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May 16, 2025

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Summarizing recent significant New York appellate cases

A panel of the Second Department recently, in dicta, took a different view of the Election Law concerning whether a political nominee who declines a nomination can thereafter be designated to fill that same vacancy. Although the First Department in 1934 held that the same person who originally declined the nomination was barred from being designated, and that holding was affirmed by the Court of Appeals without opinion, the Second Department disagreed, explaining that its view of the language of the statute was not so restrictive. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

ANTITRUST, DONNELLY ACT

People v CVS Pharm., Inc., 2025 NY Slip Op 02857 (1st Dept May 08, 2025)

Issue: **Did the People properly plead a Donnelly Act claim by alleging that CVS's conduct has foreclosed competition in the market for 340B Drug Pricing Program services, which is a federal program established to assist charitable and other healthcare providers that treat low-income and other at-risk populations?**

Facts: "The 340B Drug Pricing Program is a federal program established to assist charitable and other healthcare providers that treat low-income and other at-risk populations. These providers are referred to as 'Covered Entities,' and under the 340B program, they are allowed to purchase outpatient drugs at discounted prices that are often substantially lower than wholesale or retail prices. Covered Entities often contract with pharmacies (Contract Pharmacies) to dispense these drugs and engage third-party administrators (TPAs) to manage compliance and administrative tasks. Covered Entities rely on 340B savings, defined as the difference between the 340B price and insurance reimbursements, minus administrative fees paid to Contract Pharmacies or TPAs, to fund healthcare services. CVS acts as a 340B Contract Pharmacy to some Covered Entities and will not enter into a 340B contract with a Covered Entity unless the Covered Entity agrees to use Wellpartner as its TPA for CVS. CVS does not, however, require that a Covered Entity use Wellpartner exclusively, and the Covered Entity is therefore free to use other TPAs for pharmacies that are not CVS."

The People commenced this Donnelly Act (General Business Law § 340 et seq.) litigation against CVS, alleging that defendants engaged in "tying" by using its power in one market— the 340B TPA services market—to compel consumers to purchase a separate product—Wellpartner as the TPA. CVS moved to dismiss, and Supreme Court granted the motion, holding that the People failed to plead a proper relevant tying market.

Holding: The First Department affirmed, holding that the People improperly "relie[d] on the single-brand market definition, consisting solely of defendant CVS's own pharmacies, that does not properly consider the interchangeability of other pharmacies. Single-brand product markets are disfavored because there are, by definition, no interchangeable products in such a market, and indeed, no competing products at all. Courts have routinely rejected the single-brand market definition." Even though Covered Entities cannot steer patients away from filling prescriptions at CVS, some insurers require patients to use CVS, and patients themselves may prefer to use CVS, those preference alone, the Court held, was not enough to justify the single-brand market on which the People relied.

SECOND DEPARTMENT

ELECTION LAW

Matter of Wohl v Bruen, 2025 NY Slip Op 02861 (2d Dept May 9, 2025)

Issue: **Does Election Law § 6-148(1) permit a political committee, following a declination of a nomination, to fill the vacancy thereby created with the same candidate who originally declined the nomination?**

Facts: "On or about April 3, 2025, a petition designating David Bruen as a candidate in a primary election to be held on June 24, 2025, for the nomination of the Democratic Party as its candidate for the public office of Town Clerk of the Town of Clarkstown was filed with the Rockland County Board of Elections (hereinafter the Board). On or about April 7, 2025, Bruen filed a certificate declining the designation. On or about April 11, 2025, the Committee to Fill Vacancies of the Clarkstown Democratic Party (hereinafter the Committee to Fill Vacancies) filed a certificate of substitution by committee to fill vacancies after declination, death, or disqualification with the Board designating Bruen to fill the vacancy created by his prior declination." Petitioner then commenced this proceeding pursuant to Election

Law § 16-102 to invalidate the certificate of substitution, arguing that the vacancy cannot be filled with the same person who already declined the nomination. Supreme Court dismissed the proceeding for failure to name a necessary party, but noted that if it had reached the merits, it likely would have agreed with petitioner on the interpretation of the Election Law.

Holding: The Second Department affirmed, holding that failure to name the nominating committee as a party was jurisdictionally fatal. Nevertheless, the Second Department, in dicta, noted its disagreement with prior Appellate Division and Court of Appeals precedent interpreting Election Law § 6-148(1) to preclude the person who had originally declined the nomination from being designated to fill the vacancy. The Court explained, "[i]n 1934, the Appellate Division, First Department, applying Election Law former § 140, held that the 'Election Law plainly contemplates that the candidate designated to fill a vacancy shall be a person other than the person originally named' (*Matter of Nestler v Cohen*, 242 App Div 726, 726). . . . Thereafter, this holding has been affirmed by the Court of Appeals without opinion and has been adhered to by other Departments of the Appellate Division. These cases each interpret Election Law § 6-148(1) to mean that the substituting candidate shall be 'a person other than the person originally named,' language not reflected in the statute, but first stated by the First Department in *Nestler*."

"Upon review of Election Law § 6-148(1), we disagree with *Nestler* that the Election Law 'plainly contemplates' that the candidate designated to fill a vacancy shall be a person other than the person originally named. . . . It is our opinion, when interpreting the legislative text, that the plain language of Election Law § 6-148(1) does not prohibit re-designation of a candidate who previously declined the same designation. Moreover, there is no indication that the Legislature intended such a prohibitive interpretation. Such a prohibition does not appear in any other sections of the Election Law. Rather, as argued by Commissioner Allison Weinraub of the Rockland County Board of Elections, in an effort to prioritize ballot access, the Legislature has shifted to a more liberal interpretation of the Election Law. However, as the *Nestler* rule has been the interpretation in this State since 1934, with this holding affirmed by the Court of Appeals without opinion, this Court is constrained to follow such precedent."

THIRD DEPARTMENT

HUMANE ALTERNATIVES TO LONG-TERM SOLITARY CONFINEMENT ACT, SPECIAL HOUSING UNIT EXCLUSION LAW

***Matter of Walker v Commissioner, N.Y. State Dept. of Corr. & Community Supervision*, 2025 NY Slip Op 02834 (3d Dept May 8, 2025)**

Issue: **Must the Department of Corrections and Community Supervision make special written findings under the Humane Alternatives to Long-Term Solitary Confinement Act or the Special Housing Unit Exclusion Law before imposing discipline upon an incarcerated individual that includes segregated confinement for more than three days?**

Facts: "In 2021, the Legislature passed the Humane Alternatives to Long-Term Solitary Confinement Act (hereinafter the HALT Act). . . . [T]he HALT Act amended Correction Law § 137 to restrict when the Department of Corrections and Community Supervision may place incarcerated individuals in segregated confinement. The Special Housing Unit Exclusion Law (hereinafter SHU Exclusion Law) prohibits an incarcerated individual in a residential mental health treatment unit (hereinafter RMHTU) from being sanctioned with segregated confinement, or removed from and placed in segregated confinement or a residential rehabilitation unit (hereinafter RRU), except in exceptional circumstances where the incarcerated individual's conduct creates a significant and unreasonable risk to the safety of staff and incarcerated individuals and the individual committed an act within Correction Law § 137 (6) (k) (ii)."

"Petitioner is an incarcerated individual with serious mental illness who has been confined in a residential mental health unit (hereinafter RMHU) in Greene County. Over a two-week period in the summer of 2022, petitioner received five misbehavior reports that resulted in five separate tier III disciplinary hearings; he was found guilty and penalties were imposed amounting to a total of 1,025 days in segregated confinement. Ultimately, petitioner's time was administratively reduced and he completed his disciplinary sanctions for all five incidents in an RMHU. Each of petitioner's administrative appeals was denied." Supreme Court then dismissed Petitioner's five separate Article 78 proceedings, in which he challenged the segregated confinement sanctions as violating "the HALT Act and SHU Exclusion Law" because he was kept in a RMHU for more than three days without the requisite findings. The Court held, however, that "respondent did not violate the HALT Act or SHU Exclusion Law since an RMHU is not considered as segregated confinement or an RRU," and therefore the laws did not bar his disciplinary sanctions.

Holding: The Third Department modified, first holding that DOCCS did not violate the HALT Act by placing petitioner in the RMHU for more than three days. The Court explained, "petitioner remained in the RMHU where he received at least seven hours of out-of-cell time, therefore he was not in segregated confinement, which is defined as 'the confinement of an incarcerated individual in any form of cell confinement for more than [17] hours a day' (Correction Law § 2 [23]). Nor can it be inferred that the Legislature intended for RMHTUs to be encompassed as RRUs as the Legislature distinctly defined both terms separately. Furthermore, the failure to include a provision including RMHTUs with RRUs implies that its exclusion was intended by the Legislature." Therefore, the Court held, DOCCS was not required to make any special findings before imposing petitioner's disciplinary sanction.

On the SHU Exclusion Law issue, however, the Court disagreed. Because petitioner was sanctioned with segregated confinement in a RMHTU, the SHU Exclusion Law required that DOCCS make a written finding that there were "exceptional circumstances where such incarcerated individual's conduct poses a significant and unreasonable risk to . . . safety . . . *and* . . . has been found to have committed

an act or acts defined in Correction Law § 137 [6] [k] [ii]," which includes assault causing serious physical injury or death, rape, extorsion, coercion, inciting a riot, procuring a deadly weapon, or escape, among other things (emphasis added). DOCCS never found, in writing, that petitioner committed such an act. The Court, therefore, annulled the disciplinary sanctions, and remanded the matter to DOCCS to "impose new and appropriate sanctions on petitioner for his established rule violations in each of the five proceedings, each not to exceed three days in segregated confinement."

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