

Bosse v Amoriell

2026 NY Slip Op 31684(U)

April 24, 2026

Supreme Court, Albany County

Docket Number: Index No. 904557-26

Judge: David A. Weinstein

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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ALBANY

CONSTANCE BOSSE, CHRISTA DENING,
and SHELLY GARDNER,

Petitioners-Objectors,

-against-

DECISION AND ORDER

Index No.: 904557-26

STUART J. AMORIELL,

Respondent-Candidate,

-and-

GREGORY PETERSON, PETER KOSINSKI,
DOUGLAS KELLNER and ANDREW SPANO
COMMISSIONERS CONSTITUTING THE NEW
YORK STATE BOARD OF ELECTIONS,

Respondents,

for an order, pursuant to sections 16-100, 16-102, and 16-116 of the Election Law, declaring INVALID the designating petition purporting to designate Respondent-Candidate for the Public Office of Representative in Congress, from the 21st Congressional District, New York State in the June 23, 2026 Democratic Primary Election, enjoining Respondent NEW YORK STATE BOARD OF ELECTIONS from certifying the name of Respondent-Candidate as an official candidate for said Public Office in said Primary Election, and enjoining the NEW YORK STATE BOARD OF ELECTIONS from printing said name on ballots to be used at said Primary Election.

(Supreme Court, Albany County All Purpose Term)

APPEARANCES:

Andrew Roger Tulloch, Esq.
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David A. Weinstein, A.J.S.C.:

Petitioners Constance Bosse, Christa Dening and Shelly Gardner commenced this special proceeding by Order to Show Cause ("OTSC") and Verified Petition, seeking to invalidate the

designating petition of respondent Stuart J. Amoriell to appear as a candidate for the Democratic Party nomination for the position of United States Representative for the 21st Congressional District, in the Democratic Party primary to take place on June 23, 2026. The matter is now before me on a motion by respondent Amoriell to dismiss the Petition as untimely.

First, a little background: after Amoriell filed his designating petition, petitioners filed objections with the New York State Board of Elections (“BOE”) on April 8 and 9, with specifications filed on April 14 (*see* Petition ¶¶ 7-8). This Petition, signed on April 17, was then filed on Sunday, April 19. It asserts that the signatures on the petition were insufficient, and defective on a host of grounds. Today, a BOE hearing officer found that the petition had a sufficient number of valid signatures, and the Commissioners will take up the matter for review on April 28.¹

In regard to the timing of the petition’s filing and service – which is at the heart of the motion now before me – the affirmation of petitioners’ counsel Andrew Rogers Tulloch, Esq. provides the following account: The petition appeared on NYSCEF at 9:39 AM on April 20. At 9:53 AM, counsel contacted the Clerk’s Office of Albany Supreme Court asking that a Justice be assigned to address the proposed OTSC, and was told it would be forwarded to the *ex parte* clerk handling election matters, and that counsel should check NYSCEF (Affirmation of Andrew Rogers Tulloch, Esq. ¶ 4). The filing did not appear on NYSCEF that day, and in several calls to the Court, counsel was either told to check NYSCEF or received no answer (*id.* ¶ 5).

At 9:00 A.M. the next morning, Mr. Tulloch spoke to a Court Clerk handling emergency applications, and was told the matter was assigned to me, and that an email had been sent to chambers notifying me of such.² The parties were contacted later that afternoon, via an initial inquiry about counsel’s authority to practice in New York State. In his response, Amoriell’s counsel indicated by e-mail his view that the matter was untimely. I ultimately scheduled a conference for 3:30 p.m., after which I signed an amended version of the proposed OTSC which:

- directed that service be made (1) on the BOE by e-mail and either overnight mail or delivering a copy of the papers to its Albany office; and (2) on Amoriell by overnight mail or personal or substituted service, “provided that this Order may not be read as reflecting any determination of the timeliness of this action under the Election Law”;

¹ This is based on the representation of petitioners’ counsel, received via email today.

² The e-mail was received in Chambers at 11:37 A.M.

- set forth a schedule for the filing of a motion for dismissal “on timeliness or other grounds”; and
- scheduled a hearing for April 27.

Petitioners subsequently filed affirmations of service indicating that the respondents were served by overnight mail, sent on April 21 and delivered the following morning.³ Respondent Amoriell has now moved to dismiss the petition as untimely in accordance with the Court’s schedule, and petitioners have filed papers in opposition.⁴ Petitioners’ argument in opposition is essentially that the petition is untimely solely because it was not processed by the Court on April 20, through no fault of petitioners, and thus the Court should exercise its equitable jurisdiction to hear the petition in any event.

For reasons set forth below, I find this argument unavailing, and grant the motion to dismiss.

DISCUSSION

Under Election Law § 16-102(1), a proceeding “with respect to a [designating] petition shall be instituted within fourteen days after the last day to file the petition . . .”⁵ A proceeding is “instituted” when petitioner has “complete[d] service all parties” (*see Matter of Facteau v Clinton County Bd. Of Elections*, 197 AD3d 840, 842 [3d Dept 2021], quoting *Matter of Suaberman v Weinstock*, 183 AD3d 1107, 1109 [3d Dept 2020]; accord *Matter of McCrory v Westchester County Bd. of Elections*, 216 AD3d 857, 858 [2d Dept 2023]). This occurs if “actual delivery” is made “no later than the last day upon which the proceeding may be commenced” (*Matter of Facteau*, 197 AD3d at 842).

As petitioners concede, in this case the last day to institute this proceeding was on April

³ The affirmation does not indicate that the OTSC and supporting papers were also served on the Board members by e-mail as required by the OTSC. Respondent does not raise this issue, and so I do not address it.

⁴ Respondent points out via email that while the deadline for filing papers in his opposition to the motion to dismiss was 12:00 p.m. today, petitioner’s papers were filed at 12:08 p.m. Respondent alleges no prejudice from this eight-minute delay, and given the extremely tight time frame and de minimus nature of the delay, I will consider petitioner’s submission (*cf.* CPLR 2001). The Court of Appeals has cautioned that court orders cannot be ignored “with impunity” if “the credibility of court orders and the integrity of the judicial system are to be maintained” (*Kihl v Pfeffer*, 94 NY2d 118, 123 [1999]). I think the integrity of the judicial system will survive a deadline missed by eight minutes, though.

⁵ Section 16-102(2) also allows for the challenge to be initiated “within three business days after the officer or board with whom or which such petition was filed,” when it “makes a determination of invalidity with respect to such petition or certificate to fill a vacancy.” That provision has no relevance here.

20, 2026 (*see* Petition ¶ 16). The OTSC did not come before a Judge in this case until the following day, and service was not made until April 22. On this basis, it would appear the matter is time-barred (*see Matter of Davis v McIntyre*, 43 AD3d 636, 636-637 [4th Dept 2007] [petition filed but not served within 14-day period is untimely]).

Nothing in the record before me provides a way around this defect. The central claim made by petitioners is that service was rendered untimely only because the filing was “lost” in the Court’s systems, and thus equity demands that petitioners be allowed to proceed. That argument is unsustainable, for a number of reasons.

First, I have no authority to do an end run around the Election Law deadlines on equitable grounds. Initially, the parties dispute whether a Court presiding over an Election Law matter has any equitable powers. Respondent argues in the negative – a position upheld by a 1914 Court of Appeals decision and some more recent trial court rulings (*see Schieffelin v Komfort*, 212 NY 520 [1914] [“It is the settled law in this state that equity has no jurisdiction over contests for office even if the election is claimed to be void”]; *Terranova v Board of Elections*, 67 Misc 3d 1211[A], at *3 [“it is long established that the Supreme Court has no equity powers in election matters”]; *Austin v Deligatti*, 137 Misc 2d 530, 532-533 [Sup Ct Nassau County 1987]). For their part, petitioners point to a provision in the New York State Constitution stating that “[t]he supreme court shall have general original jurisdiction in law and equity” (*see* NY Const, Art VI, § 7), and to Judiciary Law § 140-b, which provides that “the general jurisdiction in law and equity which the supreme court possesses under the provisions of the constitution includes all the jurisdiction which was possessed and exercised by the supreme court of the colony of New York at any time, and by the court of chancery in England on the fourth day of July, seventeen hundred seventy-six,” although it specifically exempts from such “the exceptions, additions and limitations created and imposed by the constitution and laws of the state.” In short, the authorities cited by petitioners do not rebut the carve out for election cases cited by respondent. But putting aside for now whether there might be some role for equity in some unique instance, there is no question that in this case, I am strictly bound by the rules set by statute (*see Amedure v State*, 232 AD3d 48, 56 [3d Dept 2024][“[a]ny action Supreme Court takes with respect to a general election challenge must find authorization and support in the express provisions of the Election Law statute”] [cleaned up]). And the statute does not provide for an action to be brought beyond the deadline set forth in section 16-102, even when the reasons for missing the

deadline may be sympathetic ones. Rather, “[t]he courts of this [s]tate have repeatedly determined that the filing deadlines in the Election Law are mandatory and absolute, and are not subject to the discretion of the courts or the judicial fashioning of exceptions, regardless of how reasonable they may appear to be” (*see Minichino v Fox*, 219 AD3d 1637, 1639 [3d Dept 2023] [citations omitted]).

