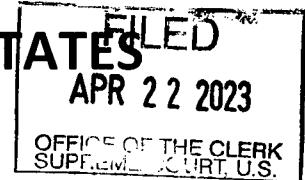


No. 22-7770

ORIGINAL

In The

SUPREME COURT OF THE UNITED STATES



VICTOR JORDAN,

Petitioner

vs.

JOSUE PIERRE ET AL,

Respondents

On Petition for Certiorari to the United States Court
Of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

Victor Jordan, J.D.
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QUESTION PRESENTED FOR REVIEW

Does NY Election Law §§ 3-226(3) and 3-404(2),(3) violate the a candidate's right to substantive due process, where the district in which the candidate and the incumbent candidate is competing for the same office, this law allows incumbent candidate, to appoint the incumbent's Chief of Staff as a Poll Site Coordinator, and appoint candidates on the incumbent's slate of candidates, competing for elective offices in the same district, as Election Inspectors, Scanner Monitors, and other Election Day Workers in the same district?

List of Parties

- 1) VICTOR JORDAN, Plaintiff and Petitioner
- 2) JOSUE PIERRE, Defendant
- 3) RODNEYSE BICHOTTE, Defendant and Respondent
- 4) BOARD OF ELECTIONS IN THE CITY OF NEW YORK, Defendant and Respondent
- 5) SALVATORE BARRERA, Chief Clerk, Board of Elections (I.A.)
- 6) JOSE MIGUEL ARAUJO, RODNEY L. PEPE-SOUVENIR, JODI MORALES,
MICHAEL J. COPPOTELLI, GINO A. MARMORATO,
SIMON SCHAMOUN, KEITH SULLIVAN,
PATRICIA ANN TAYLOR, and FREDERIC M. UMANE,
Commissioners, New York City Board of Elections, Defendant
- 7) GARY TILZER, Defendant and Respondent
- 8) KINGS COUNTY DEMOCRATIC COUNTY COMMITTEE, Defendant and Respondent
- 9) EXECUTIVE COMMITTEE OF THE KINGS COUNTY DEMOCRATIC COUNTY COMMITTEE, Defendant and Respondent
- 10) DEMETRIA JULIEN, Defendant
- 11) MICHAEL DAVIDSON, Defendant
- 12) SHIRLEY CHISHOLM DEMOCRATIC CLUB, Defendant
- 13) CLARENCE ROBERTSON, Defendant
- 14) CHIDI EZE, Defendant
- 15) MABLE ROBERTSON, Defendant
- 16) EMMANUEL VAMBRAN, Defendant
- 17) LISA L. DERRICK, Defendant

DIRECTLY RELATED CASES

Victor Jordan v. Board of Elections in the City of New York, No. 20 – 1554, Second Circuit, Court of Appeals, judgment entered June 15, 2020.

Victor Jordan v. Board of Elections in the City of New York, No. 20 CV - 01602, Eastern District of New York, judgment entered May 7, 2020.

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OPINION BELOW

The opinion of the Untied States Court of Appeals for the Second Circuit, filed on October 31, 2022 is unreported but is reprinted in the Appendix hereto, pp. 1a-6a.

The order of the Second Circuit denying rehearing en banc, filed January 23, 2023 is unreported but is reprinted in Appendix hereto, p. 26a.

The memorandum opinion and order of the United States District Court for the Southern District of New York, filed June 22, 2021 is unreported but is reprinted in Appendix hereto, pp. 7a-25a.

The order of the District Court denying FRCP 59(e) motion, filed July 23, 2021 is unreported but is reprinted in Appendix hereto, p. 62a.

JURISDICTION

On September 18, 2018, Petitioner brought suit against Respondents and other Respondents in the United States District Court for the Southern District of New York, alleging that Respondents and others had violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Racketeering Influenced and Corrupt Organization Act (“RICO”) by giving the Respondents uncontrolled discretion to hire election day workers to manage the polling stations in which the many Respondents were also running as candidates. (See App. pp. 71a-103a).

