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232 N.Y.S.2d 462
Application of Perry B. DURYEYEA, Jr., et al.
v.
Everett McNAB et al.
Supreme Court, Special Term, Suffolk County.
Aug. 24, 1962.

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Leonard D. Wexler, Smithtown, for petitioners.

George W. Percy, Jr., County Atty. of Suffolk County, Riverhead, for respondents.

Jack Olchin, New York City, for respondent Stout.

HENRY M. ZALESKI, Justice.

This is a proceeding under Article 14 of the Election Law to restrain the respondents as Commissioners of the Board of Elections of Suffolk County from placing the name of August H. Stout, Jr. on any ballot for nomination by the Liberal Party for the office of Member of the Assembly, First Assembly District.

By a certificate timely filed the state executive committee of the Liberal Party designated Stout as the candidate of the Liberal Party for the office of Assembly. Stout is not an enrolled member of that Party. Petitioners claim that there is a duly constituted county committee of the Liberal Party in this County; that such committee, under the Election Law and the rules of the Liberal Party, was the proper committee to make the designation of Stout; that because of the existence of a county committee the state executive committee had no power to make the designation and that, consequently, the designation is invalid. The Court does not agree with petitioners.

Section 137, subd. 4 of the Election Law authorizes a political party to designate as a

candidate a person who is not an enrolled member of the party. Such designation may be authorized either 'at a meeting of the members of the party committee representing the political subdivision of the office for which a designation is to be made, or of such other committee as the rules of the party may provide * * *.' By virtue of that Section the designation of Stout could have been made by the County Committee or some other committee authorized by party rules. By Article VI, Section 3 and Article VIII, Section 8, of the State Liberal Party rules the State Executive Committee exercises the functions and powers of the county committee in those 'counties of the state where no county committee of the Liberal Party is organized or exists * * *.' Therein lies the problem. Petitioner claims that there is a duly constituted county committee. Respondent Stout asserts that there is no county committee or that no county committee is organized.

By Section 12, subd. 1 of the Election Law, a county committee is constituted 'by the election in each election district within such county of at least two members * * *.' However, by subdivision 2 of said Section, effective April 21, 1960, a county committee shall be 'legally constituted if twenty-five per centum of the committeemen required to be elected in such county, * * * have been elected.' In 1958 twenty county committeemen were elected in Suffolk County. An election was held in 1960 but an insufficient number of committeemen were elected.

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In effect, therefore, as has been conceded by respondent, there was no election. Of the twenty

committeemen elected in 1958, fourteen are still committeemen as 'hold-overs.' (Hammer v. Curran, 203 Misc. 417, 118 N.Y.S.2d 268; Sec. 13, Election Law). Petitioners argue that the remaining fourteen compose the duly constituted county committeemen.

If we assume that the twenty committeemen elected in 1958 were a sufficient number at that time to make the county committee a legally constituted body, there is no evidence that such a number is sufficient this year. The Court takes judicial notice of the fact that there are 428 election districts in Suffolk County. After April 21, 1960, 25% of the number required by Section 12, subd. 1 or at least 214 committeemen are needed to comprise a 'legally constituted' county committee. But, by virtue of the failure of the 1960 election there

were only 14 or, at the most, 20 committeemen in office. Either number is insufficient to comprise a 'legally constituted' county committee. (Licitra v. Power, 10 A.D.2d 996, 203 N.Y.S.2d 322). It follows that no such committee exists capable of authorizing the designation of a non-party member as the party's candidate. That being so, by party rules the authority to make the designation devolved upon the state executive committee.

The Court holds that in performing the functions of the non-existent county committee, the state executive committee acted properly and its designation of Stout is valid.

The petition is dismissed.

Submit order.