Petitioners contend that “[i]n signing the [OTSC], [Acting] Justice Weinstein, after discussion with the parties, determined that the Court can and would exercise its’ equitable power granted to it by the authorities cited [i.e., the constitutional and statutory grant of equity jurisdiction to the courts].” They do not explain, though, how the OTSC did this. Not only does the Order say nothing of the kind, it specifically notes that its service provisions should not be read as making any determination of the timeliness of such under the governing law.

Second, the late service that occurred in this case cannot be attributed solely – or even mostly – to the delay between the filing of the petition and the assignment of a judge. The petition, although signed two days earlier, was not filed until the Sunday before the final deadline of April 20. This ensured that the OTSC would not be before the Court until the last day for service. Even if petitioners could have gotten the matter before a judge as soon as possible, they would have needed to have the papers delivered into the hands of all parties that very day, i.e., through personal service. The proposed OTSC nonetheless left overnight mail as an option for service, although it would have necessarily been untimely. Indeed, the petition *specifically acknowledges* that personal service might not be possible on the 20th, and it is for that reason that express mail should be provided for as an option (*see* Petition ¶ 29). But if that possibility were to occur – as petitioners conceded it might – the petition would be untimely regardless of how quickly the matter was assigned. Thus, while petitioners place blame for the delay solely on the Clerk’s Office, there was one obvious thing it could have done to avoid this eventuality: file their petition with adequate time for service by the deadline.⁶

Finally, I will make the following observation: One can imagine circumstances where the

⁶ I note without deciding that there were other steps which petitioners might have been able to take on the 20th to protect against what has occurred, including personally serving the petition and obtaining approval for such service *nunc pro tunc* in the OTSC, or coming personally to the Court to seek out the Part One judge to sign a hard copy of the application. The point is not to determine exactly what petitioners could have done, only to note that this is not a case where a petitioner took every possible step to timely file the matter, only to be thwarted by the Court’s own errors.

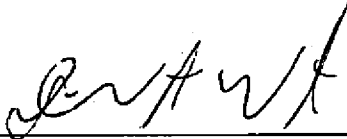
impact of a missed deadline due to the error of the Court or a third party would potentially work a profound unfairness or public harm, such as disqualifying an otherwise eligible candidate from a place on the ballot to which the individual are legally entitled. That is the sort of case in which the use of a court's equity powers – if they are at all available in the election context – might be justified. But in this case, petitioners wish to escape the strict deadlines of the Election Law so they can attempt to kick someone *off* the ballot, invoking among other things the hyper-technical petition requirements for which New York Election Law is famous (*see, e.g.* Petition ¶ 18[e] [“material alterations were made after the execution thereof by the subscribing witnesses and either were not initialed or were initialed, but the initials were not dated”]; *id.* ¶ 18[n] [“[s]ome of the names are printed and thus should not be counted validly”; *id.* ¶ 18[r] [“[s]ome witness statements set forth an incorrect number of signatures on the respective sheets”]). Petitioners are, of course, entitled to bring such challenges, but it is worth noting that petitioners here are asking the Court to exercise its supposed equitable powers to waive the strict and hyper-technical deadlines of the Election Law, so that they can bring a challenge to designating petitions asserting, *inter alia*, the strict and hyper-technical rules that govern that process.

In any event, I am without power to grant such relief for all the reasons stated above, and grant the motion on that basis.


Accordingly, respondent's motion to dismiss the petition as untimely is hereby GRANTED, and the hearing scheduled for April 27 by the OTSC is cancelled.

ENTER

Dated: Albany, New York
April 24, 2026



David A. Weinstein
Acting Supreme Court Justice



Papers Considered:

1. Petitioners' Order to Show Cause, with Verified Petition dated April 17, 2026; 04/27/2026
2. Respondent's Notice of Motion to Dismiss with supporting statement of counsel, dated April 22, 2026;
3. Petitioners' Affirmations of Service dated April 22, 2026; and
4. Petitioners' Affirmation in Opposition to Respondent Candidate's Motion to Dismiss, dated April 24, 2026.