

App. 1

*State of New York
Supreme Court, Appellate Division
Third Judicial Department*

Decided and Entered: August 10, 2017 524197

In the Matter of ROBERT C.
LAITY,

Appellant,

v

STATE OF NEW YORK et al.,

Respondents,
et al.,
Respondents.

MEMORANDUM
AND ORDER

Calendar Date: June 1, 2017

Before: McCarthy, J.P., Lynch, Devine, Clark and
Aarons, JJ.

Robert C. Laity, Tonawanda, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany
(Jeffrey W. Lang of counsel), for State of New York, re-
spondent.

Daniel M. Sullivan, New York City, for Rafael Ted
Cruz, respondent.

Devine, J.

Appeal from an order of the Supreme Court (Hartman, J.), entered August 16, 2016 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to Election Law § 16-102, to, among other things, declare invalid the certificate of designation naming respondent Rafael Edward (Ted) Cruz as a Republican Party candidate for the public office of President of the United States in the April 19, 2016 presidential primary election.

On January 26, 2016, respondent Rafael Edward (Ted) Cruz filed a certificate of designation with the State Board of Elections seeking to have his name placed on the ballot for the April 19, 2016 presidential primary election as a Republican Party candidate for the public office of President of the United States. Petitioner then filed with the State Board general and specific objections to the placement of Cruz, as well as respondents Marco Rubio and Piyash (Bobby) Jindal on the ballot, asserting that the three men were ineligible for the office of President because they were not "natural born [c]itizen[s]" (US Const, art II, § 1). On February 23, 2016, the State Board issued determinations overruling petitioner's objections on the grounds that the objections were outside the ministerial scope of the State Board to determine, were made in the incorrect venue and that petitioner failed to provide the requisite proof of service of his objections. The State Board also noted that petitioner's objections were moot as to Jindal, who had not filed a designating certificate.

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Petitioner commenced this proceeding pursuant to Election Law § 16-102 in April 2016 and sought, among other things, “to ENJOIN [respondent] State of New York from entering upon the Presidential Election Ballot for 2016” the names of Cruz, Rubio and Jindal on the ground that they were ineligible for the office of President of the United States. Thereafter, the State moved, pre-answer, to dismiss the petition on several grounds. Cruz filed an answer and reply memorandum of law, requesting, among other things, that the proceeding be dismissed. Supreme Court found the petition to be defective in numerous respects and dismissed it, prompting this appeal by petitioner.

To the extent that petitioner challenges the primary ballot and the general election ballot, the proceeding is moot because the 2016 presidential primary and general elections have already taken place and “the rights of the parties cannot be affected by the determination of this” appeal (*Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714 [1980]; see *Matter of Danielewicz v Aurigema*, 58 NY2d 881, 881-882 [1983]; *Matter of Reed v Walsh*, 101 AD3d 1661, 1662 [2012]). The exception to the mootness doctrine does not apply inasmuch as this case does not present the type of issue that would typically evade review (see *Matter of Hearst Corp. v Clyne*, 50 NY2d at 714-715). The 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 therefrom.

To the extent that petitioner challenges future presidential elections on the ground that the State allegedly “misrepresent[s]” the constitutional requirements for the office of President by allowing candidates to appear on the ballot whom petitioner considers ineligible, this 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, AF-SCME, AFL-CIO v Cuomo*, 64 NY2d 233, 240 [1984]; see *Schulz v Cuomo*, 133 AD3d 945, 948 [2015], *appeal dismissed* 26 NY3d 1139 [2016], *lv denied* 27 NY3d 907 [2016]). In light of our determination, we need not consider the alternative arguments for affirmance by the State and Cruz.

McCarthy, J.P., Lynch, Clark and Aarons, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

/s/ Robert D Mayberger

Robert D. Mayberger
Clerk of the Court

App. 5

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application
of ROBERT C. LAITY, Pro se,

Petitioner,

-against-

STATE OF NEW YORK,
RAFAEL EDWARD ("TED")
CRUZ, MARCO RUBIO, and
PRIYASH "BOBBY" JINDAL,

Respondents.

**DECISION AND
JUDGMENT**

(Filed Aug. 16, 2016)

For a Judgment Pursuant to
Article 78 of The Civil Practice
Law and Rules.

