

At a Term of The Supreme Court of the State of New York held in and for the Sixth Judicial District in the County of Schuyler, Watkins Glen, New York, on the 20th day of August, 2024.

**PRESENT: HON. CHRISTOPHER P. BAKER
SUPREME COURT JUSTICE**

STATE OF NEW YORK
SUPREME COURT: COUNTY OF SCHUYLER

MONTGOMERY BLAIR SIBLEY,

Plaintiff,

DECISION & ORDER

vs.

INDEX #24-24

KRISTEN ZEBROWSKI STAVISKY,
Solely In Her Official Capacity As New York's
Chief Election Official,

Defendant.

CHRISTOPHER P. BAKER, JSC

FINDINGS OF FACT

Plaintiff commenced this ballot eligibility challenge action by filing a summons and complaint on August 5, 2024. Therein, plaintiff seeks declaratory relief that Kamala Harris is ineligible to appear on the New York ballot for the November 5, 2024 United States Presidential election.

Plaintiff now moves, by "Notice of Hearing on Motion," for an Order shortening the time for the defendant to respond to the Complaint for Declaratory Relief and for an expedited scheduling Order for this action.

CONCLUSIONS OF LAW

The Court begins from the premise that the Third Department has "consistently held that the exclusive remedy for seeking to remove a candidate from the ballot is a proceeding pursuant to the Election Law." Matter of Ferguson v. Cheeseman, 138 A.D.2d 852, 853-54 (3d Dept. 1988);

Scaringe v. Ackerman, 119 A.D.2d 327 (3d Dept. 1986), aff'd, 68 N.Y.2d 885 (1986); see Savago v. Ulster County Bd. of Elections, 220 A.D.2d 926, 927 (3d Dept. 1995); see Nowinski v. New York City Bd. of Elections, 164 A.D.3d 722 (2d Dept. 2018) (although petitioners commenced an action pursuant to CPLR Article 78, the proceeding was governed by the requirements set forth in the Election Law, including the shortened statute of limitations).

Among other substantive and procedural requirements, Election Law section 16-116 provides that a “special proceeding under the foregoing provisions of this article shall be heard upon a verified petition...and upon such notice to such officers, persons or committees as the court or justice shall direct, and shall be summarily determined.” “Notably, in election proceedings jurisdiction is not acquired unless the methods of service designated by the court are strictly complied with.” Matter of Millar v. Tolly, 252 A.D.2d 872, 873 (3d Dept. 1998) (also noting that, pursuant to CPLR 304, a special proceeding is commenced by the filing of a notice of petition or order to show cause and petition); see Wallace v. Bujanow, 176 A.D.3d 1307, 1309 (3d Dept. 2019) (“For Supreme Court to have acquired jurisdiction, petitioners were required to seek and obtain a directive from a justice or the court as to how respondents were to be notified of such proceeding.”). Defendant’s receipt of actual notice of the action “does not suffice to confer jurisdiction.” Id. at n.2.

Here, plaintiff failed to comply with Election Law 16-116, proceeding by way of a summons and complaint, rather than by commencing a special proceeding with a verified petition and notice of petition or order to show cause. Because plaintiff failed to proceed by notice of petition or order to show cause and, accordingly, to obtain the Court’s directive as to the notice to be provided to defendant, the Court lacks jurisdiction over this matter. See, e.g., Millar, 252 A.D.2d at 873; Wallace, 176 A.D.3d at 1309. Plaintiff’s complaint must be dismissed accordingly.

It is therefore,

ORDERED, that plaintiff’s motion is hereby **denied**; and it is further

ORDERED, that the Complaint is hereby **dismissed**.

This shall constitute the Decision and Order of The Court.

ENTER

Dated: August 20, 2024.

A handwritten signature in black ink, appearing to read "Christopher P. Baker", written over a horizontal line.

Hon. Christopher P. Baker
Supreme Court Justice

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