



What happens during the interregnum—the period of time after new political party committee members are elected at the June primary elections and before the committees hold their organizational meetings at the end of September? Who gets to propose party rule changes and conduct committee business? According to a 2019 amendment to the Election Law, the old committee still functions as an authoritative body until the organizational meeting, but as the Second Department held recently, that doesn't necessarily govern who gets to vote on committee business during that time. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

SECOND DEPARTMENT

ELECTION LAW

Matter of Peña v Hermelyn, 2026 NY Slip Op 05507 (2d Dept Sept. 29, 2026)

Issue: What is the effect of the 2019 amendment to Election Law § 2-112(1)(b), which provides that the “existing county committee shall exercise all legal authority” until the county committee’s organization meeting?

Facts: During the June 2026 election primaries, “voters registered in political parties selected members of their political parties’ state committee and county committee.” In Kings County, the voters elected eight new members to the State Democratic Committee. Under the local party rules, those members elected to the State Committee serve on the County Executive Committee, as well as others elected by the Executive Committee to fill vacancies and “the Chairperson, Secretary, Treasurer, and Assistant Treasurer of the County Committee.” Only the State Committee members and those elected by the Executive Committee, however, could vote on Executive Committee business.

“At the time of the primary election, the respondent/defendant Rodneyse Bichotte Hermelyn was the Chairperson of the County Committee. However, a majority of the State Committee members elected at the primary election allegedly indicated that they intended to replace Bichotte Hermelyn with the petitioner/plaintiff Julio Peña III as Chairperson.” In August, the Chairperson sent out notice that the Executive Committee intended to hold a special meeting to consider amendments to the party rules, which if adopted “would create new officers, expand the membership of the Executive Committee, and extend voting rights to every member of the Executive Committee. On August 25, 2026, the Executive Committee, including all but one of the outgoing members, met in executive session and approved the proposed amendments. The votes of 10 of the outgoing members allegedly were necessary for the amendments to pass.”

The new proposed Chairperson and others then commenced this proceeding, alleging that “the proposed amendments were Bichotte Hermelyn’s ‘11th hour undemocratic gambit to cling to power . . . that would have the effect of nullifying the will of Brooklyn’s voters by permitting her to expand the Executive Committee with 48+ unelected members appointed by her.’ The petition/complaint alleged that, under Election Law § 2-106 and the Party Rules, the outgoing members no longer possessed voting rights on the Executive Committee after the 2026 primary election, at which they were not reelected. The petition alleged that as a result, the amendments, which passed only with the votes of the outgoing members, were not validly adopted.” Respondents moved to dismiss, arguing that the petitioners failed to name necessary parties and that the outgoing members were authorized to vote on the amendments and continued to have that authority until the next committee organizational meeting.

Supreme Court denied the motion to dismiss, “enjoined the appellants from attempting to certify, implement, or give effect to the amendments adopted at the special meeting on August 25, 2026, enjoined the appellants from permitting the outgoing members to exercise functions on substantial matters as part of the Executive Committee, and declared that the amendments adopted at the August 25, 2026 special meeting are null and void.”

Holding: The Second Department modified, holding that Supreme Court properly annulled the party rule amendments, because the outgoing members of the Executive Committee were not authorized to vote on them, but striking that portion of the injunction that barred the outgoing members from exercising functions on any substantial matters until the committee’s organizational meeting. Explaining the backdrop of the issues, the court noted that when the Legislature, in 2019, moved primary elections back from September to June, it created a period of time between the new primary date in June and party organizational meetings at the end of September or early October—“the interregnum”—when the authority of outgoing party committee members was in flux. Under pre-2019 law, it was clear that outgoing party committee members did not have authority to conduct committee business during what used to be that very short period of time. But as the delay between the primary and party organizational meetings has expanded to three to four months, significant questions have arisen. To address that gap, the Legislature “amended Election Law § 2-112(1)(a) and (b) to add new language

providing, respectively, that the ‘existing state committee’ and ‘existing county committee’ shall exercise all legal authority’ until the organization meeting, at which time the ‘new state committee’ and the ‘new county committee’ shall assume all legal authority vested in ‘the ‘previously organized state committee’ and ‘the previously organized county committee.’”

The court noted, “Election Law § 2-106 sets the term of office for members of the State Committee and the County Committee as commencing upon their election at the primary election and ending at the next primary election for that position. Accordingly, the outgoing members’ terms had ended by the August 25, 2026 special meeting.” That their terms had ended did not answer whether they still possessed the authority to vote at that meeting, in light of the continuing authority of the old committee during the interregnum.

Nor did the 2019 amendment did not answer the question of who is authorized to vote on the County Executive Committee, the court held. “[T]he Executive Committee’s institutional authority to act during the interregnum is different from individual voting eligibility on the Executive Committee. The purpose of the 2019 amendment to Election Law § 2-112 was to preserve continuity and ensure that state and county committees retained all legal authority to act during the interregnum, without carving out substantial matters from that authority. Election Law § 2-112(1)(b) does not address, alter, or enlarge the category of persons entitled to vote on the Executive Committee.”

That question is governed by the Party Rules, the court reasoned, because “[t]he Executive Committee exists solely by virtue of the Party Rules and is not created by the Election Law.” Under the Party Rules, “the outgoing members—individuals who had either lost their races for reelection in the June primary election or chose not to seek reelection in that primary election—were not ‘elected as State Committee members’ on August 25, 2026.” Rather, they had lost their elections or chose not to run in “the most recent primary election” and therefore were no longer considered voting members of the Executive Committee.

