

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CAE 19-01002

PRESENT: CENTRA, J.P., CARNI, DEJOSEPH, AND NEMOYER, JJ.

IN THE MATTER OF STEPHEN CORRYN, OBJECTOR,
MATTHEW SCARFIA, OBJECTOR, CHERYL DINOLFO,
CANDIDATE AGGRIEVED AND GREGORY J. DEVLIN,
CANDIDATE AGGRIEVED,
PETITIONERS-RESPONDENTS-APPELLANTS,

V

MEMORANDUM AND ORDER

ADAM BELLO, CANDIDATE, JOSEPH D. MORELLE, JR.,
CANDIDATE, FRANK MACKAY, AS CHAIRMAN OF NEW YORK
STATE COMMITTEE OF INDEPENDENCE PARTY, WILLIAM BOGARDT,
AS SECRETARY OF EXECUTIVE COMMITTEE OF NEW
YORK STATE COMMITTEE OF INDEPENDENCE PARTY,
RESPONDENTS-APPELLANTS-RESPONDENTS,
NEW YORK STATE BOARD OF ELECTIONS, ET AL.,
RESPONDENTS.
(PROCEEDING NO. 1.)

IN THE MATTER OF NEW YORK STATE COMMITTEE
OF INDEPENDENCE PARTY, EXECUTIVE COMMITTEE OF
INDEPENDENCE PARTY, FRANK M. MACKAY, AS CHAIRMAN
OF NEW YORK STATE COMMITTEE OF INDEPENDENCE
PARTY, WILLIAM BOGARDT, AS SECRETARY OF NEW YORK
STATE COMMITTEE OF INDEPENDENCE PARTY, ADAM J.
BELLO, CANDIDATE AGGRIEVED, JESSICA L. LEARY,
OBJECTOR, JOSEPH D. MORELLE, JR., CANDIDATE
AGGRIEVED AND JOSEPH L. D'ANGELO, OBJECTOR,
PETITIONERS-APPELLANTS-RESPONDENTS,

V

NEW YORK STATE BOARD OF ELECTIONS, DOUGLAS E.
FRENCH AND THOMAS FERRARESE, AS COMMISSIONERS
OF MONROE COUNTY BOARD OF ELECTIONS, RESPONDENTS,
STEPHEN CORRYN, AS CHAIRMAN OF MONROE COUNTY
COMMITTEE OF INDEPENDENCE PARTY, LYNELLEN P.
CORRYN, AS SECRETARY OF MONROE COUNTY COMMITTEE
OF INDEPENDENCE PARTY, CHERYL DINOLFO,
CANDIDATE, GREGORY J. DEVLIN, CANDIDATE, AND
MONROE COUNTY INDEPENDENCE PARTY,
RESPONDENTS-RESPONDENTS-APPELLANTS.
(PROCEEDING NO. 2.)

GREENBERG TRAUIG, LLP, ALBANY (ROBERT M. HARDING OF COUNSEL), FOR RESPONDENTS-APPELLANTS-RESPONDENTS ADAM BELLO, CANDIDATE, JOSEPH D. MORELLE, JR., CANDIDATE, FRANK MACKAY, AS CHAIRMAN OF NEW YORK STATE COMMITTEE OF INDEPENDENCE PARTY, WILLIAM BOGARDT, AS SECRETARY OF EXECUTIVE COMMITTEE OF NEW YORK STATE COMMITTEE OF INDEPENDENCE PARTY IN PROCEEDING NO. 1 AND PETITIONERS-APPELLANTS-RESPONDENTS NEW YORK STATE COMMITTEE OF INDEPENDENCE PARTY, EXECUTIVE COMMITTEE OF INDEPENDENCE PARTY, FRANK M. MACKAY, AS CHAIRMAN OF NEW YORK STATE COMMITTEE OF INDEPENDENCE PARTY, WILLIAM BOGARDT, AS SECRETARY OF NEW YORK STATE COMMITTEE OF INDEPENDENCE PARTY, ADAM J. BELLO, CANDIDATE AGGRIEVED, JESSICA L. LEARY, OBJECTOR, JOSEPH D. MORELLE, JR., CANDIDATE AGGRIEVED AND JOSEPH L. D'ANGELO, OBJECTOR, IN PROCEEDING NO. 2.

THE GLENNON LAW FIRM, P.C., ROCHESTER (PETER J. GLENNON OF COUNSEL), FOR PETITIONERS-RESPONDENTS-APPELLANTS STEPHEN CORRYN, OBJECTOR, MATTHEW SCARFIA, OBJECTOR, CHERYL DINOLFO, CANDIDATE AGGRIEVED AND GREGORY J. DEVLIN, CANDIDATE AGGRIEVED IN PROCEEDING NO. 1 AND RESPONDENTS-RESPONDENTS-APPELLANTS STEPHEN CORRYN, AS CHAIRMAN OF MONROE COUNTY COMMITTEE OF THE INDEPENDENCE PARTY, LYNELLEN P. CORRYN, AS SECRETARY OF MONROE COUNTY COMMITTEE OF INDEPENDENCE PARTY, CHERYL DINOLFO, CANDIDATE, GREGORY J. DEVLIN, CANDIDATE, AND MONROE COUNTY INDEPENDENCE PARTY, IN PROCEEDING NO. 2.

Appeal and cross appeal from a judgment and order (one paper) of the Supreme Court, Monroe County (John J. Ark, J.), entered May 3, 2019 in proceedings pursuant to Election Law article 16. The judgment and order, inter alia, denied in its entirety the petition in proceeding No. 1 and granted in part and denied in part the petition in proceeding No. 2.

It is hereby ORDERED that the judgment and order so appealed from is unanimously modified on the law by granting judgment in favor of petitioners-respondents-appellants as follows:

It is ADJUDGED and DECLARED that the certificates of authorization issued by the Monroe County Committee of the Independence Party designating petitioner-respondent Cheryl Dinolfo as an Independence Party candidate for the office of Monroe County Executive and designating petitioner-respondent Gregory J. Devlin as an Independence Party candidate for the office of Monroe County Legislator for the 17th District in the primary election to be held on June 25, 2019 are valid,

and as modified the judgment and order is affirmed without costs.

Memorandum: In these consolidated proceedings pursuant to, inter alia, Election Law article 16 and CPLR 3001, respondents-petitioners-appellants (respondents) appeal, and petitioners-respondents-appellants (petitioners) cross-appeal from a judgment and order that, among other things, determined that the conflicting sets of Wilson-

Pakula certificates of authorization (certificates) with respect to candidates for public office in Monroe County issued by the State Executive Committee of the New York State Committee of the Independence Party, a petitioner in proceeding No. 2, and the Monroe County Committee of the Independence Party (County Committee) were both valid. We conclude that Supreme Court properly determined that both sets of certificates were valid for reasons stated in its decision. Inasmuch as respondents in their petition sought a declaration that the certificates issued by the County Committee are invalid, however, the court should have made a declaration in favor of petitioners with respect to that issue (*see generally Maurizzio v Lumbermens Mut. Cas. Co.*, 73 NY2d 951, 954 [1989]; *Matter of Max v Ward*, 107 AD3d 1597, 1601 [4th Dept 2013]), and we modify the judgment and order accordingly.

Entered: May 30, 2019

Mark W. Bennett
Clerk of the Court