On June 22, 2021, the Honorable John Koeltl, District Judge for the United States District Court for the Southern District of New York, filed his findings and recommendations wherein he recommended that the complaint of Petitioner be dismissed. (See App. p. 24a). On July 20, 2021, Petitioner filed a FRCP 59(e) motion to correct or amend the memorandum opinion and order. (See App. pp. 47a-61a). On July 23, 2021, the District Court issued an order denying this motion. (See App. p. 62a). On July 30, 2021, Petitioner appealed the dismissal of the complaint to the United States Court of Appeals for the Second Circuit.

On October 31, 2022, the Second Circuit issued an order affirming the District Court's order and opinion. Petitioner timely filed a petition for en banc rehearing to the Second Circuit. (See App. pp. 27a-46a). On January 23, 2023, the Second Circuit issued an order denying Petitioner's petition for rehearing en banc. (See App. p. 26a).

The jurisdiction of this Court to review the Judgment of the Second Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE

Fourteenth Amendment to the United States Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any States deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

N.Y. 2018 Election Law § 3-226(3)

List of persons recommended to serve as inspectors of election and poll clerks shall be filed by the chairperson of the county committees of the political parties entitled to representation on the board of elections.

N.Y. 2018 Election Law § 3-404(2), (3)

§ 3-404(2)

Each political party entitled to representation on any board of elections may, not later than the first day of May in each year, file with the appropriate board of elections, an original list of persons recommended to serve. Supplemental list may be filed at the same time and at any time before the designation is made and certified or when a vacancy exists. All designations shall be made first from those named in the original list filed if those designated are found qualified.

§ 3-404(3)

Such lists shall be authenticated and filed by the chairman, or, under his direction by the secretary, of the county committee of the party, except that in cities other than the city of New York, if there is a general city committee of such party, such list shall be filed by the chairman or secretary of such city committee.

N.Y. 2018 Election Law §§ 7-106(8), 8-312(5)

§ 7-106(8)

After completing your ballot, insert it into the ballot scanner and wait for the notice that your ballot has been successfully scanned. If no such notice appears, seek the assistance of an election inspector.

§ 8-312(5)

No ballot without the official endorsement shall be allowed to be deposited in the ballot scanner or, when a bolt scanner is inoperable or otherwise unable to scan the ballot, in a ballot box or other secure storage container except for emergency ballots as provided in subdivision two of section 7-120 of this chapter. No person to whom any election day paper ballot shall be delivered shall leave the space within the guard-rail until after he or she shall have scanned the ballot, deposited the ballot in a box or other secure storage container or delivered the ballot back to the inspectors or the clerks.

N.Y. 2018 Election Law §§ 17-130(1), 17-168

§ 17-130(1) Misdemeanor in relations to elections

Any person:

Acts as an inspector of election or as a clerk at an election, without being able to read or write the English language or without being otherwise qualified to hold such office; or,

§ 17-168 Crimes against the elective franchise not otherwise provided for

Any person who knowingly and willfully violates any provision of this chapter, which violation is not specifically covered by any of the previous sections of this article, is guilty of a misdemeanor.

STATEMENT OF THE CASE

This case began in July 2016, when both Respondent Bichotte and Respondent Pierre, who are cousins, became female District Leader and male District leader, respectively, for the 42 Assembly District (A.D.). This meant that under N.Y. Election Law §§ 3-226(3), 3-404(2), (3), the two Respondents together could select all of the poll workers who would work in all of the Poll Sites in the 42nd A.D. on Election Day.

N.Y. Election Law § 3-226(3) reads as follows:

List of persons recommended to serve as inspectors of election and poll clerks shall be filed by the chairperson of the county committees of the political parties entitled to representation on the board of elections.

N.Y. Election Law § 3-404(2), (3) reads as follows:

§ 3-404(2)

Each political party entitled to representation on any board of elections may, not later than the first day of May in each year, file with the appropriate board of elections, an original list of persons recommended to serve. Supplemental list may be filed at the same time and at any time before the designation is made and certified or when a vacancy exists. All designations shall be made first from those named in the original list filed if those designated are found qualified.

§ 3-404(3)

Such lists shall be authenticated and filed by the chairman, or, under his direction by the secretary, of the county committee of the party, except that in cities other than the city of New York, if there is a general city committee of such party, such list shall be filed by the chairman or secretary of such city committee. (A-143, Supplemental Appendix).

Respondent Bichotte Chief of Staff Manages a
Poll Site in which Her Boss is a Candidate

Pursuant to N.Y. Election Law §§ 3-226(3), 3-404(2), (3), on September 13, 2016, the 2016 Primary Election, Respondent LISA L. DERRICK, the Chief of Staff to Respondent BICHOTTE was employed as an Election Day Coordinator at Poll Site PS 269, 1957 Nostrand Avenue, Brooklyn, NY. Respondent LISA L. DERRICK acceptance of the position of a Poll Site Coordinator, given that she worked as the Chief of Staff for Respondent BICHOTTE, when she knows that Respondent BICHOTTE is a candidate in the same Assembly District as Poll Site P.S. 269 is also a violation of New York Election Law §§ 17-130(1), 17-168. (2nd Amended Complaint, at ¶ 27). (See App. p. 75a).

Witnesses Observe Poll Workers Stuffing Scanner B with Pre-Marked Ballots in the
Polling Site Where Respondent Bichotte's Chief of Staff was working as the Coordinator

Two years later, on September 13, 2018, in the 2018 Primary Election, pursuant to N.Y. Election Law §§ 3-226(3), 3-404(2), (3), Respondent LISA L. DERRICK, the Chief of Staff to Respondent BICHOTTE, was again employed as an Election Day Coordinator at the Poll Site at PS 269, 1957 Nostrand Avenue, Brooklyn, NY. Petitioner and one of his Poll Watchers entered

the Polling Site to observe the closing of the Polling Site. After waiting about 15 minutes for the tape from Scanner B to be placed on the wall, Petitioner and the Poll Watcher walked over to Scanner B to see what was causing the delay. At Scanner B, the Petitioner and the Poll Watcher observed two Poll Workers, Respondent Demetria JULIEN and Respondent Michael DAVIDSON fraudulently feeding pre-marked ballots into the scanner in violation of 18 U.S.C. § 1029. Respondent Demetria JULIEN was unable to provide a satisfactory reason why voters were not allowed to place their own ballots into the scanner in compliance with Election Law §§ 7-106(8), 8-312(5) and with the Board of Elections Rules and Regulations. (See App. p. 90a, 104a).

On Page 91 of the “Basic Poll Worker Manual, 2018/2019 Certification Period,” Respondent Board of Elections directs that if “**All Scanners Break down,**” “Notify the Coordinator immediately, which will call the Borough Office,” “**WAIT for the Coordinator to tell you to begin Emergency Procedures. THEN:**” a. Break the yellow seal on the Emergency Ballot Box at Scanner A, Location #3, and open door.” (See App. p. 108a).

Respondent Bichotte Appoints a Candidate Running on her Slate as a Poll Site Coordinator, Pursuant to N.Y. Election Law §§ 3-226(3), 3-404(2), (3)

For the Primary Election on September 13, 2016, a perusal of the Site Coverage Report By LD/AD for the 18 Polling Sites in the 42nd Assembly District and the list of employees at each Site revealed that the employment of a large number of Poll Workers were in violation of Election Law § 3-400(6). (See App. pp. 109a-114a). Respondent EMMANUEL VAMBRAN who was a Candidate on Respondent PIERRE and Respondent BICHOTTE’S slate of Candidates, (See App. p. 115a), was hired as a Coordinator at the Polling Site at PS 249, 18 Marlborough Road, Brooklyn, NY. (See App. p. 113a). By working in a polling site where he is also running as a candidate, Respondent EMMANUEL

VAMBRAN was in clear violation of New York Election Law §§ 17-130(1), 17-168. In addition, Respondent Bichotte selected Respondent Clarence A. Roberson, another candidate running on Respondent Bichotte slate of candidates, (See App. p. 115a), to work as a R Inspector at the Poll Site at PS 152/PS 315 at 725 East 23 Street along with his wife, Respondent Mable Robinson . (See App. pp. 111a-112a),

Respondent Bichotte’s Appointee to the NYC Board of Elections Refused to Allow the Petitioner to Speak in Defense of His Petitions in an Effort to Cover up Respondent Bichotte’s Fraud

Pursuant to N.Y. Election Law §§ 3-226(3), 3-404(2), (3), Rodney L. Pepe-Souvenir was appointed as Respondent Bichotte’s representative on the NYC Board of Elections. As such, on April 28, 2022, Respondent Pepe-Souvenir, as President of the NYC BOE, oversees the petition hearing where candidates are provided the opportunity to defend their petitions. At this hearing Respondent Pepe-Souvenir “cut off” the Petitioner and refused to allow him to address any alleged deficiency in Petitioner’s petitions, while allowing other candidates to speak. Petitioner believes that this was an effort to conceal the fraudulent document the Respondent Bichotte filed with Respondent Board of Elections to fraudulently remove the Petitioner from the ballot. (See App. pp. 116a-125a). This blatant violation of the Petitioner’s right to a due process hearing before Respondent Board of Elections was made possible by N.Y. Election Law §§ 3-226(3), 3-404(2), (3).

