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| <b>Kane v Board of Election in the City of N.Y.</b>  |
| 2026 NY Slip Op 32003(U)   |
| May 7, 2026  |
| Supreme Court, New York County   |
| Docket Number: Index No. 451700/2026   |
| 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

-----X

NICKIE KANE,

Petitioner,

- v -

BOARD OF ELECTION IN THE CITY OF NEW YORK,
SEAMUS CAMPBELL,

Respondents.

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INDEX NO. 451700/2026

04/30/2026,
04/30/2026,

MOTION DATE 04/30/2026

MOTION SEQ. NO. 001 001 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 14, 15, 16, 17, 23, 24, 25, 26, 27

were read on this motion to/for ELECTION LAW - VALIDATE PETITION

Upon the foregoing documents, and oral arguments 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 Nickie Kane 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 Representative in Congress from the 10th Congressional District, New York State.

On or about April 3 to 6, 2026, Kane filed a designating petition with the BOE. On April 15, 2026, respondent objector Seamus Campbell filed with the BOE specifications of objections (alleging that the designating petition did not contain a sufficient number of valid signatures), and served a duplicate copy on petitioner via FedEx overnight mail. On April 29, 2026, the BOE made a final determination of

invalidity, finding the number of valid signatures insufficient, and removing petitioner from the ballot.

On April 30, 2026, petitioner filed the instant petition to validate, contending that she had not been properly served with respondent Campbell's specifications of objections and therefore she did not have a meaningful opportunity to participate in the BOE review process (NYSCEF Doc. No. 1).

On May 4, 2026, respondent objector filed an answer, asserting that he had fully complied with service requirements, and raising a number of affirmative defenses (NYSCEF Doc. Nos. 18-22).

On May 5, 2026, the parties appeared before this Court for oral arguments. That day, petitioner filed a reply affidavit and memorandum (NYSCEF Doc. Nos. 23-27).

Election Law § 6-154(3)(b) provides, in pertinent part:

No specifications of objections to any petition, certificate of nomination or ballot access document will be considered unless the objector filing the specifications personally delivers or mails by overnight mail a duplicate copy of the specification to each candidate for public office named on the petition. ... Service shall be made on or before the date of filing of any specifications with the officer or board. Proof of service shall accompany the specifications or be received by the end of two business days following the filing of the specifications, whichever is later.

“[S]uch service is mandatory and the failure to so serve deprives the Board of jurisdiction to consider objections” (*Kazatsker v Gurshumov*, 2023 NY Slip Op 32056[U] [Sup Ct, Kings County 2023]; see *Matter of Neal v Liscum*, 164 AD3d 1540, 1541-1542 [3d Dept 2018] [reaching same conclusion regarding nearly identically worded 9 NYCRR 6204.1(b), itself derived from Election Law § 6-154], *lv denied* 32 NY3d 906 [2018]; *Matter of Young v Thalmann*, 286 AD2d 550, 551 [3d Dept 2001] [same]; *Matter of Moran v Board of Election of City of NY*, 122 AD2d 908, 908-909 [2d

Dept 1986] [same, without expressly citing the regulation]; *see also Alayeto v Commissioners of Elections of City of N.Y.*, 238 AD3d 479, 480-481 [1<sup>st</sup> Dept 2025] [requiring compliance with Election Law § 6-154(3)(b)].

Petitioner's sole contention is that the specifications of objections were not properly served because the FedEx delivery record states that the package was "left on the porch" (NYSCEF Doc. No. 24), but petitioner's building does not have a porch, and she did not receive the package.

In *Kazatsker, supra*, one of petitioner Kane's cited cases, FedEx staff made a clerical error, incorrectly transcribing the petitioner's apartment number as 130, rather than 103, although otherwise recording the correct street address; moreover, the package was delivered to the correct apartment, number 103 (2023 NY Slip Op 32056[U]). Relying on cases holding that a "minor error in the address to which a summons is mailed will not render service of process void where it is virtually certain that the summons will arrive at its intended destination" (*id.* at 12 [internal quotes and cites omitted]), the court determined that "[a]ny minor discrepancy involving the apartment number, which had no effect upon the ability of FedEx to deliver the specifications of objections to the petitioner in a timely manner, did not amount to a jurisdictional defect," and therefore the petitioner had been properly and timely served (*id.* at 12-13).

Here, a photograph included in the FedEx proof of service shows the package was left on an entryway window frame of petitioner's building (NYSCEF Doc. No. 21). A photograph petitioner herself submitted of the building from a further distance depicts the entry door as somewhat set in from flanking columns and an arch under a railed balcony (NYSCEF Doc. No. 25), perhaps inspiring the FedEx porch misnomer.

Regardless of the descriptor used by FedEx, service was properly mailed and delivered to the correct address, and therefore complied with Election Law § 6-154(3)(b) (see *Kazatsker*, 2023 NY Slip Op 32056[U] [and cases cited therein]; see also *Alayeto*, 238 AD3d at 480-481). The sole basis advanced by the petition is thus rejected.


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” page on the court’s website).

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

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|-------------------------|--|---------------------------------|--|------------------------------------|
| <u>5/7/2026</u><br>DATE | <br>MATTHEW V. GRIECO, J.S.C. |                                 |  |                                    |
| CHECK ONE:              | <input checked="" type="checkbox"/> CASE DISPOSED  | <input type="checkbox"/> DENIED | <input type="checkbox"/> NON-FINAL DISPOSITION | <input type="checkbox"/> OTHER     |
| APPLICATION:            | <input type="checkbox"/> GRANTED   |                                 | <input type="checkbox"/> GRANTED IN PART       |                                    |
| CHECK IF APPROPRIATE:   | <input type="checkbox"/> SETTLE ORDER  |                                 | <input type="checkbox"/> SUBMIT ORDER          |                                    |
|                         | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN  |                                 | <input type="checkbox"/> FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFERENCE |