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BI-PARTISAN VOTING

N.Y. CONST. LAW, art. II, § 8:

All laws, creating, regulating or affecting boards or officers charged with the duty of registering voters, or of distributing ballots to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively, as the legislature may direct

SUPREME COURT, APPELLATE DIVISION

SECOND DEPARTMENT

*In re Matthews*⁹¹
(decided November 8, 1993)

Petitioner Matthews, the County Committee Chairman of the Nassau County Democratic Party, was denied the position of Commissioner of Elections for Nassau County by the Board of Supervisors.⁹² Matthews claimed that Election Law section 3-204(4)⁹³ violated his rights under article II, section 8 of the New

91. ___ A.D.2d ___, 603 N.Y.S.2d 534 (2d Dep't 1993).

92. *Id.* at ___, 603 N.Y.S.2d 534.

93. N.Y. ELEC. LAW § 3-204(4) (McKinney 1978 & Supp. 1994). The New York Election Law section 3-204(4) provides in pertinent part:

[C]ommissioners of election shall be appointed by the county legislative body Provided, however, that if a legislative body shall fail to appoint any person recommended by a party for appointment as a commissioner pursuant to this section, within thirty days after the filing of a certificate of recommendation with such legislative body, then the members of such legislative body who are members of the political party which filed such certificate may appoint such person.

Id.

York Constitution,⁹⁴ and the Fourteenth Amendment.⁹⁵ The appellate division, affirmed the decision by the Supreme Court, Nassau County, which held that: 1) although Election Law section 3-200⁹⁶ and section 3-204(4) specified only several minimum credentials for any candidate running for county commissioner of elections, the statutes do not preclude the board from rejecting a candidate for reasons besides satisfying the statutory requirements;⁹⁷ 2) challenging the constitutionality of Election Law section 3-204 by claiming it violated the New York Constitution, article II, section 8 was premature because the appellant had not exhausted the remedies provided by the Election Law;⁹⁸ and 3) the application for a declaratory judgment had to be dismissed because the petitioner's contentions that

94. N.Y. CONST. LAW, art. II, § 8. The New York Constitution, article II, section 8 provides in relevant part:

All laws, creating, regulating or affecting boards or officers charged with the duty of registering voters, or of distributing ballots to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively, as the legislature may direct.

Id.

The purpose of this section, formerly section 6, "is to guarantee equality of representation to the two majority political parties on all such boards" *People v. Voorhis*, 236 N.Y. 437, 446, 141 N.E. 907, 910 (1923). This section of the New York Constitution is relevant in *Matthews* since petitioner was contesting the Democratic Party's procedure of voting against his nomination. See *Matthews*, ___ A.D.2d at ___, 603 N.Y.S.2d at 534-35.

95. *Matthews*, ___ A.D.2d at ___, 603 N.Y.S.2d at 534-35. See U.S. CONST. amend XIV ("no state shall make or enforce any law which shall abridge . . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . .").

96. The New York Election Law section 3-200 provides in pertinent part that "[n]o person shall be appointed as election commissioner or continue to hold office who is not a registered voter in the county and not an enrolled member of the party recommending his appointment, or who holds any other public office" N.Y. ELEC. LAW § 3-200(4) (McKinney 1978).

97. *Matthews*, ___ A.D.2d at ___, 603 N.Y.S.2d at 535 (2d Dep't 1993).

98. *Id.* at ___, 603 N.Y.S.2d at 535-36.

Election Law section 3-204(4) violated the Federal Constitution by enabling the Board of Supervisors to reject the party chair's first choice without a hearing and was "without foundation in law and [was] based on faulty reasoning."⁹⁹

On November 30, 1992, Matthews, chairman of the County Committee of the Nassau County Democratic party, nominated himself for the two-year position of Commissioner of Elections of the Nassau County Democratic Party, contingent on approval by the Board of Supervisors of Nassau County.¹⁰⁰ On June 28, 1993, the Board of Supervisors voted on Matthews' nomination and failed to pass the resolution.¹⁰¹ Matthews did not obtain the appointment because he did not receive the statutorily-mandated 65 votes from members of the board.¹⁰² Subsequently, Matthews brought this unsuccessful action in Supreme Court, Nassau County to compel the board to file a certificate appointing him as the next county Commissioner of Elections and also requested the court to issue a declaratory judgment stating that Election Law section 3-204 should only be used within 60 "days of filing the nominating certificate."¹⁰³ The lower court denied relief to Matthews and, consequently, he appealed his case, claiming that Election Law section 3-204(4) was "impermissibly vague" because it did not include sufficient legal standards for the board to follow in determining whether the nominee was qualified.¹⁰⁴ As a result, Matthews claimed that the statute violated the Federal Constitution because it allowed the board to reject the party's or the County Committee's first choice without a hearing on the nominee's qualifications.¹⁰⁵ The appellate division rejected Matthews' contentions that Election law section 3-204 is impermissibly vague, that it violated the Federal Constitution, and that it was not "in force" because of an insufficient number

99. *Id.* at ___, 603 N.Y.S.2d at 534.

100. *Id.* at ___, 603 N.Y.S.2d at 535.

101. *Id.* at ___, 603 N.Y.S.2d at 534, 535.

102. *Id.* at ___, 603 N.Y.S.2d at 534.

103. *Id.* at ___, 603 N.Y.S.2d at 534.

104. *Id.* at ___, 603 N.Y.S.2d at 534-35.

105. *Id.* at ___, 603 N.Y.S.2d at 535.

of negative votes.¹⁰⁶ The court found that Matthew's "assertion that because the resolution putting forth Matthews' nomination did receive the necessary 65 or more votes, the board did not 'act,'" illogical.¹⁰⁷ The court held that the board did act by not appointing Matthews to the position pursuant to the Nassau County Charter section 105(1).¹⁰⁸ The number of votes needed to pass a nomination was 65 and, therefore, the board acted by rejecting Matthew's nomination.¹⁰⁹ Further, the court rejected his claim that under Election Law section 3-200 the nominee must be appointed unless a candidate is found to satisfy the qualifications.¹¹⁰ The court found that even when the nominee met the minimum requirements, the board could still reject a candidate for other reasons.¹¹¹

Moreover, the court rejected Matthew's constitutional challenge that Election Law section 3-204 violated article II, section 8 of the New York Constitution.¹¹² The *Matthews* court rejected the appellant's application as "premature."¹¹³ Elaborating, the court stated that a person could only challenge the constitutionality of the Election Law after other remedies provided in that law had been exhausted.¹¹⁴

The *Matthews* court relied on both federal and state law in arriving at its conclusion. Therefore, this holding would apply equally under both state and federal law.

106. *Id.* at ___, 603 N.Y.S.2d at 535.

107. *Id.* at ___, 603 N.Y.S.2d at 535.

108. *Id.* at ___, 603 N.Y.S.2d at 535. The Nassau County Charter § 105(1) provides that "[t]he board shall act only by ordinance or resolution No ordinance or resolution . . . shall be passed . . . by less than a majority of the voting strength." *Id.* (quoting Nassau County Charter § 105(1)).

109. *Id.* at ___, 603 N.Y.S.2d at 535.

110. *Id.* at ___, 603 N.Y.S.2d at 535.

111. ___ A.D.2d at ___, 603 N.Y.S.2d at 535.

112. *Id.* at ___, 603 N.Y.S.2d at 535-56

113. *Id.* at ___, 603 N.Y.S.2d at 535.

114. *Id.* at ___, 603 N.Y.S.2d at 535-56.