

To be argued  
By: BEEZLY J. KIERNAN  
10 minutes requested

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# Supreme Court of the State of New York

## Appellate Division – Third Department

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**No. CV-24-1509**

MONTGOMERY BLAIR SIBLEY,

*Plaintiff-Appellant,*

v.

KRISTEN ZEBROWSKI STAVISKY solely in her official  
capacity as Co-Executive Director of the New York  
Board of Elections and New York’s Chief Election  
Official,

*Defendant-Respondent.*

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### BRIEF FOR RESPONDENT

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Dated: September 30, 2024

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## **PRELIMINARY STATEMENT**

Pro se plaintiff Montgomery Blair Sibley commenced this action against Co-Executive Director of the State Board of Elections Kristen Zebrowski Stavisky to challenge Kamala Harris's placement on the November 2024 general election ballot. According to plaintiff, Ms. Harris is ineligible to serve as President because she is not a natural-born citizen of the United States. Supreme Court, Schuyler County (Baker, J.), dismissed the complaint because plaintiff failed to comply with the procedural requirements set forth in the Election Law.

This Court should affirm. As Supreme Court held, the exclusive remedy for removing a candidate from a ballot is a special proceeding commenced pursuant to the Election Law. Plaintiff did not commence such a proceeding. Nor did he file an objection with the State Board of Elections, as required before commencing a special proceeding. Thus, plaintiff lacks standing to challenge Ms. Harris's placement on the ballot under the Election Law. Plaintiff also lacks standing to assert a federal constitutional claim under 42 U.S.C. § 1983 because he has not alleged any concrete and particularized injury arising from Ms. Harris's candidacy. Supreme Court therefore correctly dismissed the complaint.

## QUESTIONS PRESENTED

1. Whether Supreme Court correctly dismissed plaintiff's complaint for failure to comply with the procedural requirements set forth in the Election Law.

2. Whether, in the alternative, plaintiff lacks standing to assert a claim under 42 U.S.C. § 1983 challenging Ms. Harris's eligibility for President.

## STATEMENT OF THE CASE

### A. Statutory Framework

The Election Law sets forth a procedure for challenging the eligibility of a candidate for public office. Every candidate must file a certificate or petition, as appropriate, to appear on a ballot. *See* Election Law art. 6. A political party's certificate of nomination of its candidate for President must be filed with the State Board of Elections. Objections to a certificate of nomination "may be filed by any voter registered to vote for such public office" within three days of the filing of the certificate. *Id.* § 6-154(2). The objector must file "specifications of the grounds of the objections" within six days thereafter. *Id.* If specifications are not timely filed, "the objections shall be null and void." *Id.* Specifications also must



be served on the candidate whose nomination is challenged. *Id.* § 6-154(3)(b). An objector may specify that the candidate “is ineligible to be elected” to the office for which she is nominated. *Id.* § 6-122. The candidate has an opportunity to respond to the objection. *Id.* § 6-154(4)(a).

A candidate’s placement on the ballot may also be challenged in court pursuant to the Election Law. Election Law § 16-102 provides that the nomination “of any candidate for any public office . . . may be contested in a proceeding instituted in the supreme court by any aggrieved candidate, or by the chairman of any party committee or by a person who shall have filed objections, as provided in this chapter.” Election Law § 16-102(1). A voter who seeks to commence such a proceeding, and who is not an aggrieved candidate or party committee chairman, therefore must first file an objection with the board of elections, and then commence the proceeding by filing a verified petition and providing “notice to such officers, persons or committees as the court or justice shall direct.” *Id.* § 16-116. A special proceeding under Election Law § 16-102 must be filed within ten days after the filing of the

certificate of nomination, *id.* § 16-102(2), and “shall have preference over all other causes in all courts,” *id.* § 16-116.

