

Williams v Board of Elections in the City of N.Y.

2021 NY Slip Op 34057(U)

April 23, 2021

Supreme Court, New York County

Docket Number: Index No. 153703/2021

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

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JUMAANE WILLIAMS, BRAD LANDER, ALTHEA STEVENS, AMANDA FARIAS, MINO LORA, MARJORIE VELAZQUEZ, JENNIFER GUTIERREZ, LINCOLN RESTLER, SANDY NURSE, ALEXA AVILES, FELICIA SINGH, AUSTIN SHAFRAN, HAROLD MILLER, TIFFANY CABAN, JASLIN KAUR, MOUMITA AHMED, JUAN ARDILA, TAHANIE ABOUSHI, ERIC GONZALEZ, ANTONIO REYNOSO, BOB COHEN, KENNETH SCHAEFFER, DEBORAH AXT, THE NEW YORK STATE COMMITTEE OF THE WORKING FAMILIES PARTY, THE STATE EXECUTIVE BOARD OF THE WORKING FAMILIES PARTY

INDEX NO. 153703/2021

MOTION DATE 04/19/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Plaintiff,

- v -

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 4 were read on this motion to/for ELECTION LAW - VALIDATE PETITION

On April 16, 2021, Candidate-Petitioners Jumaane D. Williams, Brad Lander, Althea V. Stevens, Amanda Farias, Mino Lora, Marjorie Velazquez, Jennifer Gutierrez, Lincoln Restler, Sandy Nurse, Alexa Aviles, Felicia Singh, Austin I Shafran, Harold C. Miller Jr., Tiffany Caban, Jaslin Kaur, Moumita Ahmed, Juan D. Ardila, Tahanie Aboushi, Eric Gonzalez, Antonio Reynoso, Bob Cohen, Kenneth Schaeffer, Deborah Axt, and Petitioners New York State Committee of the Working Families Party and State Executive Board of the Working Families Party (collectively, Petitioners) commenced the instant proceeding by filing a verified petition and Order to Show Cause (Motion Seq. 001).

Petitioners seek, inter alia, an order validating the designating petitions and certificate of authorization filed with Respondent Board of Elections in the City of New York ("the Board") designating Candidate-Petitioners as candidates for nomination in the Working Families Party

Primary Election to be held June 22, 2021, along with an order directing the Board to include Candidates-Petitioners on the official ballot in the June 22 primary election as candidates for the public offices for which they were designated for nomination.

At a Microsoft Teams Conference held April 22, 2021, counsel for the Board argued that the instant petition is invalid on its face as the Board was not properly served within the time period mandated by the applicable statute of limitations.

Pursuant to Election Law § 16-102(2), petitions to validate nominating petitions must be brought no later than fourteen (14) days after the last day to file such petition or three (3) business days after the determination of invalidity, whichever is later.

Here, the Board determined that the designating petitions were invalid at a hearing held April 13, 2021. Petitioners argue that the application was timely commenced as the petition and Order to Show Cause were filed April 16, three days after the determination was made.

However, this Court thus did not initialize the Order to Show Cause filed on April 16 given that the papers did not indicate that service was properly made on the Board. At the April 22 conference, counsel for the Board affirmed that the Board had no notice of the petition until it was served with the papers by mail on April 21.

It is well-settled that in Election Law Article 16 proceedings, “the petitioner must effectuate ‘actual delivery of the instrument of notice not later than the last day on which the proceeding may be commenced’” (*Matter of Angletti v Morreale*, 131 AD3d 808, 811 [2015], quoting *Matter of Yellico v Ringer*, 185 AD2d 965, 966 [1992]). Accordingly, the last day here to effectuate actual delivery was April 16, and the Board was not served until April 21. Therefore, the petition is untimely.

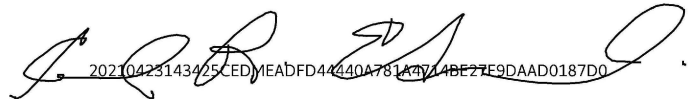
“The time requirements for filing papers set forth in the Election Law are mandatory and absolute,” and this Court is “without authority or discretion to fashion exceptions” for time requirements under any circumstances (*Seawright v Bd. of Elections in City of New York*, 35 NY3d 227, 234–35, [2020], citing *Matter of Hawatmeh*, 183 A.D.3d 1109, 2020 N.Y. Slip Op. 02907, at *2).

As the petition is untimely on its face, the Court is precluded from addressing the merits of the issues raised, as to do so would constitute an improper advisory opinion.

Therefore, in accordance with the “So-Ordered” transcript April 22, 2021 (Lori A. Sacco, Court Reporter), it is hereby

ORDERED that this proceeding is dismissed with prejudice, and it is further

ORDERED that Motion Seq. 001 is moot.



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4/23/2021
DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE