

Evans v Monroe County Bd. of Elections
2025 NY Slip Op 35243(U)
May 2, 2025
Supreme Court, Monroe County
Docket Number: Index No. E2025009518
Judge: Daniel J. Doyle
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

ANDRAE EVANS, Candidate for Office,
Petitioner,

Decision and Order

vs.

Index No.: E2025009518

MONROE COUNTY BOARD OF ELECTIONS,
Respondent.

Appearances:

Edward P. Hourihan, Jr. Esq., BOND, SCHOENECK & KING, PLLC, Attorney for
Petitioner

John P. Bringewatt, Esq., Monroe County Attorney, Robert J. Shoemaker, Esq., of
counsel, for Respondents Monroe County Board of Elections

Doyle, Daniel J.:

In this proceeding Petitioner Andrae Evans (hereinafter “Evans”), candidate for the Democrat Party nomination for the office of Irondequoit Town Supervisor, seeks to nullify the Monroe County Board of Elections’ (hereinafter “respondent”) determination invalidating his designation as a candidate for that office.

For the reasons that follow, the petition is DISMISSED.

Prior Proceedings

On April 25, 2025, the respondent issued a determination invalidating Evans’ designating petition on the grounds that it contained only 489 valid signatures and failed to meet the minimum number of required signatures.

Petitioner initiated this action by way of a petition with concomitant order to show cause on April 30, 2025.¹ The Court, recognizing that “[e]lection Law proceedings are subject to severe time constraints, and they require immediate action (see *Matter of Tenneriello v. Board of Elections in City of N.Y.*, 104 A.D.2d 467, 468, 479 N.Y.S.2d 72)” (*Master v. Pohanka*, 44 A.3d 1050, 1052 [2nd Dept. 2007]), signed the Order to Show Cause directing that the respondent be served by May 1, 2025 at 12:00 p.m. The Court also directed that respondent file its responding papers by May 2, 2025 at 9:00 a.m.²

Respondent filed an answer to the petition with (as relevant herein) two objections in point of law: (1) that the action is untimely as the respondent was not served within the statute of limitations period; and (2) that Evans failed to name a necessary party *i.e.*, the objector to Evans’ designating petition.

The parties appeared on May 2, 2025, at 10:00 to argue their respective positions. The Court granted Evans’ application to submit a letter memorandum of law by 1:00 p.m. on May 2, 2025.

Relevant Facts

As noted above, respondent issued its decision invalidating Evans’ designating petition on April 25, 2025. Evans filed his petition on April 30, 2025, at 5:09 p.m.

¹ According to the NYSCEF Confirmation Notice (NYSCEF Docket # 1), the Petition and Order to Show Cause were filed on April 30, 2025, at 5:09 p.m.

² The Order to Show Cause was signed by the Court and e-filed at 9:45 a.m. on May 1, 2025. (NYSCEF Docket # 7.)

Service was made on the respondent on May 1, 2025, at 11:15 a.m.³ Respondent submits the affirmations of Andrew Spong, Esq., staff attorney with respondent, and Peter Elder, Republican Commissioner for respondent, and Jackie Ortiz, Democratic Commissioner for respondent. Each affirms that they did not receive service of the petition and order to show cause on April 30, 2025.

The Petition is Dismissed as Untimely and for Failure to Add a Necessary Party

Election Law § 16-102 requires that “[a] proceeding with respect to a petition shall be instituted within . . . three business days after the officer or board with whom or which such petition was filed, makes a determination of invalidity with respect to such petition. . .”. Respondent’s determination invalidating Evans’ petition was on April 25, 2025. Three business days from that date would require Evans to institute the proceeding to nullify the respondent’s determination by April 30, 2025.

Instituting a proceeding – in addition to filing the petition- requires the respondent to be served in accordance with the court’s directive in the order to show case **and** that the petitioner serve the “instruments of notice” within the requisite statute of limitations period. “[T]he 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 Yellico v Ringer*, 185 AD2d 965, 966 [1992]; see *Matter of Riley v Democratic Party of Owasco*, 21 AD3d 708, 709 [2005], *lv denied* 5 NY3d 707 [2005]).

³ NYSCEF Docket # 8.

In other words, the respondent must “receive delivery” of the order to show cause and the verified petition “within the [statute of limitations] period” (*Matter of Thompson v New York State Bd. of Elections*, 40 NY2d 814, 815 [1976]).” (*Angletti v. Morreale*, 131 AD3d 808, 811 [4th Dept. 2015] *aff’d*, 25 NY3d 794 [2015]. See also *Stora v. New York State Board of Elections*, 208 AD3d 1213 [2nd Dept. 2022]; *Sauberman v. Weinstock*, 183 AD3d 1107 [3rd Dept. 2020].)

