

Brown v Rudd

2025 NY Slip Op 32337(U)

June 30, 2025

Supreme Court, Onondaga County

Docket Number: Index No. 005937/2025

Judge: Robert E. Antonacci, II

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At a term of the of the Supreme Court of the State of New York, held in and for the County of Onondaga on June 30, 2025.

STATE OF NEW YORK
COUNTY OF ONONDAGA SUPREME COURT

RICKEY BROWN and SHARON OWENS,

Petitioners,

**DECISION, ORDER AND
JUDGMENT**

Index No.: 005937/2025

-against-

TIMOTHY M. RUDD and THE ONONDAGA
COUNTY BOARD OF ELECTIONS,

Respondents.

APPEARANCES:

For Petitioners

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For Respondents

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ANTONACCI II, J.S.C.

This special proceeding, brought on by an order to show cause and petition with supporting documents filed by Rickey Brown and Sharon Owens pursuant to Election Law article 16 and CPLR article 78, seeks a judgment and order invalidating respondent Timothy M. Rudd's independent nominating petition relating to his candidacy for the office of Mayor of the City of Syracuse in the November 2025 general election (NYSCEF Doc Nos. [Doc Nos.] 1-11). Respondents Rudd and the Onondaga

County Board of Elections have each filed answers (Doc Nos. 15, 18). Rudd has also filed a motion seeking an order dismissing the petition on the ground that, among other things, it was not timely filed pursuant to Election Law § 16-102 (Doc Nos. 13-14 [notice of motion and supporting affirmation]). The Court has reviewed these filings in rendering its determination (*see generally* CPLR 2219 [a]).

Generally, petitioners allege that Rudd's nominating petition is permeated with fraud (*see* Doc No. 1 at ¶¶ 9-16). According to petitioners, on or about April 24, 2025, Rudd visited the home of Michael J. Brooks and his wife, Anna M. Brooks (Doc No. 1 at ¶ 10). There, he witnessed Mr. Brooks sign his own name and Mrs. Brooks' name on the petition (Doc No. 1 at ¶¶ 10-11). Nevertheless, Rudd falsely "signed the subscribing witness statement for th[e] petition sheet, attesting, under the pains and penalties of perjury, that each of the individuals whose names were subscribed to the sheet 'subscribed the same in my presence'" (Doc No. 1 at ¶ 15). In a supporting affidavit, Mrs. Brooks avers that Mr. Brooks signed the petition on her behalf and that Rudd witnessed the signing of the petition (Doc No. 7 [Anna M. Brooks affidavit]). Petitioners have also filed an "Investigation Report" prepared by private investigator Joseph A. Spadafore, which recounts an interview with Mr. and Mrs. Brooks and includes what appears to be a copy of the signature page of the petition at issue (Doc No. 9).

Rudd moves to dismiss the petition (*see* Doc Nos. 13-14). He contends, *inter alia*, that this proceeding was not instituted within the statutory timeframe, i.e., no later than fourteen days after the last date to file an independent nominating petition

(Doc No. 14 at ¶¶ 13-28). In opposition, petitioners do not dispute that their petition was untimely under the statutory limitations period (*see generally* Doc No. 20 [attorney affirmation in opposition to motion to dismiss]; Doc No. 21 [memorandum of law in opposition to motion to dismiss]). Rather, petitioners contend, in essence, that their petition alleging that Rudd subscribed falsely to witnessing Mrs. Brooks sign the nominating petition has merit, and that the untimeliness of the present petition did not prejudice Rudd (Doc No. 21 at 3-5).

“A Court presiding over a special proceeding under Article 16 of the Election Law must resolve all potentially dispositive procedural objections before addressing the underlying merits of the action” (*Lehot v Mileham*, 71 Misc3d 1217[A], *2 [Sup Ct, Onondaga County Apr. 30, 2021] [Scott J. DelConte, J.], citing *Castracan v Colavita*, 173 AD2d 924, 925 [3d Dept 1991]).

As is relevant here, Election Law § 16-102 (2) provides that “[a] proceeding with respect to a petition shall be instituted within fourteen days after the last day to file the petition” An independent nominating petition for a position to be filled at a general election “shall be filed not earlier than twenty-four weeks and not later than twenty-three weeks preceding such election” (Election Law § 6-158 [9]). The general election is to be held on November 4, 2025 (*see* Election Law § 8-100 [1] [c]), and thus the last date for filing an independent nominating petition is May 27, 2025. Fourteen days from that date—the final date on which to institute a proceeding—was thus June 10, 2025.

In this case, petitioners filed their petition and ex parte application for an order to show cause on June 10, 2025, the final day for instituting the proceeding (Doc Nos. 1-2), and the Court issued an order to show cause on June 11, 2025 (Doc No. 11). Filing of a petition to invalidate is, standing alone, insufficient to institute a proceeding: “Election Law § 16-116 provides that respondents are entitled to notice of the proceeding and ‘[t]hat requirement calls for *delivery* of the instrument of notice not later than on the last date on which the proceeding may be commenced’” (*Matter of Davis v McIntyre*, 43 AD3d 636, 637 [4th Dept 2007], quoting *Matter of Ehle v Wallace*, 195 AD2d 1086, 1086 [4th Dept 1993], *lv denied* 82 NY2d 653 [1993]; accord *Matter of Stora v New York State Bd. of Elections*, 208 AD3d 1213, 1214 [2d Dept 2022], *app dismissed* 38 NY3d 1180 [2022], *cert denied* __ US __, 143 SCt 587 [2023]; *Matter of Facticeau v Clinton County Bd. of Elections*, 197 AD3d 840, 842-843 [3d Dept 2021]).