REASON WHY CERTIORARI SHOULD BE GRANTED

Review is Warranted Because Review is Necessary in Order to Maintain Public Confidence and Trust in the Electoral System.

The standard applied to a law that burdens a fundamental constitutional right such as substantive due process or the First Amendment of the federal Constitution is strict scrutiny, which means that such a law will only pass constitutional muster if it is designed to meet a

compelling state interest and it is also narrowly tailored. California Democratic Party et al. v. Jones, Secretary of State of California, et al., 530 U.S. 567, 582 (2000). The purpose of the Due Process Clause of the Fourteenth Amendment is to prevent governmental power from being used for purposes of oppression. [Citation omitted.]. Daniels v. Williams, 474 US 327, 331-232 (1986).

In 2016 Respondent Bichotte and Respondent Pierre, who are cousins, became the two Democratic District Leaders for the 42nd Assembly District (42nd A.D.). As such, NY Election Law §§ 3-226(3), 3-404(2), (3) gives them the power to present a list of their choices of individuals who should manage and work at all of the Polling Stations in the 42nd A.D. NY Election Law also provides for two Republican District Leaders, but because the district is so heavily Democratic, the Republicans are indifferent to what happens in the District. This state law impinged on the Petitioner and the voters' substantive due process right to a fair election and to have their vote counted. [Citation omitted.]. Rucho v. Common Cause, 139 S. Ct. 2484, 2514 (2019)

From 2016 to the present, Respondent Bichotte has appointed her Chief of Staff, Respondent Lisa Derrick as the Coordinator of the Poll Site located at PS 269 in Brooklyn. Respondent Derrick's job on Election Day is to supervise the elections process at that Poll Site from beginning to end, while ensuring that no candidate or supporter of a candidate has an advantage over other candidates. It is hard to imagine that Respondent Derrick would not favor her employer Respondent Bichotte, on which her livelihood depends. Clearly, if a candidate has the power to select all the poll workers at Poll Sites, it gives them a great advantage over other candidates; hence, burdening the voters and the Petitioner's substantive due process right to a fair election, under the Fourteenth Amendment. Purcell v. Gonzalez, 549 US 1, 7 (2006) {quoting Reynolds v. Sims, 377 US 533, 554-555 (1964)}

THE CHALLENGED LAWS ALLOWS FOR THE
DILUTION OF THE VOTES OF OTHER CITIZENS

On Election Day, Tuesday, September 11, 2018, around 9:15pm at the Poll Site at PS 269, two polling workers were observed by two witnesses stuffing pre-marked ballots into Scanner B. (See App. p. 90a). When questioned the two poll workers involved could not provide a satisfactory reason. This stuffing of pre-marked ballots into Scanner B was contrary to the Respondent Board of Elections written rules and regulations. (See App. pp. 104a-108a), The challenged laws not only violate the Petitioner's right to substantive due process but it also impinges on the fundamental rights of other voters by diluting their votes with fraudulent ballots. All qualified voters have a constitutionally protected right to vote, which can be denied by the dilution or debasement of the weight of a citizen's vote just as effectively as prohibiting the free exercise of the franchise. Reynolds v. Sims, 377 US 533, 555 (1964)

