

Department found, that claim is moot because these elections have already occurred and "the rights of the parties cannot be affected by the determination of this" appeal. *Matter of Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 714 (1980). Moreover, the exception to the mootness doctrine does not apply because the issues will not typically evade review. Indeed, as the Third Department noted, "[t]he substantive issue presented would not have evaded judicial review had petitioner timely commenced this proceeding, which would have enabled Supreme Court to hear the case before the presidential primary election and petitioner to take an expedited appeal." Decision at 3.

As to petitioner's claim concerning the State Board of Election's alleged misrepresentations of the criteria for the office of President, this claim is not justiciable because it amounts to a challenge to future presidential elections, and thus is not ripe. The claim is premature because any harm "is contingent upon events which may not come to pass." *Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL-CIO v. Cuomo*, 64 N.Y.2d 233, 240 (1984). If in a future election, a candidate for the presidency whom petitioner believes is ineligible files a certificate of designation in reliance on the State's alleged misrepresentations, petitioner will then have an opportunity to file objections and commence a proceeding to contest the candidate's designation. Until then, however, he has no ripe controversy to bring before the Court.

In addition, and as further explained in our brief to the Third Department, this case does not present a substantial constitutional question because the underlying proceeding suffers from threshold procedural deficiencies. Among other things, the proceeding was untimely and petitioner lacked standing to bring it because he failed to comply with the Board of Election's service rules.

For these reasons, this Court should dismiss petitioner's appeal as moot in part, unripe in part, and for want a substantial constitutional question.

Respectfully yours,

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