## **B. Factual Background**

Plaintiff commenced this action by filing a summons and complaint on August 5, 2024. (R. 7-14.) Plaintiff named Co-Executive Director of the State Board of Elections Kristen Zebrowski Stavisky as the defendant. (R. 8.) In his complaint, plaintiff alleged that Kamala Harris is ineligible to serve as President of the United States because she is not a natural-born citizen. Specifically, plaintiff alleged that while Ms. Harris was born in the United States, neither of her parents was a citizen at the time of her birth. (R. 9.) Plaintiff attached a purported copy of Ms. Harris’s birth certificate. (R. 15.) Plaintiff sought a declaration that defendant would violate plaintiff’s federal constitutional rights if she permitted Ms. Harris to appear on the November 2024 general election ballot. (R. 13.) Plaintiff also moved for expedited consideration of his complaint. (R. 17-18.)

When this action was commenced, plaintiff had not filed an objection to the certificate of nomination naming Ms. Harris as the Democratic Party nominee for President. In fact, the certificate itself was

not filed until August 29, 24 days after plaintiff filed his complaint.<sup>1</sup> Plaintiff has not since filed an objection with the State Board of Elections challenging this certificate. Plaintiff also did not file a verified petition or proposed order to show cause that would have directed service on defendant.

On August 20, Supreme Court (Baker, J.) sua sponte dismissed the complaint. The court explained that the exclusive remedy for seeking to remove a candidate from the ballot is a proceeding pursuant to the Election Law. (R. 2.) The court found that plaintiff had not complied with the Election Law's procedural requirements, specifically Election Law § 16-116's requirement that a party commence a special proceeding with a verified petition and notice of petition or order to show cause. (R. 3.) The court held that it lacked jurisdiction over the matter and accordingly dismissed the complaint. (R. 3.)

Plaintiff moved to vacate the August 20 decision. (R. 19-27.) Plaintiff argued that he need not comply with the Election Law's

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<sup>1</sup> See Who Filed, New York State Board of Elections, available at <https://publicreporting.elections.ny.gov/WhoFiled/WhoFiled>. We are providing a screenshot of this publicly available website as an addendum to this brief.

procedural requirements because he sought relief under 42 U.S.C. § 1983, which provides a cause of action for violations of the U.S. Constitution. (R. 21-24.) Defendant did not file any papers in response to this motion but did appear for oral argument. (*See* R. 6.)

On August 29, Supreme Court denied plaintiff's motion to vacate. Supreme Court held that plaintiff was required to comply with New York procedural law regardless of his reliance on the federal cause of action for constitutional violations. (R. 6.) As Supreme Court observed, if plaintiff had complied with the procedural requirements of the Election Law, he could have raised his constitutional objection to the appearance of Ms. Harris on the general election ballot, and would have been entitled to a calendar preference. (R. 6.)

Plaintiff appealed. (R. 28.)

## **ARGUMENT**

### **POINT I**

#### **SUPREME COURT CORRECTLY DISMISSED THE COMPLAINT BECAUSE PLAINTIFF FAILED TO COMPLY WITH THE ELECTION LAW'S PROCEDURAL REQUIREMENTS**

As Supreme Court correctly held, plaintiff failed to satisfy the procedural requirements under the Election Law for obtaining a court

order directing the removal of a candidate for office from the ballot. He therefore cannot now seek to remove Ms. Harris from the November 2024 general election ballot. Plaintiff's reliance on the federal cause of action for constitutional violations, 42 U.S.C. § 1983, is misplaced, because this statute is not an alternative vehicle to raise his challenge that would excuse his failure to comply with the Election Law's procedures. Accordingly, this Court should affirm the dismissal of plaintiff's complaint.

**A. Plaintiff Lacks Standing to Challenge Ms. Harris's Certificate of Nomination Under the Election Law.**

Plaintiff failed to satisfy the Election Law's procedural requirements, and now lacks standing to assert his challenge to Ms. Harris's eligibility in court. Election Law § 16-102 provides that the nomination "of any candidate for any public office . . . may be contested in a proceeding instituted in the supreme court by . . . a person who shall have filed objections." Election Law § 16-102(1). As courts have repeatedly held, a voter who fails to file objections pursuant to Election Law § 6-154 lacks standing to seek judicial review of a candidate's placement on a ballot under Election Law § 16-102. *See Matter of Korman*

*v. New York State Bd. of Elections*, 137 A.D.3d 1474, 1475 (3d Dep’t), *lv. denied*, 27 N.Y.3d 903 (2016); *Matter of Nicolai v. Kelleher*, 45 A.D.3d 960, 964 (3d Dep’t 2007); *Matter of Naples v. Swiatek*, 286 A.D.2d 567, 567, 730 N.Y.S.2d 589, 590 (4th Dep’t), *lv. denied*, 96 N.Y.2d 718 (2001).

