

Other Orders/Judgments

1:10-cv-02502-JG -VVP McMillan v. New York State Board of Elections et al
NPROSE

U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 6/25/2010 at 3:31 PM EDT and filed on 6/25/2010

Case Name: McMillan v. New York State Board of Elections et al

Case Number: 1:10-cv-02502-JG -VVP

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Docket Text:

ORDER: For the reasons explained in the attached Order, the motion for a preliminary injunction is denied as moot given the parties' agreement that "Rent is 2 Damn High" is an appropriate way for plaintiff's party name to appear on the ballot. A copy of the Order will be mailed to plaintiff. Ordered by Judge John Gleeson on 6/25/2010. (MacMahon, Paul)

1:10-cv-02502-JG -VVP Notice has been electronically mailed to:

Joel Graber Joel.graber@oag.state.ny.us, Stephanie.Rosenberg@oag.state.ny.us

Stephen Edward Kitzinger Skitzing@law.nyc.gov

1:10-cv-02502-JG -VVP Notice will not be electronically mailed to:

James E. McMillan, III
1996 Nostrand Avenue
Brooklyn, NY 11210

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp_ID=875559751 [Date=6/25/2010] [FileNumber=5312407-0]
[8bb5f43ad6c8fb529166f090877c1a64853353a3d45b4a49af114fd5c72198bc94a34
f98d410633da6a183986904e56c887f51e91959b1f3795e1d2aada4cac8]]

tenants. McMillan has successfully petitioned for ballot access on three occasions, running for Governor of New York in 2006 and for Mayor of New York City in 2005 and 2009. He was ultimately defeated at the polls by Eliot Spitzer (in 2006) and Michael Bloomberg (in 2005 and 2009).

This case arises from McMillan's insistence that the party's emphatic name should appear on the ballot in its entirety. Though the full name appeared on the 2005 mayoral ballot, the word "Damn" was excised by the electoral authorities on the 2006 gubernatorial ballot and the 2009 mayoral ballot. McMillan contends that the abbreviated name – "Rent is Too High" – weakens his message and leads to voter confusion. Moreover, McMillan alleges that the word "Damn" was removed for religious reasons, and asserts that its elimination violates the First Amendment's Free Speech and Establishment Clauses. The complaint seeks damages of \$50 million, and also requests permanent injunctive relief that would guarantee "Rent is Too Damn High" a place on all future ballots.

The defendants – the New York State and City Boards of Elections – made the decisions to edit the party name in 2006 and 2009. They deny any religious motive, and say that "Rent is Too Damn High" is simply too long for the ballot. Defendants point to the provisions of the Electoral Code that permit abbreviation of party names containing more than fifteen letters "whenever limitations of space so require." *See* N.Y. Elec. Law § 7-104(2) (electronic voting machines); *id.* § 7-106(10) (paper ballots). "Rent is Too Damn High" contains seventeen letters; defendants assert that they chose the thirteen-letter "Rent is Too High" because, in their view, it was the least intrusive abbreviation that would fit, and because McMillan provided no alternative suggestion.

McMillan is running for Governor of New York again this year. When he filed this action, he also moved by order to show cause for a preliminary injunction requiring the defendants to allow “Rent is Too Damn High” on the general election ballot in November.¹ At oral argument on the motion, however, McMillan and the defendants were able to reach a mutually acceptable middle ground between “Rent is Too Damn High” and “Rent is Too High.” They agree that a different abbreviation – “Rent is 2 Damn High” – would accommodate both sides’ concerns. This fifteen-character name is not subject to abbreviation under the electoral laws. Most importantly for McMillan, it preserves the intensifying force of the word “Damn.”

By agreeing to this compromise position, McMillan mooted his request for preliminary injunctive relief requiring the full, seventeen-character version of the party’s name. The agreement removes any dispute with regard to the forthcoming election. Accordingly, the motion for a preliminary injunction is denied as moot.

So ordered.

John Gleeson, U.S.D.J.

Dated: June 25, 2010
Brooklyn, New York

¹ McMillan is also pursuing the Democratic Party’s nomination for Governor.