Rejecting the outgoing members’ claim that that interpretation would create a vacuum of authority, the court noted that “Election Law § 2-112(1)(b) and the Party Rules ensure that the County Committee can continue fulfilling its responsibilities during the interregnum. The Chairperson retains authority to notice and conduct meetings, the Executive Committee may exercise all legal authority delegated to it under the Party Rules, and those members of the Executive Committee who are authorized to vote under article V, § 1 may do so. Nothing in our holding prevents the County Committee from meeting, organizing, filling vacancies in elective office under Election Law §§ 6-116 and 6-148(3), or performing any other statutory or internal functions. The appellants’ broad claim of a governance vacuum therefore overstates the consequences of rejecting their strained interpretation of those individuals who ‘were elected’ in article V, § 1. Holding that the outgoing members are not authorized to vote on the Executive Committee after the June primary election does not prevent the County Committee from acting. The appellants simply must act through the individuals who satisfy the eligibility criteria prescribed by the Party Rules.”

Nevertheless, the court held, “the Supreme Court erred by enjoining the appellants from permitting the outgoing members to exercise functions on substantial matters as part of the Executive Committee . . . [T]his holding rested on case law prior to the 2019 amendment to Election Law § 2-112(1)(b) and should no longer be followed.”

FOURTH DEPARTMENT

ADMINISTRATIVE LAW, PRIMARY JURISDICTION DOCTRINE

Agway Energy Servs., LLC v Central Hudson Gas & Elec. Corp., 2026 NY Slip Op 05621 (4th Dept Oct. 2, 2026)

Issue: Did Supreme Court properly apply the primary jurisdiction doctrine to dismiss a breach of contract action by an energy service provider against a utility in favor of a pending proceeding before the Public Service Commission?

Facts: “Plaintiff is an alternative energy supply company (ESCO) providing electricity and gas to customers in the Hudson Valley region and competes for customers with defendant, a regulated utility company providing electric and gas transmission and distribution services. Both parties are subject to regulations promulgated by the Public Service Commission.” Plaintiff entered into a billing services agreement with defendant in 2007, and after defendant implemented a new billing system in 2021, the system malfunctioned, causing incorrect bills to be sent to plaintiff’s customers and plaintiff having to deal with the fallout. As a result, plaintiff commenced a proceeding before the Public Service Commission to address those issues.

Plaintiff also then filed this breach of contract action in Supreme Court. “Defendant moved to dismiss the complaint arguing, inter alia, that the PSC had primary jurisdiction over plaintiff’s claims. As noted, Supreme Court granted defendant’s motion and dismissed the complaint without prejudice, applying the doctrine of primary jurisdiction.”

Holding: The Appellate Division, Fourth Department held that the primary jurisdiction doctrine properly applied, but modified the Supreme Court order to stay, rather than dismiss, the action. The court held that “[t]he doctrine of primary jurisdiction is intended to co-ordinate the relationship between courts and administrative agencies to the end that divergence of opinion between them not render ineffective the statutes with which both are concerned, and to the extent that the matter before the court is within the agency’s specialized field, to make available to the court in reaching its judgment the agency’s views concerning not only the factual and technical issues involved but also the scope and meaning of the statute administered by the agency. While concurrent jurisdiction does exist, where there is an administrative agency which has the necessary expertise to dispose of an issue, in the exercise of discretion, resort to a judicial tribunal should be withheld pending resolution of the administrative proceeding.”

To apply the primary jurisdiction doctrine, the court noted, it must look factors including: “(1) whether the question at issue is within the conventional experience of judges or whether it involves technical or policy considerations within the agency’s particular field of expertise; (2) whether the question at issue is particularly within the agency’s discretion; (3) whether there exists a substantial danger of inconsistent rulings; and (4) whether a prior application to the agency has been made.” Notably, the court held, the doctrine may be applied even where the administrative agency lacks jurisdiction to award damages. And once a court determines that the doctrine applies, “it has discretion either: (1) to retain jurisdiction or (2) dismiss the case without prejudice. If the court retains jurisdiction, it merely stays the matter pending until the relevant administrative agency has rendered a determination on the issues within its primary jurisdiction.”

Here, the court held, the primary jurisdiction doctrine applied favoring resolution of the billing issues before the PSC. Indeed, the court noted that most the allegations of the complaint addressed the defendant’s failure to comply with the PSC’s billing regulations. Therefore, the court concluded, “[i]nasmuch as the complaint raises issues concerning the propriety of defendant’s billing procedures—which necessarily implicate the utility’s tariff—and its handling of the PSC-governed EDI material, those issues fall within the jurisdiction and special expertise of the PSC.” That was so, even though the PSC cannot award damages in the concurrent proceeding, the court explained.

Nevertheless, the court held that Supreme Court should not have dismissed the action, but rather should have stayed it pending the PSC’s determination of the concurrent proceeding. Dismissing the action would have subjected the plaintiff to statute of limitations concerns, whereas staying it places the plaintiff in the same position as it would have been had the primary jurisdiction doctrine not required the PSC proceeding to be adjudicated first. Thus, the court held that the action should have been stayed.

CasePrepPlus | October 9, 2026

© 2026 by the New York State Bar Association

To view archived issues of CasePrepPlus,
visit NYSBA.ORG/caseprepplus/.