

Silver-Matos v Rosario
2026 NY Slip Op 31971(U)
May 6, 2026
Supreme Court, New York County
Docket Number: Index No. 155616/2026
Judge: Matthew V. Grieco
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

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NAYMA SILVER-MATOS,

Petitioner,

- v -

EDWIN ROSARIO, COMMISSIONERS OF ELECTIONS OF THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK CONSTITUTING THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

Respondents.

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INDEX NO. 155616/2026

MOTION DATE 05/04/2026

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 14 were read on this motion to/for ELECTION LAW - VALIDATE PETITION

Upon the foregoing documents and oral arguments on the record on May 5, 2026, the petition is denied and dismissed.

In this special proceeding pursuant to Election Law §§ 16-100, 16-102, and 16-116, petitioner candidate Nayma Silver-Matos seeks to validate the designating petition she filed with respondent Board of Elections in the City of New York ("BOE") to appear as a candidate for the Democratic Party in the June 23, 2026 primary election for the office of New York State Senator from the 31st Senatorial District.

On the return date on the signed order to show cause for this proceeding, counsel for respondent objector Edwin Rosario appeared, filed an answer asserting multiple affirmative defenses, including lack of personal jurisdiction based on invalid service (NYSCEF Doc. No. 20), and made an oral application to dismiss the proceeding.

Election Law § 16-116 provides that a special proceeding commenced pursuant to Article 16 must be heard “upon such notice to such officers, persons or committees as the court or justice shall direct” (see e.g. *Angletti v Morreale*, 25 NY3d 794, 797 [2015]; *Matter of Stark v Williams*, 216 AD3d 859, 861 [2d Dept 2023]). Longstanding appellate precedent consequently holds that, in any proceeding pursuant to Election Law § 16-102, “[t]he method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with” (*Matter of Stark v Williams*, 216 AD3d at 861, quoting *Matter of Hennessey v DiCarlo*, 21 AD3d 505, 505 [2d Dept 2005], *lv denied* 5 NY3d 706 [2005]; see *Sorli v Coveney*, 51 NY2d 713 [1980]; *Matter of O’Daniel v Hayduk*, 59 AD2d 706, 707 [2d Dept 1977], *affd* 42 NY2d 1062 [1977]; *Matter of Bruno v Ackerson*, 51 AD2d 1051 [2d Dept 1976], *affd* 39 NY2d 718 [1976]; *Matter of Felder v Tischler*, 208 AD3d 1288, 1289 [2d Dept 2022]; see also *Bacon v Nygard*, 232 AD3d 407 [1st Dept 2024] [same legal principle in non-Election Law setting]).

Petitioner bears the burden of establishing, by a preponderance of the evidence, that proper service was effected and that personal jurisdiction was thereby obtained over the respondent (see *Stewart v Volkswagen of America, Inc.*, 81 NY2d 203, 207 [1993]; *Siri Med. Assocs., PLLC v Paradise Court Mgt. Corp.*, 158 AD3d 516 [1st Dept 2018]; *Ragusa v Board of Elections*, 42 Misc3d 1231[A] [Sup Ct, Queens County 2014]).

On April 29, 2026, BOE rendered its determination that petitioner’s designating petition lacked the required number of valid signatures (NYSCEF Doc. No. 1 at 4-5). Petitioner filed her order to show cause on May 4, 2026, which she concedes was the last possible day to commence this validation proceeding (*id.* at 5). This Court signed the order to show cause, and in light of the statute of limitations and the return date of May

5, 2026, directed personal service upon respondent Rosario pursuant to CPLR 308(1) on or before May 4, 2026; the Court expressly struck out petitioner's alternative request for nail and overnight mail service, and initialed that rejection (NYSCEF Doc. No. 14).

Notwithstanding the Court's clear directive, petitioner attempted service by affixing the papers to respondent objector's door and sending by Federal Express overnight mail (NYSCEF Doc. Nos. 15-18).

Petitioner's failure to strictly comply with the method of service specified in the order to show cause constitutes a jurisdictional defect that mandates the dismissal of the petition (*see Stark*, 216 AD3d at 861).¹

In light of the foregoing, this Court need not reach respondent Rosario's alternative arguments for dismissal.

Accordingly, it is

ORDERED and ADJUDGED that the petition is denied and dismissed; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office, who is hereby directed to reflect the foregoing by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing"

¹ On May 5, 2026, a Justice of the Appellate Division, First Department, denied petitioner's application under CPLR 5704 to modify the service provisions of the order to show cause (NYSCEF 2026-02541 Doc. No. 6).

page on the court's website).

This constitutes the decision, order, and judgment of the Court.

5/6/2026
DATE


MATTHEW V. GRIECO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE