

**Matter of Friends of Timothy John Mitts v Board of  
Elections of Orange County NY**

2025 NY Slip Op 35269(U)

September 26, 2025

Supreme Court, Orange County

Docket Number: Index No. 007563-2025

Judge: Kyle C. McGovern

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To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this Order with Notice of Entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

Index No.: 007563-2025

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In the Matter of the Application of:

Friends of Timothy John Mitts, Timothy John Mitts,  
Tim Mitts Pro Se, Timothy John Mitts as a  
Registered Conservative Voter,

*Petitioner,*

**DECISION and ORDER**  
(Mot. Seq. #1 & #2)

- against -

Board of Elections of Orange County NY, Louise  
Vandemark (Election Commissioner Democrat),  
Courtney Canfield Greene (Election Commissioner  
Republican), Conservative Party, Grace White,  
Anthony P. Cardone, III, Dorey Houle,  
Steven R. Thua and Yvette A. Rosario,

*Respondents.*

For a judgment pursuant to CPLR sec 7806  
Compelling the Respondent to accept  
Petitioner's application

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**McGOVERN, J.**

The following papers were read and considered on the application brought by Petitioner by Order to Show Cause (Mot. Seq. #1) for an Order pursuant to CPLR §7806 compelling the Orange County Board of Elections Commissioners to declare the petitions of Respondents Anthony P. Cardone, III, Dorey Houle, Steven R. Thua and Yvette A. Rosario to be null and void and to remove the Respondents from the Conservative Party Line and awarding Petitioner the nomination for the November election on the Conservative Party Line, and on the application brought by Petitioner (Mot. Seq. #2) to strike the Answer, Objections in Points of Law, and Affirmation in Opposition of Respondents Conservative Party, Grace White, Anthony P. Cardone, III, Dorey Houle, Steven R. Thua and Yvette A. Rosario:

*Motion #1:*

Petitioner’s proposed Order to Show Cause, Verified Petition, dated August 1, 2025 with Exhibits A-E.....Doc. 1<sup>1</sup>

Respondent Orange County BOE Affirmation in Opposition/Answer to Petition, with Exhibit A and B .....Doc. 7-8

Respondent- Candidates Verified Answer, Objections in Points of Law, Attorney Affirmation, dated September 4, 2025..... Doc. 11-12

*Motion #2:*

Petitioner’s Motion to Strike and Verification.....Doc. 15

This Article 78 proceeding is brought by Petitioner to challenge the Conservative Party Designating Petition of Respondents Grace White, Anthony P. Cardone, III, Dorey Houle, Steven R. Thua, and Yvette A. Rosario (“Respondent-Candidates”). Petitioner seeks to compel Respondent Board of Elections of Orange County (“BOE”) to declare the Designating Petition null and void and to compel Respondent Conservative Party (“Party”) to remove Respondent Anthony Cardone III from the Designating Petition and award Petitioner the nomination for Conservative Party candidate for Town Supervisor.

On or about April 1, 2025, Respondent-Candidates filed their Designating Petition with the Respondent BOE designating the Respondent-Candidates as the Conservative Party candidates for public offices in the June 24, 2025 primary elections. Specifically, the Designating Petition designated Respondent-Candidates of the Conservative Party for public offices in the Town of Monroe as follows: Anthony P. Cardone III as Town Supervisor, Steven R. Thua and Dorey Houle as Town Council Members and Yvette A. Rosario as Town Justice. The Petition alleges the address of one of the candidates on the Designating Petition was incorrect and would mislead or confuse the public, a defect Petitioner characterizes as fatal, requiring removal of Respondent Anthony Cardone III from the ballot.

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<sup>1</sup> This matter was converted to electronic filing after commencement and all submitted documents preceding conversion are reflected in County Clerk Minutes – Prior to Conversion (NYSCEF Doc. 1). The original hard copy documents reflected in the County Clerk Minutes are maintained in the Clerk’s office.

Respondents both filed Answers and Objections in Points of Law, seeking dismissal of the Petition as untimely and assert this Article 78 is the improper vehicle to challenge the validity of a Designating Petition. Respondents also direct the Court to Petitioner's July 7, 2025 Order to Show Cause before the Hon. Sherri L. Eisenpress, J.S.C., (Matter of Mitts v. Orange County Bd. of Elections, et. al., Index No. 006354-2025) where the Court dismissed as untimely, Petitioner's Article 78 seeking to invalidate the same Designating Petition.

### The Instant Proceeding

On August 1, 2025, the instant proceeding was commenced by the filing of a proposed Order to Show Cause together with a Verified Petition (the "Petition") and supporting documents with the Orange County Clerk's Office. The Order to Show Cause was signed by the undersigned on August 1, 2025, with August 29, 2025 set as the initial appearance date. The Court directed service be made by personal service on all respondents by 5:00 p.m. on August 4, 2025. In accordance with the Order, Respondents were served and opposition was received on behalf of all Respondents. By Notice of Motion (Mot. Seq. #2) Petitioner moves to strike the Answer and Affirmation in Opposition filed by Respondent-Candidates on September 5, 2025 as untimely where the Order to Show Cause, dated August 1, 2025, directed that opposing papers be filed with the Court on or before August 25, 2025.