This Court’s decision in *Matter of Korman* is instructive. The petitioners in that case challenged the certificate of designation naming Ted Cruz as a candidate for President in the 2016 Republican Party primary. The petitioners claimed that Mr. Cruz was not a natural-born citizen. While the petitioners had filed objections to the certificate of designation, they did not do so timely. “As a result,” the Court explained, the petitioners “failed to meet a condition precedent to standing—namely, that they file objections in compliance with Election Law § 6-154(2).” *Matter of Korman*, 137 A.D.3d at 1476. The Court held that it was “simply unable to relax the mandatory filing requirements of Election Law § 6-154(2) or excuse petitioners’ noncompliance therewith.” *Id.*

Here, plaintiff failed to show that he filed an objection to the certificate of nomination naming Ms. Harris as the Democratic Party nominee for President. Indeed, plaintiff could not have filed the requisite

objection before this action was commenced, on August 5, 2024, because the certificate of nomination itself was filed 24 days later, on August 29. Nor has plaintiff since filed an objection with the State Board of Elections. Because an objection is a condition precedent to a legal challenge under Election Law § 16-102, *see Matter of Korman*, 137 A.D.3d at 1476; *Matter of Scaringe*, 119 A.D.2d at 329, plaintiff's failure to file an objection deprives him of standing to challenge Ms. Harris's placement on the November 2024 general election ballot.

**B. As Supreme Court Held, Plaintiff Did Not Properly Commence a Special Proceeding Under the Election Law.**

Plaintiff's suit fails for the additional reason that he did not properly commence a special proceeding in accordance with Election § 16-116. That statute requires a party to commence a special proceeding under the Election Law by filing a verified petition and providing notice to the respondents "as the court or justice shall direct." Election Law § 16-116. As this Court has explained, jurisdiction in an election proceeding "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 Dep't 1998); *see also Matter of Hughes v. Delaware County Bd. of*

*Elections*, 217 A.D.3d 1250, 1254 (3d Dep’t 2023) (noting that courts require strict compliance with the Election Law in election proceedings). Thus, “[f]or Supreme Court to have acquired jurisdiction,” plaintiff was “required to seek and obtain a directive from a justice or the court as to how respondent[]” was to be notified of the proceeding. *Matter of Wallace v. Bujanow*, 176 A.D.3d 1307, 1309 (3d Dep’t 2019).

As Supreme Court explained, plaintiff did not commence a special proceeding by filing a verified petition. Nor did he obtain an order to show cause directing a method of service on the State Board of Elections. Rather, plaintiff commenced this lawsuit by filing a summons and complaint, naming only Co-Executive Director Kristen Zebrowski Stavisky as a defendant. “In the absence of the required court directive and compliance therewith, Supreme Court’s jurisdiction was lacking.” *Matter of Wallace*, 176 A.D.3d at 1309. And the fact that the State Board of Elections received actual notice of the action “does not suffice to confer jurisdiction.” *Id.* at 1309 n.2. Supreme Court therefore correctly



dismissed the complaint for failure to comply with the procedural requirements of the Election Law.<sup>2</sup>

**C. Plaintiff's Reliance on 42 U.S.C. § 1983 Is Unavailing Because the Election Law Provides the Exclusive Remedy for This Ballot Challenge.**