RESPONDENT BICHOTTE APPOINTS CANDIDATES TO MANAGE
POLL SITES IN WHICH THEY ARE COMPETING AS CANDIDATES

NY Election Law §§ 3-226(3), 3-404(2), (3), gives Respondent Bichotte as District Leader the power to appoint her choice of employees to manage the Poll Sites in her own district, the 42nd A.D. For the Primary Election on Sept. 13, 2016, Respondent Bichotte selected Respondent Emmanuel Vambran to be the Coordinator at the Poll Site at PS 249. (A-140). In addition, Respondent Bichotte appointed Respondent Clarence A. Robertson, another candidate on her slate in the same district, as an R Inspector at Poll Site PS 152/ PS 315 along with his wife, Respondent Mable Robinson. (See App. p. 111a-112a). Thus, these two individuals are competing in the same district in which they are managing or working in the Poll Site. Clearly, an election conducted under these circumstances cannot be "said to be fair." Griffin et al v. Burns et al, 570 F.2d 1065, 1076 (1st Cir. 1978). The Petitioner lacked the resources to watch

every Poll Site, but it was clear that these two candidates were not going to lose an election in a Poll Site that they were managing and controlling. (See App. p. 112a, 113a),

RESPONDENT BICHOTTE COMMITS FRAUD AT THE BOARD OF ELECTIONS AND HER APPONTEE TO THE BOARD PROTECTS ‘COVERS’ FOR HER

The petitioners worked together to prevent the Petitioner from being placed on the ballot by the submission of fraudulent documents and the arbitrarily denying the Petitioner due process right to speak in defense of his petitions. (See App. pp. 116a-125a). At the hearing at the New York County Board of Elections, on April 28, 2022, where all candidates are provided with a due process opportunity to speak in defense of his petition, Respondent Bichotte’s appointee to the NYC Board of Elections, Respondent Rodney L. Pepe-Souvenir, arbitrarily prevented the Petitioner from speaking, hence denying the Petitioner the opportunity to be heard, while allowing other candidates their due process right to speak in defense of their petition. Respondent Board of Elections joined Board Member, Respondent Rodney L. Pepe-Souvenir, in preventing the Petitioner from appearing on the ballot by the submission of fraudulent documents to the Board of Elections by Respondents. As a result, Respondent Bichotte has denied the voters in the 42nd A.D. their constitutional right to have their vote fairly counted. Moreover, Respondent Bichotte was operating under color of state law when Respondent Bichotte violated Petitioner’s rights under the Due Process Clause of the Fourteenth Amendment. Lugar v. Edmondson Oil Co., Inc. et. al, 457 U.S. 922, 953-955 (1982).

THE STATE’S INTEREST

The state’s interest in enacting NY Election Law is generally to prevent corruption or the appearance of corruption and to regulate the electoral process to protect the integrity of the process. Buckley v. Valeo, 424 U.S. 1, 26-27 (1976). However, the granting of the power to District Leaders to select the individuals who would be employed by the Board of Elections to oversee the administration of the election clearly does not achieve that goal. The evidence above suggest that NY Election Law §§ 3-

226(3), 3-404(2), (3) enabled the stuffing of scanners and the appointment of candidates to work at Poll Sites in which they are competing as candidates on Election Day. There is no meaningful relationship between NY Election Law §§ 3-226(3), 3-404(2), (3) and protecting the integrity of the electoral process. Moreover, NY Election Law §§ 3-226(3), 3-404(2), (3), by allowing District Leaders to hire Election Day workers in their own district, has also denied the voters their constitutional right to vote for the “candidate of one’s choice, which is the essence of a democratic society, and any restriction on that right strike at the heart of representative government.” Harman v. Forssenius, 380 U.S. 528, 537 (1965).

STRICT SCRUTINY

Strict scrutiny requires that a law be declared unconstitutional if this law does not serve a compelling state interest and is not narrowly tailored to meet that interest. California Democratic Party et al. v. Jones et al., 530 U.S. 567, 582 (2000). When the Court has found a law that severely burdens a fundamental right without advancing any legitimate or important state interest, it has held that law unconstitutional on its face. Buckley v. American Constitutional Law Foundation, Inc., 525 U.S. 182, 209 (1999). Allowing Respondent Bichotte to hire her supporters to run Poll Sites in a district in which she is a candidate is not a compelling state interest to justify the burden placed on the substantive due process rights of the Petitioner and the voters in that district. No set of circumstances exist under which NY Election Law §§ 3-226(3), 3-404(2), (3) would be valid. U.S. v. Salerno et al., 481 U.S. 739, 745 (1987).

CONCLUSION

For the foregoing reason, this Court should reverse the order below and grant the petition.

Date: June 9, 2023

Respectfully submitted,

BY:



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