

**Matter of Li v Board of Elections in the City of N.Y.**

2024 NY Slip Op 32143(U)

June 25, 2024

Supreme Court, Kings County

Docket Number: Index No. 516562/2024

Judge: Peter P. Sweeney

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This opinion is uncorrected and not selected for official publication.

At the Special Election Part 1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 25<sup>th</sup> day of June, 2024.

P R E S E N T:

HON. PETER P. SWEENEY,  
Justice.

-----X  
IN THE MATTER OF THE APPLICATION OF  
KEN LI,  
PETITIONER-CANDIDATE-AGGRIEVED,

-AGAINST-

INDEX. No. 516562/24

BOARD OF ELECTIONS IN THE CITY OF NEW YORK

RESPONDENT.  
-----X

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Order to Show Cause/Petition \_\_\_\_\_  
Other papers \_\_\_\_\_

1-6  
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Upon the foregoing papers in this validating proceeding brought pursuant to Election Law § 16-102, the court rules as follows. On May 28, 2024, petitioner-candidate Ken Li (petitioner) filed with respondent Board of Elections in the City of New York (the Board) an independent nominating petition seeking placement on the ballot in the November 5, 2024 general election for the public office of Member of New York State Senate in the 17<sup>th</sup> Senate District. On or about May 31, 2024, petitioner allegedly filled out a certificate of acceptance form. However, this form was not filed with the Board until

June 5, 2024 as a result of petitioner becoming incapacitated after contracting food poisoning.

On June 11, 2024, the Board's Commissioners met and ruled petitioner off the ballot based upon the untimely filing of his certificate of acceptance. Accordingly, under Election Law § 16-102 (2), respondent had three business days to commence a validating proceeding in order to overturn the Board's determination ruling him off the ballot. On June 14, 2024 (i.e., the last day to commence) at 2:46 PM, petitioner filed on NYSCEF a validating petition and proposed order to show cause seeking to overturn the Board's determination ruling him off the ballot. On June 18, 2024, the court signed the order to show cause and petitioner served the order to show cause and validating petition on the Board. The Board opposes the validating petition based upon petitioner's failure to serve it until after the statute of limitations expired and his further failure to timely file his certificate of acceptance.

“A petitioner raising a challenge under Election Law § 16-102 [2] must commence the proceeding and complete service on all the necessary parties within the period prescribed by Election Law § 16-102 [2]” (*Matter of Nunziato v Messano*, 87 AD3d 647, 648 [2d Dept 2011], quoting *Matter of Wilson v Garfinkle*, 5 AD3d 409, 410 [2d Dept 2004]). As noted above, under Election Law § 16-102 (2), petitioner had three business days to commence a validating proceeding and serve the Board after he was removed from the ballot on June 11, 2024. However, petitioner did not serve the Board until June 18, 2024, which was five business days after he was removed from the ballot. Accordingly, the instant validating petition must be dismissed as untimely.

The validating petition must also be dismissed based upon petitioner's failure to timely file a certificate of acceptance. In particular, Election Law § 1-106(2) provides that "[t]he failure to file any petition or certificate relating to the designation or nomination of a candidate for party position or public office or to the acceptance or declination of such designation or nomination within the time proscribed by the provisions of this chapter shall be a fatal defect." Thus, "[t]he time requirements for filing papers set forth in the Election Law are mandatory and absolute, and the Judiciary is without authority or discretion to fashion exceptions to such time requirements, regardless of how compelling or reasonable they may appear to be" (*Matter of Hawatmeh v New York State Bd. of Elections*, 183 AD3d 1109, 1111 [3d Dept 2020], *affd sub nom Matter of Seawright v Board of Elections in City of New York*, 35 NY3d 227 [2020]). This includes the filing of certificates of acceptance within the time period proscribed in the Election Law (*id.* at 232-233).

Election Law § 6-158 (11) provides that "[a] certificate of acceptance or declination of an independent nomination for an office to be filled at the time of a general election shall be filed not later than the third day after the twenty-third Tuesday preceding such election." Accordingly, petitioner was required to file his certificate of acceptance no later than May 31, 2024 (i.e. the third day after the twenty-third Tuesday preceding the November 5, 2024 General Election). Here, it is undisputed that petitioner did not file his certificate of acceptance with the Board until June 5, 2024, five days after the deadline. Thus, the instant validating petition must be dismissed based upon petitioner's failure to timely file a certificate of acceptance (*Matter of Seawright*, 35 NY3d at 232-233).

Accordingly, it is hereby,

**ORDERED** that the instant validating petition is denied and dismissed.

This constitutes the decision and final order of the court.

ENTER



\_\_\_\_\_  
J.S.C.

**MON. PETER P. SWEENEY, J.S.C.**