Plaintiff cannot avoid these procedural requirements by framing his challenge as a federal-law claim brought under 42 U.S.C. § 1983. This Court 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 (3d Dep’t 1988); *see also Matter of Cartwright v. Kennedy*, 230 A.D.3d 969 (3d Dep’t), *appeal dismissed, lv. denied*, --- N.Y.3d --- (2024) (affirming judgment removing candidate from ballot in proceeding pursuant to Election Law § 16-102); *Matter of Scaringe v. Ackerman*, 119 A.D.2d 327, 329 (3d Dep’t), *aff’d*, 68 N.Y.2d 885 (1986). Indeed, “[w]hen a party seeks judicial intervention in the election process, the court’s jurisdiction is limited to that expressly conferred by the Election Law.” *Matter of New*

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<sup>2</sup> Contrary to plaintiff’s argument (Br. at 13-14), Supreme Court properly dismissed the complaint sua sponte based on its facial inadequacy.

*York State Comm. of the Independence Party v. New York State Bd. of Elections*, 87 A.D.3d 806, 809 (3d Dep’t), *lv. denied*, 17 N.Y.3d 706 (2011). Characterizing a claim as brought pursuant to some other statute “will not enable intervention in the election process when it would not otherwise be available under the Election Law.” *Id.*; *see also Matter of Nowinski v. New York City Bd. of Elections*, 164 A.D.3d 722, 724 (2d Dep’t), *lv. denied*, 31 N.Y.3d 914 (2018).

In *Matter of Scaringe*, for example, this Court affirmed the dismissal of a C.P.L.R. article 78 petition seeking to prohibit the State Board of Elections from placing a candidate on the ballot. The petitioners had failed to commence the proceeding within the time period prescribed by Election Law § 16-102. The petitioners argued that the Election Law’s procedural requirements did not apply because they had commenced an article 78 proceeding challenging the candidate’s substantive qualifications for office. The Court rejected this argument, holding that “a proceeding to remove a candidate from the ballot, based upon allegations that the candidate does not meet certain constitutional residency requirements to hold office . . . must be commenced in accordance with the requirements of Election Law § 16-102.” 119 A.D.2d

at 329. The same is true here. Plaintiff's challenge to Ms. Harris's placement on the ballot based on her alleged ineligibility to serve as President must be commenced in accordance with the procedural requirements set forth in the Election Law. Plaintiff's reliance on 42 U.S.C. § 1983 does not excuse his failure to comply with those requirements. Thus, this Court should affirm Supreme Court's dismissal of plaintiff's complaint for failure to comply with the procedural requirements set forth in the Election Law.

## **POINT II**

### **PLAINTIFF LACKS STANDING TO CHALLENGE MS. HARRIS'S ELIGIBILITY UNDER 42 U.S.C. § 1983**

Even if plaintiff's challenge to Ms. Harris's eligibility could be properly construed as a claim to remedy an ongoing violation of federal law under 42 U.S.C. § 1983—which it cannot—such a claim would be subject to dismissal for lack of standing. Standing is “a threshold requirement for a plaintiff seeking to challenge governmental action.” *New York State Ass’n of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211 (2004). To establish standing, the plaintiff must demonstrate an injury-in-fact that is actual or imminent and “sufficiently concrete and

particularized to warrant judicial intervention.” *Mental Hygiene Legal Serv. v. Daniels*, 33 N.Y.3d 44, 50 (2019) (citing *Novello*, 2 N.Y.3d at 214; *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 [2016]).

Plaintiff claims that Ms. Harris’s placement on the ballot injures him by violating his purported right “to vote for only and have a ‘natural born Citizen’ President.” (Br. at 8.) This alleged injury is not sufficiently concrete and particularized to support standing. Notably, federal courts have routinely dismissed similar challenges to the eligibility of presidential candidates brought under 42 U.S.C. § 1983 for lack of a concrete and particularized injury. *See, e.g., Kerchner v. Obama*, 612 F.3d 204 (3d Cir. 2010); *Berg v. Obama*, 586 F.3d 234 (3d Cir. 2009); *Schwartz v. Cruz*, 179 F. Supp. 3d 743 (S.D. Tex. 2016); *Fischer v. Cruz*, 2016 WL 138349 (E.D.N.Y. Apr. 7, 2016); *Robinson v. Bowen*, 567 F. Supp. 2d 1144 (N.D. Cal. 2008); *Hollander v. McCain*, 566 F. Supp. 2d 63 (D.N.H. 2008). This Court should not countenance the type of § 1983 claim that federal courts themselves have repeatedly rejected for lack of standing.