Index No. 1561-16
(RJI No. 01-16-ST7762)

APPEARANCES:

ROBERT C. LAITY
Petitioner, *Pro Se*
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Tonawanda, New York 14150

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL OF THE
STATE OF NEW YORK
Mark G. Mitchell, of Counsel
Attorney for Defendant
The Capitol
Albany, New York 12224-0341

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DANIEL M. SULLIVAN
Attorney for Defendant Rafael “Ted” Cruz
750 Seventh Avenue, 26th Floor
New York, New York 10019
No Other Appearances

Hartman, J.

Petitioner Robert C. Laity commenced this special proceeding pursuant to Election Law article 16 “to enjoin the State of New York from entering upon the Presidential Election Ballot for 2016, the names of Rafael ‘Ted’ Cruz, Marco Rubio and Piyash [sic] ‘Bobby’ Jindal”; and “to enjoin the State of New York from continuing to misrepresent as one of the criteria for being President as being ‘Born a Citizen’ instead of the actual criteria mandated in the U.S. Constitution.” Petitioner argues that respondents Cruz, Rubio, and Jindal are ineligible to be President because they are not “natural born Citizen[s]” (US Const, art II § 1, cl 5). Further, petitioner argues that the State of New York is in derogation of state law by failing to bar candidates from the election ballot who are “ineligible to be elected to such office” or “who, if elected will not at the time of commencement of the term of such office . . . , meet the constitutional or statutory qualifications thereof” (Election Law § 6-122).

Respondent State of New York moves to dismiss on the grounds of multiple procedural deficiencies and nonjusticiability. Respondent Cruz, in his Answer and Reply Memorandum of Law, requested that the proceeding be dismissed for, among other reasons, lack of personal jurisdiction. Respondents Rubio and Jindal

have not appeared in this proceeding. Because there were multiple procedural deficiencies in the commencement of the proceeding and the issue is nonjusticiable the proceeding is dismissed.

Background

According to the Election Calendar published by the New York State Board of Elections, candidates for the New York Republican Party presidential primary election, held on April 19, 2016, were required to file a certificate of designation seeking placement on the ballot with the State Board of Elections between January 26, 2016 and February 16, 2016. On January 26, 2016, respondent Cruz filed a certificate of designation with the State Board of Elections to have his name placed on the primary ballot. That same day, petitioner Robert C. Laity filed with the State Board of Elections general and specific objections to the appearance of respondents Cruz, Rubio, and Jindal on the election ballot. Petitioner Laity also sent a copy of the objections to respondents Cruz, Rubio, and Jindal "by regular U.S. Mail." On February 23, 2016, the State Board of Elections issued determinations that Laity's objections to Cruz, Rubio, and Jindal were invalid because he failed to provide adequate proof of service of his objections, the objections were made in the incorrect venue, the objections raised issues outside the ministerial scope of the State Board of Elections, and the State Board of Elections had never received a certification of designation seeking ballot access for Jindal.

On April 8, 2016, Laity filed a verified petition with the Albany County Clerk's Office. In his verified petition, Laity named New York State, Cruz, Rubio, and Jindal as respondents to this proceeding; Laity did not name the State Board of Elections or any of its commissioners as a party in the proceeding. On April 23, 2016, Laity sent a copy of the verified petition "by U.S. Mail" to Eric Schneiderman, the New York State Attorney General; Cruz; Rubio; Jindal; and the New York State Board of Elections.

On April 19, 2016, New York held its Republican Party presidential primary election. Neither Rubio nor Jindal appeared as a candidate on the ballot. Respondent Cruz appeared as a candidate on the ballot and finished third in the primary election. On May 3, 2016, Cruz suspended his presidential campaign.

On April 29, 2016, the Court signed an order to show cause in a special proceeding, which directed a response to petitioner Laity's claims by May 13, 2016, and directed personal service of a copy of the order, the verified petition, and all other papers upon which the order was granted by May 6, 2016. On May 5, 2016, petitioner Laity sent a copy of the order to show cause and an additional copy of the verified petition "by U.S. Mail" to Schneiderman, Cruz, Rubio, Jindal, and the New York State Board of Elections. Respondent Cruz received the order to show cause and additional copy of the verified petition on May 13, 2016. Following requests from the State of New York and Cruz, the matter was adjourned to June 10, 2016.

On June 6, 2016, respondent State of New York moved to dismiss this proceeding in its entirety, providing support for its objections in point of law in the annexed affirmation of an assistant attorney general. On June 9, 2016, respondent Cruz filed an answer and reply memorandum of law where he asserted, among other defenses, that the proceeding should be dismissed for lack of personal jurisdiction. Neither Rubio nor Jindal has responded or appeared in this proceeding. On June 15, 2016, petitioner Laity filed his motion in opposition to the State of New York's motion to dismiss, and on June 17, 2016 he filed his reply to Cruz's answer and reply memorandum of law.

