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Barnhart, Rachel

The County of Monroe, New York
Bringewatt, John P

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MONROE COUNTY CLERK'S OFFICE
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JAMIE ROMEO

MONROE COUNTY CLERK



STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

RACHEL BARNHART,

Petitioner,

-against-

THE COUNTY OF MONROE,
NEW YORK and JOHN P. BRINGEWATT
in his official capacity,

Respondents.

DECISION

Index No. E2023011593

APPEARANCES:

Attorney for Petitioner: Ernstrom and Drete LLP
 Michael F. Higgins, Esq.
 925 Clinton Square
 Rochester, New York 14604

Attorneys for Respondents: County of Monroe Department of Law
 John P. Bringewatt, Esq.
 Maria E. Rodi, Esq.
 307 County Office Building
 39 West Main Street
 Rochester, New York 14614

Vazzana, J.

Petitioner, Rachel Barnhart, on October 6, 2023, filed a Notice of Petition and a Verified Petition pursuant to Article 78 of the Civil Practice Law and Rules against the County of Monroe and John P. Bringewatt, Esq. in his official capacity as Monroe County Attorney. In her Verified Petition, the Petitioner demands judgment against the Respondents as follows:

“A. Adjudging and declaring that respondent failed to perform a duty enjoined upon him by law by County Code § 39-3 and Public Officers Law §18.

B. Adjudging and declaring that the August 15 and September 8 decisions denying petitioner a defense in a pending action as arbitrary and capricious and an abuse of discretion.

C. Enjoining and ordering respondent to provide petitioner a defense in an action pending in Monroe County Supreme Court entitled Nicolas Nicosia n Nathan McMurray and Rachel Barnhart, Index No. E2023008829.

D. Granting petitioner such other and further relief as the Court deems just, proper, and equitable.”

On January 3, 2024, Respondents filed their Verified Answer and Objections in Points of Law, ultimately requesting this Court deny and dismiss as a matter of law with prejudice the Verified Petition.

Both Petitioner and Respondents filed Memorandums of Law and various other Exhibits. (*See* NYSCEF Doc. Nos. 1-13, 21-25, 28-32, and 35-36).

On November 2, 2023, a motion was filed by Attorney Michael Thad Allen seeking an Order of this Court granting Nicolas Nicosia permission to intervene in this matter. Both Petitioner and Respondents responded to the Nicosia intervener motion. After a review by this Court of all documents filed and hearing arguments at Special Term by those who appeared, this Court denied that motion in its entirety, issuing a separate Order dated February 6, 2024. (*See* NYSCEF Doc. No. 38).

This Court having duly considered and deliberated on the pleadings and proceedings had herein and after hearing the arguments of counsel, this Court finds as follows:

Petitioner (hereinafter Legislator Barnhart) is a Monroe County Legislator. Her Legislative District is located within the City of Rochester, County of Monroe, and State of New

York. On August 10, 2023, counsel for Legislator Barnhart sent a letter to Monroe County Attorney John P. Bringewatt, Esq. (hereinafter County Attorney) requesting defense and indemnification in an action against Legislator Barnhart. The action related to Legislator Barnhart's statements at a press conference and post on Twitter. By letter dated August 15, 2023, the County Attorney denied the request, stating,

“I have reviewed the Complaint in the Action and do not understand it to relate to Legislator Barnhart's duties as a County Legislator. The Complaint does not reference any County business, does not reference Legislator Barnhart engaging in County Legislative work, and does not sue Legislator Barnhart in her official capacity. Because the Action does not relate to acts allegedly occurring within the scope of Legislator Barnhart's public duties, I have determined that Legislator Barnhart is not entitled to defense or indemnification at County expense.”

Counsel for Legislator Barnhart again requested defense and indemnification by letter dated September 5, 2023 to the County Attorney. By letter dated September 8, 2023, the County Attorney again denied the request, stating,

“I have reviewed the arguments made in your letter of September 5. None of the conduct you reference relates to Legislator Barnhart's duties as a County Legislator, nor does it relate to any governmental business of Monroe County. First, you point to Legislator Barnhart's remarks at a press conference held on August 11, 2022. During that press conference, Legislator Barnhart's comments did not allude to any County business, but rather referred to the General Orders of the Rochester Police Department and asked ‘what *City* resources, if any, were used’ in connection with the events at issue (emphasis added). You then reference a tweet sent by Legislator Barnhart, which likewise did not concern any County Business.