To the extent plaintiff claims that Ms. Harris’s candidacy violates his purported federal constitutional right to vote only for a natural-born citizen, he has alleged no concrete injury “because he could always

support a candidate he believed was eligible.” *Berg v. Obama*, 586 F.3d 234, 239 (3d Cir. 2009); *see also Hollander*, 566 F. Supp. 2d at 70-71 (plaintiff lacked judicially cognizable injury because he “remain[ed] free to cast his vote for any candidate he considers eligible”).

And to the extent plaintiff claims that he would be injured if Ms. Harris won the election despite her alleged ineligibility, that harm “would adversely affect only the generalized interest of all citizens in constitutional governance.” *Hollander*, 566 F. Supp. 2d at 68 (quoting *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 217 [1974]). Such a “generalized grievance[,] shared in substantially equal measure by all or a large class of citizens,” is not sufficiently particularized to support standing in a case brought pursuant to 42 U.S.C. § 1983. *Berg*, 586 F.3d at 239 (quoting *Warth v. Seldin*, 422 U.S. 490, 499 [1975]). Because plaintiff’s asserted injury applies equally to all New York voters, his “claim constitutes a ‘paradigmatic generalized grievance that cannot support standing.’” *Fossella v. Adams*, 225 A.D.3d 98, 110 (2d Dep’t 2024) (quoting *Wood v. Raffensperger*, 981 F.3d 1307, 1314 [11th Cir. 2020]).

To be sure, if plaintiff had properly filed an objection with the State Board of Elections, he could have challenged Ms. Harris’s eligibility to serve as President in a special proceeding brought pursuant to the Election Law. This Court recently affirmed the invalidation of a nominating petition in just such a proceeding. *See Matter of Cartwright*, 2024 WL 3977541. Likewise, other state courts have adjudicated the constitutional eligibility of presidential candidates in proceedings brought under those states’ laws. *See, e.g., Elliott v. Cruz*, 137 A.3d 646 (Pa. Commw. Ct.), *aff’d*, 134 A.3d 51 (Pa. 2016); *Ankeny v. Governor of Indiana*, 916 N.E.2d 678 (Ind. Ct. App. 2009); *Wrotnowski v. Bysiewicz*, 958 A.2d 709 (Conn. 2008). But plaintiff cannot rely on 42 U.S.C. § 1983 to challenge Ms. Harris’s eligibility without asserting any concrete and particularized injury arising from her candidacy.

\* \* \*

For all the reasons explained above, the Court should not reach the merits of petitioner’s challenge to Ms. Harris’s eligibility to serve as President of the United States. We note, nonetheless, that the challenge is meritless. Ms. Harris is a “natural born Citizen,” and thus eligible for the Office of President, *see* U.S. Const. art. II, § 1, because she was “born

. . . in the United States and subject to the jurisdiction thereof,” see U.S. Const. amend. XIV, § 1 (R. 15). Whether or not her parents were also citizens at the time of her birth is immaterial. See *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898) (“The fourteenth amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens . . . .”); *Lynch v. Clarke*, 1 Sand. Ch. 583, 663 (N.Y. Ch. 1844) (“every person born within the dominions and allegiance of the United States, whatever were the situation of his parents, is a natural born citizen”); *Ankeny*, 916 N.E.2d at 688 (“persons born within the borders of the United States are ‘natural born Citizens’ for Article II, Section 1 purposes, regardless of the citizenship of their parents”); see also W. Blackstone, 1 *Commentaries on the Laws of England* 361 (1765) (explaining common law rule that “children of aliens, born here in England, are, generally speaking, natural-born subjects”).

## CONCLUSION

This Court should affirm the judgment below.

Dated: Albany, New York  
September 30, 2024

Respectfully submitted,

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## **PRINTING SPECIFICATIONS STATEMENT**

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