its motion for a temporary restraining order and preliminary injunction.

PRAYER FOR RELIEF

41. **WHEREFORE**, by reason of the foregoing, Plaintiffs respectfully request that the Court enter judgment in Plaintiffs' favor and against Defendants immediate enjoining Defendants to:

- (a) Pursuant to CPLR §3001 *declaring* the newly proposed amendment to the Rules of the Government of the Kings County Democratic Committee Article II §3a in violation of the Election Law and null and void.
- (b) Pursuant to CPLR §3001 *declaring* any appointments made by the Executive Committee

to the County Committee prior to the required organizational County Committee meeting null and void and in violation of the Election Law.

- (c) Pursuant to CPLR §6301, granting Plaintiff's request for a Temporary Restraining Order (TRO) *to prohibit and enjoin* the Executive Committee from any further substantial actions on behalf of the County Committee prior to the organizational meeting as required by the Election Law and enjoining the Executive Committee from adopting its amended Rules to the Government of the Kings County Democratic Committee Article II §3a; and
- (d) Awarding Plaintiffs attorneys' fees and costs as may be permitted by law; and
- (e) Granting such other and further relief as may be just and proper.

Dated: New York, New York
December 3, 2020

Sincerely,



ALI NAJMI, ESQ.

The Law Office of Ali Najmi
261 Madison Avenue, 12th Floor
New York, New York 10016
Telephone: (718) 637-7707
ali@najmilaw.com
Attorneys for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ALI NAJMI, an attorney duly admitted to practice in the Courts of the State of New York, states:

I am an attorney in THE LAW OFFICE OF ALI NAJMI the attorneys for the Plaintiff herein.

I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to those matters therein alleged to be on information and belief and, that as to those matters, I believe them to be true.

The reason this verification is made by me and not by the Plaintiff is that the Plaintiff is presently outside the county in which THE LAW OFFICE OF ALI NAJMI maintains its office.

The grounds of my belief as to all matters not stated upon my own knowledge are information, books, records, data and correspondence contained in deponent's file and conversations had with the Plaintiff herein.

I affirm that the foregoing statements are true under the penalty of perjury.

Dated: New York, New York
December 3, 2020

Sincerely,

Sincerely,



ALI NAJMI, ESQ.