Petitioners did not timely complete service. According to their affirmations, petitioners served Rudd with the petition and supporting papers by mailing them on June 12, 2025 (Doc No. 12) and personally served him on June 14, 2025 (Doc No. 17); petitioners delivered the petition to the Board of Elections on June 13, 2025 (Doc No. 16). Even if depositing the petition into the mail were sufficient—and it is not (*see Stora*, 208 AD3d at 1214; *Davis*, 43 AD3d at 636-637)—the proceeding here still would have been instituted two days beyond the deadline.

Additionally, although the order to show cause directed that service be completed by delivery on or before June 16, 2025 (Doc No. 11), this fact has no bearing

upon the statute of limitations and is irrelevant to the timeliness analysis (*see Davis*, 43 AD3d at 637 [noting that “the fact that the order to show cause . . . provided that the last day on which to effect service was August 3, 2007 is of no moment” because this provision “ ‘could not and did not extend the period of limitations within which to institute the proceeding within the meaning of the Election Law’ ”], quoting *Matter of Marino v Orange County Bd. of Elections*, 307 AD2d 1011, 1012 [2d Dept 2003], *lv denied* 100 NY2d 509 [2003]).

As noted above, petitioners do not dispute the issue of untimeliness, but they ask the Court to overlook it because they believe that their contentions have merit and involve Rudd himself. Petitioners cite no authority for their proposed exception from the limitations period (*see generally* Doc No. 21). To the contrary, the Court of appeals has held that “the provisions of the Election Law ‘make it crystal clear that the time limitations for filing are mandatory’ and ‘foreclose the judiciary from fashioning exceptions, however reasonable they might’ appear to be” (*Matter of Seawright v Bd. of Elections in City of New York*, 35 NY3d 227, 233 [2020], quoting *Matter of Baker v Monahan*, 42 NY2d 1074, 1074 [1977]). Thus, to advance the imperative of “uniform application of the law” and vouchsafe the “sanctity of the election process” (*Matter of Seawright*, 35 NY3d at 233, quoting *Matter of Gross v Albany County Bd. of Elections*, 3 NY3d 251, 258 [2004]), the Court has “consistently mandated strict compliance with the time limitations imposed by the Election Law, notwithstanding a candidate’s unique or extenuating circumstances” (*id.*).

Finally, the Court notes that, in rare circumstances, a petitioner's failure to comply with an Election Law limitations period has been excused where the untimeliness is attributable to some factor entirely outside of the petitioner's control. In *Matter of Harvey v Wolf*, the Appellate Division, Second Department, reversed a judgment that dismissed a petition to validate a designating petition for untimeliness because the board of elections did not render a determination on the respondent's underlying specific objections until the last day upon which a court proceeding could be commenced (133 AD2d 201, 202 [2d Dept 1987], *lv dismissed* 70 NY2d 746 [1987] ["The statutory time limitation is not to be strictly applied where the Board of Elections does not reject a candidate's designating petition until after the expiration of the 14-day statutory period"]). In *Matter of Straniere v Cutolo*, the appellants had filed a petition for an "opportunity to ballot without naming a candidate" for a certain public office in a party primary election (59 AD2d 572, 572 [2d Dept 1977], *affd* 42 NY2d 984 [1977]). The Board of Elections rejected the petition because it had been filed late. On appeal in the special proceeding, the Second Department concluded that "the filing of the appellants' petition one day late was excusable in light of the fact that the offices of the Board of Elections were closed on the last day for filing petitions as a result of the blackout of July 13, 1977" (59 AD2d 572, 573 [2d Dept 1977]).

These unusual examples, however logical their holdings, appear to run counter to the proposition that judicial exceptions to Election Law deadlines should not be countenanced (*see Matter of Seawright*, 35 NY3d at 233). Even if the Court were

empowered to excuse the lateness of a petition under extraordinary circumstances, however, there is no basis to do so here. Petitioners' papers present no excuse or explanation as to why this proceeding was not instituted before expiration of the limitations period, much less one attributable entirely to outside forces that prevented them from acting more promptly.

For these reasons, the Court grants Rudd's motion to dismiss the petition. In light of this determination, the Court has no occasion to consider the merits.

Accordingly, it is hereby

ORDERED, ADJUDGED, AND DECREED that respondent Timothy Rudd's motion to dismiss the petition as time-barred is **GRANTED**, and the petition is **DISMISSED**.

IT IS SO ORDERED.

Dated: June 30, 2025

ENTER,

A handwritten signature in blue ink, reading "Robert E. Antonacci II". The signature is written in a cursive style with a large, sweeping flourish at the end.

HON. ROBERT E. ANTONACCI II, J.S.C.