

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

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CAE 09-01604

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, GREEN, AND PINE, JJ.

IN THE MATTER OF LYNNE DIXON, AGGRIEVED
CANDIDATE, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ROBERT B. REYNOLDS, JR., MICHELE M. IANNELLO,
AND THOMAS A. LOUGHRAN, CANDIDATES, SANDRA J.
ROSENWIE AND ROBERT C. VACANTI, PURPORTING TO
BE THE PRESIDING OFFICER AND SECRETARY OF A
MEETING OF THE EXECUTIVE COMMITTEE OF ERIE COUNTY
INDEPENDENCE PARTY, AT WHICH A DESIGNATION OF
CANDIDATES WAS MADE, ERIE COUNTY INDEPENDENCE
PARTY, RESPONDENTS-RESPONDENTS,
ET AL., RESPONDENTS.

BOUVIER PARTNERSHIP, LLP, BUFFALO (EMILIO COLAIACOVO OF COUNSEL), FOR
PETITIONER-APPELLANT.

JEROME D. SCHAD, WILLIAMSVILLE, FOR RESPONDENT-RESPONDENT ROBERT B.
REYNOLDS, JR., AND CANTOR, LUKASIK, DOLCE & PANEPINTO, BUFFALO (JEROME
D. SCHAD OF COUNSEL), FOR RESPONDENTS-RESPONDENTS SANDRA J. ROSENWIE
AND ROBERT C. VACANTI, PURPORTING TO BE THE PRESIDING OFFICER AND
SECRETARY OF A MEETING OF THE EXECUTIVE COMMITTEE OF ERIE COUNTY
INDEPENDENCE PARTY, AT WHICH A DESIGNATION OF CANDIDATES WAS MADE, AND
ERIE COUNTY INDEPENDENCE PARTY.

JEFFREY E. MARION, WILLIAMSVILLE, FOR RESPONDENTS-RESPONDENTS MICHELE
M. IANNELLO AND THOMAS A LOUGHRAN, CANDIDATES.

Appeal from an order of the Supreme Court, Erie County (Diane Y.
Devlin, J.), entered August 6, 2009 in a proceeding pursuant to, inter
alia, Election Law article 16. The order dismissed the petition.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioner commenced this special proceeding
seeking, inter alia, a determination that the certificates of
authorization issued to respondents Robert B. Reynolds, Jr., Michele
M. Iannello, and Thomas A. Loughran by the Erie County Independence
Party were null and void. The certificates in question authorized
those three respondents to run in the Independence Party primary for
the position of County Legislator. We agree with Supreme Court that
the proceeding is jurisdictionally defective based on petitioner's

failure to join the New York State Independence Party (State Party) as a necessary party (see CPLR 1001 [a]; 1003; *Matter of Vasquez v Smith*, 224 AD2d 822, 823; *Matter of Regan v New York State Bd. of Elections*, 207 AD2d 647, *lv denied* 84 NY2d 801). The petition sought a determination interpreting the State Party's rules, and such determination could have an inequitable effect on the rights of the State Party (see *Vasquez*, 224 AD2d at 823). Additionally, petitioner failed to serve the Erie County Independence Party in accordance with the terms of the order to show cause (see *Matter of Rodriguez v Ward*, 43 AD3d 640, 641). In view of our determination, we need not address the remaining issues raised on appeal.

Entered: August 19, 2009

Patricia L. Morgan
Clerk of the Court