The Order to Show Cause directed the parties to appear for oral argument on August 29, 2025. Upon request by Respondent BOE, the oral argument on the Order to Show Cause was adjourned to September 9, 2025. On September 9, 2025 counsel for all parties appeared before the undersigned as directed in the Order to Show Cause. Petitioner appeared *pro se*. Respondent BOE appeared by Senior Assistant County Attorney William Badura, and Respondent Party and Respondent-Candidates appeared by Attorney Adam Fusco.

Following oral argument, the Court ruled from the bench dismissing the Petition as untimely, subject to the parties ordering the court transcript<sup>2</sup> and the issuance of this written Decision and Order.

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<sup>2</sup> Despite this Court's clear instruction, Petitioner failed to promptly contact the court reporter to order the transcript of the September 9, 2025 hearing. At the Court's subsequent reminder, Petitioner eventually ordered the transcript and the Court ultimately received the transcript on September 25, 2025.

## Discussion

### *Scope of this Decision and Order*

In accordance with the directives of the Appellate Division, which require the Supreme Court to decide all issues raised by an Election Law challenge even if a technical issue would dispose of the matter, the Court will address all issues raised.

### *This “Second Petition” Must Be Dismissed under Law of the Case*

The doctrine of the law of the case is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned. *Matter of Koegel*, 184 A.D.3d 764, 765-766 (2d Dept. 2020) (citing *Martin v. City of Cohoes*, 37 N.Y.2d 162, 165 [1975]); see also *Ramanathan v. Aharon*, 109 A.D.3d 529, 530 (2d Dept. 2013). Law of the case “applies only to legal determinations that were necessarily resolved on the merits in [a] prior decision, and to the same questions presented in the same case.” *Matter of Koegel*, *supra* at 765-766. Like claim preclusion and issue preclusion, preclusion under the law of the case contemplates that the parties had a ‘full and fair’ opportunity to litigate the initial determination. *Ramanathan v. Aharon*, *supra*, at 530 (citing *People v. Evans*, 94 N.Y.2d 499, 500 [2000]).

Here, Petitioner previously mounted a similar challenge to the same Designating Petition in an action commenced by Petition and Order to Show Cause filed on July 7, 2025 in the Orange County Supreme Court (*Matter of Mitts v. Orange County Bd of Elections, et. al.*, Index No. 006354-2025) (the “First Action”). That matter was heard on oral argument before Hon. Sherri Eisenpress, J.S.C. on July 11, 2025 at which time Petitioner appeared *pro se* and Respondent BOE appeared by Senior Assistant County Attorney William Badura, and Respondent Party and Respondent-Candidates appeared by Attorney Adam Fusco. Following oral argument, Judge Eisenpress dismissed the First Action as untimely under Election Law Article 16.

In this second action<sup>3</sup>, Petitioner seeks the identical relief as the First Action, that is to declare the Designating Petition null and void and to compel the Party to remove Respondent-

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<sup>3</sup> Notably, nowhere in Petitioner’s filing does he advise the Court of the First Action or that any similar relief was requested and denied therein. It was only after Respondents served their respective Answers and Objections in Point of Law did the Court become aware of the First Action.

Candidate Anthony Cardone III from the Designating Petition and award Petitioner the nomination for Conservative Party candidate for Town Supervisor. Accordingly, as the decision by Judge Eisenpress in the First Action resolved the same questions presented here - the validity of the Designating Petition - this second petition is dismissed.

***Petitioner's Challenge to the Designating Petition is Untimely***

Respondents contend the Petition is untimely under Election Law § 16-102 having been filed and served more than four months after Respondent BOE rendered its determination as to the validity of the Designating Petition, in contravention to the mandates of the Election Law.

Election Law § 16-102 provides, in pertinent part, as follows:

1. The nomination or designation of any candidate for any public office or party position or any independent nomination, or the holding of an uncontested primary election, by reason of a petition for an opportunity to ballot having been filed, or the election of any person to any party position may be contested in a proceeding instituted in the supreme court by any aggrieved candidate, or by the chairman of any party committee or by a person who shall have filed objections, as provided in this chapter, except that the chairman of a party committee may not bring a proceeding with respect to a designation or the holding of an otherwise uncontested primary.
2. A proceeding with respect to a petition shall be instituted within fourteen days after the last day to file the petition, or 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, whichever is later; except that a proceeding with respect to a petition for a village election or an independent nomination for a special election shall be instituted within seven days after the last day to file the petition for such village election or independent nomination or 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, whichever is later. A proceeding with respect to a primary, convention, meeting of a party committee, or caucus shall be instituted within ten days after the holding of such primary or convention or the filing of the certificate of nominations made at such caucus or meeting of a party committee.