Analysis

Procedural Deficiencies

Respondent State of New York has moved to dismiss this proceeding on the grounds of multiple procedural deficiencies in petitioner's commencement of the proceeding: (1) petitioner lacked standing to bring this proceeding (CPLR 3211[a][3]); (2) this proceeding was commenced untimely (CPLR 3211[a][5]); and (3) petitioner failed to join a necessary party to this proceeding (CPLR 3211[a][10]). Respondent Cruz likewise requested dismissal on the grounds that this proceeding is untimely.¹

¹ Respondent Cruz must also be dismissed from this proceeding due to the Court's lack of personal jurisdiction over him (CPLR 3211[a][8]). Petitioner failed to comply with the personal service requirement in the order to show cause, depriving the

Petitioner does not have standing in this proceeding because he failed to comply with the rules of the State Board of Elections when attempting to file his objections to the candidates' certificates of designation (CPLR 3211[a][3]; Election Law § 16.102[1]). "It is well settled that a court's jurisdiction to intervene in election matters is limited to the powers expressly conferred by statute" (*Matter of Korman v New York State Bd. of Elections*, 137 AD3d 1474, 1475 [3d Dept 2016], *lv denied* 27 NY3d 903 [2016] [internal quotation marks and citations omitted]). Election Law § 16-102 provides that a candidate's certificate of designation may be contested in a proceeding instituted in the supreme court by . . . a person who shall have filed objections, as provided in this chapter" (Election Law § 16-102[1]; *see Matter of Korman*, 137 AD3d at 1475).

Under Election Law § 6-154, which outlines the process for filing general objections to certificates of designation and the requisite specifications of the objections, the State Board of Elections is "empowered to make rules in reference to the filing and disposition of such petition, certificate, objections and specifications." (Election Law § 6-154[2]). The State Board of Elections promulgated a rule that "[n]o specifications of objections to any petition will be considered by the board unless the objector filing the specifications personally delivers or mails by registered or certified mail a

Court of personal jurisdiction over Cruz (*see Matter of Grimaldi v Board of Elections of the State of N.Y.*, 95 AD3d 1644, 1645-46 [3d Dept 2012]).

duplicate copy of the specification to each candidate for public office named on the petition" (9 NYCRR 6204.1[b]). "Failure to comply with the rules of the board has been held to be a fatal defect" that deprives an objector of standing (*Matter of Bennett v Justin*, 77 AD2d 960, 961 [3d Dept 1980], *affd* 51 NY2d 722 [1980]).

Petitioner did not file his objections to the certificates of designation in accordance with the rules of the State Board of Elections. While the State Board of Elections requires objectors to personally deliver or mail by registered or certified mail a duplicate copy of the specifications to each candidate, the petitioner used only "regular U.S. Mail" to send a copy of his "General and specific objection(s) and ballot access challenge" to respondents Cruz, Rubio, and Jindal (verified petition, exhibit A at 5). The petitioner's failure to satisfy the service requirements of 9 NYCRR 6204.1(b) invalidates his objections and deprives him of standing in this proceeding.

Additionally, this proceeding is untimely because petitioner commenced it more than fourteen days after the last day to file a certificate of designation (CPLR 3211[a][5]; Election Law § 16-102[2]). "A proceeding with respect to a petition shall be instituted within fourteen days after the last day to file the petition, or within three business days after the . . . board with . . . which such petition was filed, makes a determination of invalidity with respect to such petition, whichever is later" (Election Law § 16-102[2]). To be on the New York presidential primary ballot, candidates must file

a certificate of designation with “the state board of elections no sooner than twelve weeks and not later than nine weeks prior to the date of the presidential primary” (Election Law § 2-122-b[3][b]).

The New York 2016 presidential primary for the Republican Party was April 19, 2016; therefore, the last day to file a certificate of designation, pursuant to Election Law § 2-122-b(3)(b), was February 16, 2016. The petitioner commenced the proceeding by filing the verified petition with the Albany County Clerk’s Office on April 8, 2016, which was more than fourteen days after February 16, 2016 (*see* CPLR 304). Due to petitioner’s failure to commence this proceeding within the fourteen-day period after the last day to file a certificate of designation, this proceeding is time-barred (*see Matter of Scaringe v Ackerman*, 119 AD2d 327, 330 [3d Dept 1986], *affd for reasons stated below* 68 NY2d 885 [1986]).

