

Opinion in Chambers

MONTGOMERY ET AL. *v.* JEFFERSON ET AL.

ON APPLICATION FOR STAY

No. A-166. Decided September 10, 1984

An application to stay enforcement of orders of the Federal District Court, which—after holding unconstitutional as applied a requirement under the New York election law that the cover sheet of a candidate's designating petition state the number of signatures in the petition—directed that the New York City Board of Elections accept respondents' designating petitions and place their names on the ballot for the imminent Democratic primary election in Kings County, is denied under the circumstances of the case.

JUSTICE MARSHALL, Circuit Justice.

Applicants request that I stay enforcement of two orders of the United States District Court for the Eastern District of New York concerning tomorrow's Democratic primary election in Kings County, N. Y. In those orders, the District Court directed the Board of Elections in the City of New York to accept the designating petitions of respondents Jefferson and Clark and to place their names on the Democratic primary ballot.

The underlying litigation arose out of challenges to the designating petitions of Jefferson and Clark filed with the Board of Elections. On August 28, 1984, the New York Court of Appeals held that the petitions were invalid under state law because their cover sheets overstated the number of signatures in the petitions. Jefferson and Clark then challenged the constitutionality of the New York election law's requirement that a designating petition's cover sheet state the number of signatures in the petition. On September 6, the District Court held the requirement unconstitutional as applied. Thus, it ordered that Jefferson's and Clark's names be placed on the ballot. On September 7, it denied applicants' motion for a stay.

Applicants then moved for a stay and for expedited appeal in the United States Court of Appeals for the Second Circuit. Today, the Second Circuit denied the motion for a stay but granted the motion for expedited appeal. It scheduled oral argument for the week of September 24.

This application was filed at approximately 3:30 p. m. today. Given the little time left for evaluating, before tomorrow's primary, the questions raised by the application, I am not persuaded to interfere with the actions of the Second Circuit.

The application for a stay is accordingly denied.

*It is so ordered.*