Evans failed to institute the instant action within the requisite statute of limitations period. Assuming, *arguendo*, that the petition and order to show cause were timely filed on April 30, 2025, the respondent was not served until May 1, 2025. The action is time-barred and must be dismissed.

Furthermore, the petition must be dismissed for failing to name a necessary party. Evans was on notice that Joseph A. LoBosco filed general and specific objections to his petition.⁴ “It is undisputed that petitioner[] received adequate and timely notice of the objector's identity, and “thus [his] failure to name the objector as a party renders this proceeding defective” (*Matter of Plochocki v Onondaga County Bd. of Elections*, 21 AD3d 710, 710 [2005]; see *Matter of Gadsen v Board of Elections of City of N.Y.*, 57 NY2d 751, 752 [1982]; *Matter of Wein v Molinari*, 51 NY2d 717, 718-719 [1980]).” (*Davis v. Czarny*, 153 AD3d 1556, 1557 [4th Dept. 2017]. See also *Sloan v. Kellner*, 120 AD3d 895, 895 [3rd Dept. 2014]: “As Supreme Court properly found, the

⁴ See NYSCEF Docket #s 16, 17, and 18.

present proceeding is jurisdictionally defective due to the “failure to name and serve all those who filed objections to the designating petition” (citations omitted). See also *Matter of Plochocki v. Onondaga County Bd. Of Elections*, 21 AD3d 710 [4th Dept. 2005].)

The Court rejects Evans’ arguments that as the primary election is on June 24, 2025, the Court can “give more consideration to general CPLR principles that allow for flexibility with respect to deadlines, amendments, and the correction of mistakes where, as here, the other side is not prejudiced” quoting *Novakhov v. Bd. of Elections in the City of N.Y.*, Index No. 516078/24, 2024 N.Y. Misc. LEXIS 3580 (Kings Cnty Sup. Ct. July 29, 2024). Pursuant to this argument, Evans asks this Court to exercise its discretion under CPLR §§ 2001 and 2004 and grant Evans an extension of time to May 1, 2025, to serve the respondent, arguing there is no prejudice to the respondent as a result of the delay.

As noted above, “[e]lection Law proceedings are subject to severe time constraints, and they require immediate action (see *Matter of Tenneriello v. Board of Elections in City of N.Y.*, 104 A.D.2d 467, 468, 479 N.Y.S.2d 72)” (*Master v. Pohanka*, 44 A.3d 1050, 1052 [2nd Dept. 2007]) and Evans’ argument ignores the statutorily imposed deadlines that require the respondent to certify the primary ballot (May 1st pursuant to Election Law § 4-114) and transmit ballots to eligible military voters (May

9th pursuant to Election Law § 10-108). The Court – assuming arguendo its has discretion to ignore Election Law §-16-102- declines to do so.⁵

Furthermore, the provisions of the election law control- not the CPLR. “Notwithstanding the provisions of the CPLR, the Election Law specifically provides when an action is commenced. Election Law § 16-116 (formerly Election Law § 335) provides that a respondent is entitled to notice of the proceeding “as the court or justice shall direct”. That requirement calls for delivery of the instrument of notice not later than on the last day on which the proceeding may be commenced (*Matter of King v Cohen*, 293 NY 435, 439; see also, *Matter of Moore v Milhim*, 109 AD2d 810).” (*Ehle v. Wallace*, 195 AD2d 1086 [4th Dept. 1993].)

Based upon the forgoing, and the submissions of the parties⁶, it is hereby

ORDERED that the petition is dismissed, with prejudice.

Dated: May 2, 2025



Hon. Daniel J. Doyle, JSC

⁵ “That requirement operates irrespective of the court's specific service directions under section 16-116 (see *Matter of Rotanelli v Westchester County Bd. of Elections*, 41 Misc 3d 254, 261 [2013], *affd* 109 AD3d 562 [2013]; *Matter of Davis v McIntyre*, 43 AD3d 636, 636-637 [2007]).” (*Angletti v Morreale*, 131 A.D.3d at 811.)

⁶ Petition with exhibits (NYSCEF Docket #s 1-3); Affirmation in Support (NYSCEF Docket # 4); Order to Show Cause (NYSCEF Docket #s 5, 7); Affirmation of Service (NYSCEF Docket # 8); Answer (NYSCEF Docket # 9); Affirmation in Opposition with exhibits (NYSCEF Docket #s 10-18); Memorandum of Law in Opposition (NYSCEF Docket # 19); Memorandum of Law in Reply (NYSCEF Docket # 20).