Chapter 39 on the County Code limits the defense and indemnification of County officers and employees to matters ‘within the scope of [their] public employment or duties.’ Monroe County Code §§39-3(A), 39-4(A). None of the statements referenced in your letter fall within the scope of the duties of a County Legislator. *See generally* Monroe County Charter § C2-6 (outlining the ‘Powers and duties’ of the County Legislature).”

In this proceeding, this Court is called upon to determine whether the County Attorney's decision had a rational basis and was not arbitrary and capricious (*Ward v. City of Long Beach*,

20 N.Y.3d 1042, 1043 [(2013) [internal quotations and citation omitted]]. “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v. Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d 222, 231 [1974]).

For the reasons set forth below, this Court finds the County Attorney’s decision not to defend Legislator Barnhart was arbitrary and capricious.

Monroe County Charter § C39-3(A) provides, “the County shall provide for the defense of the employee in any civil action or proceeding...arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties, as shall be determined by the County Attorney...” Similarly, Monroe County Charter § C39-4(A) provides the County will indemnify an employee “acting within the scope of his public employment or duties, as shall be determined by the County Attorney...”

The County Attorney relied on Monroe County Charter § C2-6 in determining that Legislator Barnhart was not acting within the scope of her public employment or duties. Monroe County Charter § C2-6(C) provides, “The County Legislature shall have, but not be limited to, the following powers and duties:” and then goes on to specifically list 14 powers and duties. The statute, by its wording, is not an exhaustive list delineating every action a County Legislator is permitted to engage in. The Court of Appeals held:

“Although [the distinction between governmental and political activity] may be relevant to other [public] employees, the line between political and governmental activities is not so easily drawn in cases dealing with legislators...”

The Legislature is the ‘political’ branch of government. All of its members are elected every two years and all legislation is the product of political activity both inside and outside the Legislature...In addition to political activities formerly recognized at law, there are additional functions which a legislator performs to gain support in the community, such as distributing newsletters and meeting constituents. Although these activities may be fairly characterized as political, as opposed to governmental, they are considered an inherent part of the job of an elected representative.” (*People v. Ohrenstein*, 77 N.Y.2d 38, 47 [1990]).

The County Attorney’s reliance on Monroe County Charter § C2-6 for the limitations of the scope of the duties of a County Legislator is without sound basis in reason as the Legislator Barnhart’s participation at the press conference and Twitter post were matters of public concern, to address the community at large, and to garner support which are all inherent requirements of any elected legislator.

Similarly, the County Attorney’s reliance on the fact that Legislator Barnhart spoke at the press conference and referred to the City of Rochester and Rochester Police Department to deny her request for defense was also without a sound basis in reason. Legislator Barnhart’s Legislative District and her constituents are within the City of Rochester. Under the County Attorney’s reasoning, a County Legislator would not be afforded the protections of the Monroe County Charter’s defense and indemnification provisions if the Legislator spoke concerning a constituent aggrieved by a department of the City of Rochester. This could have a chilling effect on the Legislature’s ability to represent their constituents and speak on matters of public concern. The County Attorney’s decision not to provide defense in cases such as this could cause a member of the Legislature to refuse to take a position in the best interest of their constituents for fear of having to defend against lawsuits.

The County's obligation to provide Legislator Barnhart a defense with a County Attorney or pay for Legislator Barnhart's private counsel is not before this Court as it was not raised by either party in the Verified Petition nor Respondent's Verified Answer and Objections in Points of Law.

Based upon all of the foregoing, it is the Decision of this Court that the Petition is GRANTED to the extent the Respondents are to provide Petitioner a defense in the Monroe County Supreme Court action under Index No. E2023008829. All other relief requested is DENIED.

Petitioner is directed to submit a proposed Order within thirty days.

Dated: April 5, 2024
Rochester, New York



HON. JAMES A. VAZZANA
Supreme Court Justice