

SHORT FORM JUDGMENT

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable Leonard Livote
Acting Supreme Court Justice

PART EPM

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Mary Jobaida,
Petitioner,

Index No: 1726/20

-- against --

Motion Date:4/30/30

The Board of Elections
in the City of New York
Respondent.

Seq. No: 1

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The following papers numbered 1-7 read on this petition for a judgment to validate Petitioner's designating petition by which she seeks placement on the ballot for the "Democratic Party position of Member of the Assembly from the 37th Assembly District" in the June 23, 2020 Democratic Party Primary Election.

	PAPERS NUMBERED
Order to Show Cause-Petition-Affidavits-Exhibits..	1-4
Answering Affidavits-Exhibits.....	5-7

Upon the foregoing papers, the petition is granted.

This proceeding concerns an attempt to validate petitioner's designating petition (the "Designating Petition") by which she seeks placement on the ballot for the "Democratic Party position of Member of the Assembly from the 37th Assembly District" ("Assembly Member") in the June 23, 2020 Democratic Party Primary Election (the "Primary Election").

After the Designating Petition was filed, the Candidate Records Unit ("CRU") conducted its review of party enrollment records to determine whether or not candidates, including petitioner, were registered to vote and enrolled as voters of the party for which they sought to be designated as a candidate for election as required by the Election Law. For the Designating Petition, it was determined that there was no record of the candidate listed thereon as a candidate for Assembly Member as a registered voter enrolled as a voter in the Democratic Party at the address listed on the Designating Petition (the "enrollment issue").

Petitioner was given notice of this enrollment issue and provided an opportunity to be heard as to why the Board should not rule the Designating Petition to be invalid as a result of the enrollment issue. At the Board's hearing on April 23, 2020, the Board received certain documents and heard arguments on behalf of petitioner but nonetheless determined that the petition was defective due to the enrollment issue and therefore invalid. Petitioner then timely commenced the instant proceeding.

A candidate seeking to be designated (or nominated) on a ballot is required to list her name on the petition pursuant to New York Election Law 6-134(1). The general rule is that one must petition under the name under which she is registered to vote. (*Gardner v Mahoney*, 123 AD2d 520 [4th Dept 1986].) "[T]he word 'name' as used in the Election Law should be afforded its plain, ordinary and usual sense." (*Lewis v New York State Board of Elections*, 254 AD2d 568 [3rd Dept 1998].) Descriptive terms and nicknames are not permitted in the place of the candidate's name on a petition. (*Id.*; ["Grandpa" Al Lewis's name was struck from the ballot because the petition included a nickname which was impermissible].) While the use of descriptive terms and nicknames is impermissible, a candidate may use a familiar or diminutive form of her name. (See *Gumbs v Board of Elections*, 143 AD2d 235 [2nd Dept 1988] [candidate used the name "Marty" in place of "Martin"]; *Matter of Abinanti v Duffy*, 120 AD3d 669 [2d Dept 2014] (candidate used the name "Mike" in place of "Michael").

In the instant case, Petitioner is registered under the name Meherunnisa Jobaida yet she sought the designation under the name "Mary" Jobaida. The Board determined that Mary is not a familiar or diminutive version of "Meherunnisa." Accordingly, the Board determined that the Designation Petition was invalid and petitioner failed to qualify as a candidate for District Leader at the Primary Election.

As a general rule, a petition should not be invalidated where "there is no proof of any intention on the part of the candidate or of those who have solicited on his (or her) behalf to mislead or confuse, and no evidence that the inaccuracy did or would lead or tend to lead to misidentification or confusion on the part of those invited to sign the petition." (*Matter of Ferris v Sadowski*, 45 NY2d 815, 817 [1978]; *Gumbs* at 235.) For example, in *Eisenberg v Strasser* (100 NY2d 590 [2003]), the court affirmed the Second Department's decision and agreed with the dissent stating "under these circumstances, there is no reason to disqualify the candidate for using the name 'Tony Eisenberg' rather than 'Anatoly Eyzenberg,' on his designating petition." The petition in *Eisenberg* was, however, invalidated for other reasons.

Here, petitioner has sufficiently established that she held herself out both professionally and personally as "Mary" and that no intent existed to mislead signatories. (See *Gumbs* at 235.) Clearly, the differences in petitioner's name in the *Eisenberg* case were far greater. In a county as diverse as Queens, with many exotic and unfamiliar names, an expansive view must be taken of what is familiar or diminutive. Thus, the position taken by the Board is impermissibly narrow. Accordingly, the petition is granted and it is,


ORDERED, ADJUDGED AND DECREED that the Designating Petition heretofore filed with Respondent Board of Elections, designating Petitioner as candidate for the party position of Member of the Assembly from the 37th Assembly District to be held on June 23, 2020, is declared valid, proper, sufficient and legally effective; and it is further,

ORDERED, ADJUDGED AND DECREED that Respondent Board of Elections is directed, required and commanded to print and/or place the name of Petitioner aforesaid as candidate for the Democratic Party position of Member of the Assembly from the 37th Assembly District on the official ballots to be used at the Primary Election to be held on the 23rd day of June 2020; and it is further,

ORDERED, ADJUDGED AND DECREED that Respondent Board of Elections is enjoined and restrained from printing, issuing, or distributing for use during the Primary Election to be held on the 23rd day of June 2020, any and all official ballots used in the said Primary Election upon which the name of Petitioner does not appear as candidate for Member of the Assembly from the 37 Assembly District.

This constitutes the Order of the Court.

Dated: May 4, 2020


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Leonard Livote, A.J.S.C.