Pursuant to Election Law § 16-102, the last day to file designating petitions was April 3, 2025. Therefore, in order to timely commence a challenge to said petitions, Petitioner would need to have commenced this action no later than April 18, 2025. Petitioner did not.<sup>4</sup> Respondents argue the instant Petition (as they argued in the First Action) represents an end-run by Petitioner to get around this statute of limitations with Petitioner commencing this proceeding more than four months later, on August 1, 2025. The Court agrees. The New York State Legislature in promulgating Election Law § 16-102 (2) intentionally sets forth short and concise time frames within to raise objection in order to have timely resolution of disputes to ensure sufficient time to properly selected candidates be placed on a ballot. A proceeding to remove candidate from the ballot, based on allegations that candidate does not meet certain constitutional residence requirements to hold office, must be commenced in accordance with requirements of Election Law §16-102, and a party cannot avoid the time requirement of §16-102 by initiating new and different proceedings having no statutory basis. *See, Scaringe v. Ackerman*, 119 A.D.2d 327 (3d Dept. 1986), *aff'd*, 68 N.Y.2d 885 (1986); *Matter of Lewis v. Garfinkle*, 32 A.D.3d 548 (2d Dept. 2006).

The Appellate Division, Second Department has consistently rejected attempts to utilize an Article 78 proceeding to remove a candidate from the ballot as untimely if it was not commenced within the period prescribed by Election Law §16-102(2). *See, Matter of Nowinski v. New York City Bd. of Elections*, 164 A.D.3d 722 (2d Dept. 2018) (objections to the sufficiency of a designating petition were filed, but rejected, by the Board of Elections and the subsequently filed Article 78 was untimely); *Matter of Ciotti v. Westchester County Bd. of Elections*, 109 A.D.3d 988 (2d Dept. 2013)(Article 78 challenge to the late filing of various designating petitions with the Board of Elections was untimely); *Matter of Independence Party of Orange County v. New York State Bd. of Elections*, 32 A.D.3d 548 (2d Dept. 2006)(challenge to a Wilson-Pakula must be within the 14-day time period); *Matter of Lewis v Garfinkle, supra*, 32 A.D.3d 548 (2d Dept.2006) (challenge to allegedly illegal Wilson-Pakula certificates must be within the 14-day time period).

In support of the position his Article 78 petition is both proper and timely, Petitioner relies on a trial court decision in *Matter of White v. Joyner*, 81 Misc.3d 396 (Sup. Ct., Suffolk Co. 2024),

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<sup>4</sup> The New York State Board of Elections issued its 2025 Political Calendar made available to the general public, including Petitioner, setting forth these dates to file and challenge petitions for the 2025 primary elections.

where the Court declined to dismiss the mandamus petition challenging a candidate's residency, and determined there were no disputed facts and the actions the Board was required to do was ministerial. Respondents argue *Matter of White v. Joyner* is readily distinguishable from the instant Petition, the facts of which Respondents assert are phenomenally in dispute and would require much more than a ministerial act by Respondent BOE to determine the validity of the Designating Petition. There is no question the instant Petition seeks to challenge the contents of the Designating Petition and falls squarely under Election Law §16-102(2), requiring Petitioner to comply with the time frames proscribed under New York Election law.

Accordingly, the instant Petition and Order to Show Cause seeking to challenge the Designating Petition of Respondent-Candidates is DISMISSED as untimely under New York Election Law § 16-102 (2).

***Petitioner's Motion to Strike Respondent-Candidates Answer as Untimely is Denied***

By separate motion filed September 5, 2025 (Mot. Seq. #2), Petitioner seeks to strike the Answer, Objections in Points of Law, and Affirmation in Opposition of Respondent-Candidates filed on September 5, 2025, ten days after the deadline of August 25, 2025 set forth in the Order to Show Cause. The Court denies this motion to strike the pleading, where Petitioner fails to demonstrate any prejudice by the Court accepting Respondent-Candidates' late filing of their Answering papers. This is particularly true where, as here, the Court did not require or permit any reply to be filed by Petitioner, and the return date on the Order to Show Cause was extended until September 9, 2025, giving Petitioner more than sufficient time to prepare for oral argument on September 9, 2025.

Further, the Court's dismissal of the Petition and the resulting termination of the action rendered Petitioner's motion to strike the pleading moot.

Accordingly, Petitioner's motion to strike Respondent-Candidates' Answer, Objections in Points of Law, and Affirmation in Opposition is DENIED and deemed moot.

**Conclusion**

Petitioner's application is untimely and is therefore dismissed. Further, Petitioner's motion to strike Respondent-Candidates' Answer and opposition is denied as moot. All other arguments made have been considered and found to be without merit or not worthy of comment.

For the foregoing reasons, it is hereby

**ORDERED** that Petitioner's motion challenging the Designating Petitions (Mot. Seq. #1) is **DENIED** and this Petition is **DISMISSED**, and it is further

**ORDERED** that Petitioner's motion to strike Respondent-Candidates' Answer (Mot. Seq. #2) is accordingly **DENIED** as moot.

The foregoing constitutes the Decision and Order of the Court.

Dated: September 26, 2025

ENTER



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HON. KYLE C. McGOVERN, J.S.C.