Further, petitioner failed to join the State Board of Elections as a necessary party to this proceeding (CPLR 3211[a][10]; *see Matter of Dioguardi v Donohue*, 207 AD2d 922, 923 [3d Dept 1994]). The law is clear that failure to join necessary parties in a proceeding pursuant to the Election Law prior to the time prescribed for initiating such a proceeding requires dismissal of the petition” (*Matter of Castracan Colavita*, 173 AD2d 924, 926 [3d Dept 1991], *appeal dismissed* 78 NY2d 1041 [1991]). Petitioner is challenging the determination made by the New York State Board of Elections regarding his objections to the inclusion of respondents Cruz, Rubio, and Jindal on the 2016

presidential election ballot, but he has failed to join the State Board of Elections or any of its commissioners as a party in this proceeding. The State Board of Elections is a necessary party to this proceeding because certificates of designation and objections to those certificates are filed with the State Board of Elections, and it is responsible for certifying the names of candidates to the county boards of elections (Election Law §§ 4-112, 6-144, 6-154: see *Matter of Dioguardi*, 207 AD2d at 923). The Court cannot adjudicate this proceeding without the State Board of Elections as a party, and the petitioner can no longer join it as a party because the time prescribed for initiating this proceeding has passed, as discussed above.

Accordingly, this proceeding is dismissed on three independent procedural grounds: (1) petitioner lacked standing to bring the proceeding because he failed to properly serve the candidates with the specifications of his objections to their certificates of designation; (2) petitioner untimely commenced the proceeding on April 8, 2016, more than fourteen days after February 16, 2016, the last day to file a certificate of designation; and (3) petitioner failed to join as a necessary party, The State Board of Elections, which is responsible for certifying the candidates to the county boards of elections and receiving the certificates of designation and objections to those certificates.

Nonjusticiability

In any event, the proceeding is nonjusticiable. Respondents State of New York and Cruz assert that this proceeding is both moot and unripe. To the extent the proceeding challenges the placement of respondents' names on the April 19, 2016 New York Republican Party presidential primary ballot, it is moot. To the extent the proceeding challenges the potential placement of respondents' names on the November general election ballot, it is unripe.

The proceeding is moot to the extent it challenges the primary ballot because the primary has already occurred. "In order to warrant a determination of the merits of a cause of action, the party requesting relief must state a justiciable claim – one that is capable of review and redress by the courts at the time it is brought for review" (*Schulz v. Cuomo*, 133 AD3d 945, 947 [3d Dept 2015] [alterations and quotation marks omitted], *appeal dismissed* 26 NY3d 1139 [2016], *lv denied* 27 NY 3d 907 [2016]). The mootness doctrine "precludes courts from considering questions which, although once live, have become moot by passage of time or change in circumstances, . . . unless the rights of the parties will be directly affected by the determination of the appeal" (*Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714 [1980]).

Petitioner's challenge to the inclusion of respondents Cruz, Rubio, and Jindal on the 2016 New York Republican Party presidential primary ballot has become moot due to the passage of time because the primary

already occurred on April 19, 2016. Moreover, neither Rubio nor Jindal appeared on that primary ballot, and Cruz did not win the primary. The Court's determination in this proceeding cannot affect the results of the April 19, 2016 Republican Party presidential primary. Further, the exception to the mootness doctrine does not apply in this case because this is not the type of issue that would typically evade review (*see Matter of Hearst Corp.*, 50 NY2d at 714-715). The issue would not necessarily have evaded review if the petitioner had complied with the procedural requirements, and timely filed and served the petition when bringing this proceeding pursuant to Election Law, which would have allowed a Court to hear the case before the New York Republican Party presidential primary.

Additionally, the proceeding is unripe to the extent it challenges the general election ballot because neither Cruz, Rubio, nor Jindal have been placed on the ballot. Under the ripeness doctrine, “[w]here the harm sought to be enjoined is contingent upon events which may not come to pass, the claim to enjoin the purported hazard is nonjusticiable as wholly speculative and abstract” (*Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL CIO v Cuomo*, 64 NY2d 233, 240 [1984]). Therefore, “a claim based on art injury which might never occur should be dismissed” (*Church of St. Paul & St. Andrew v Barwick*, 67 NY2d 510, 518 [1986], *cert denied* 479 US 985 [1986]).

No certificate of party nomination has been filed that would place respondents Cruz, Rubio, or Jindal on

the ballot as placeholders for candidates for presidential electors (*see* Election Law § 6-158[6]; 7-104[3][a]). All three have suspended their campaigns for the Presidency in 2016. And it would be entirely speculative that any of them would seek to be placed on the ballot as an independent candidate. This proceeding is unripe since it is based on a scenario that may never occur.

Therefore, the proceeding must be dismissed as nonjusticiable because it is moot to the extent that it challenges the April 19, 2016 New York Republican Party presidential primary ballot and it is unripe to the extent that it challenges the November general election ballot. Accordingly, it is hereby

ORDERED that the State of New York's motion to dismiss and Cruz's request to dismiss are granted; it is further

ORDERED that this proceeding is dismissed in its entirety.

This constitutes the Decision and Judgment of the Court. The original Decision and Judgment is being transmitted to the Attorney General. All other papers are being transmitted to the County Clerk for filing. The signing of this Decision and Judgment does not constitute entry or filing under CPLR 2220 or 5016 and counsel is not relieved from the applicable provisions of those rules respecting filing and service.

Dated: Albany, New York
August 8, 2016

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/s/ Denise A. Hartman
Denise A. Hartman
Acting Supreme Court Justice

Papers Considered

1. Petitioner's Order to Show Cause, with Exhibits A-D
 2. Petitioner's Verified Petition
 3. Respondent State of New York's Notice of Motion
 4. Respondent State of New York's Affirmation, with Exhibits 1-3
 5. Respondent Cruz's Answer and Reply Memorandum of Law, with Exhibits 1-2
 6. Petitioner's Motion in Opposition
 7. Petitioner's Reply to Respondent Cruz's Answer and Reply Memorandum of Law
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App. 18

NEW YORK STATE | **Board of Elections**

40 NORTH PEARL STREET, SUITE 5
ALBANY, N.Y. 12207-2109
Phone: 518/474-8100 Fax: 518/486-4068
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Co-Chair

Douglas A. Kelner
Co-Chair

Gregory P. Peterson
Commissioner

Andrew J. Spano
Commissioner

Todd D. Valentine
Co-Executive Director

Robert A. Brehm
Co-Executive Director

February 23, 2016

STATE OF NEW YORK
STATE BOARD OF ELECTIONS

In the Matter of the objections
of ROBERT C. LAITY, to the
designating certificates of the
Republican Party purporting to
designate delegates for MARCO **DETERMINATION**
RUBIO, for TED CRUZ and for
PIYASH "BOBBY" JINDAL as
candidates for the office of of
President of the United States

After an examination of the objection of ROBERT
C. LAITY to the designating certificates of the Repub-
lican Party purporting to nominate delegates for

MARCO RUBIO, for TED CRUZ and for PIYASH “BOBBY” JINDAL as candidates for the office of President of the United States, and the matter having been considered by the Commissioners of the State Board of Elections on February 23, 2016, the State Board finds that the objection raises issues which are beyond the ministerial scope of the State Board to determine and such objection is made in the incorrect venue, as no direct election for President of the United States occurs via election day ballots. Rather, the April 19, 2016 Presidential Primary is the ballot access process which provides for the election of delegates to a national party convention or a national party conference in 2016. For the reasons cited herein, the objection is determined to be invalid and the designating certificate retains its presumption of validity.

| | |
|------------------------------|----------------------------|
| /s/ <u>Todd D. Valentine</u> | /s/ <u>Robert A. Brehm</u> |
| Todd D. Valentine | Robert A. Brehm |
| Co-Executive Director | Co-Executive Director |

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NEW YORK STATE | **Board of Elections**

40 NORTH PEARL STREET, SUITE 5
ALBANY, N.Y. 12207-2109
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<http://www.elections.ny.gov>

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Co-Chair

Douglas A. Kelner
Co-Chair

Gregory P. Peterson
Commissioner

Andrew J. Spano
Commissioner

Todd D. Valentine
Co-Executive Director

Robert A. Brehm
Co-Executive Director

February 23, 2016

STATE OF NEW YORK
STATE BOARD OF ELECTIONS

In the Matter of the objections
of ROBERT C. LAITY, to the
designating certificate of the
Republican Party purporting to
designate delegates for PIYASH
"BOBBY" JINDAL as candi- **DÉTERMINATION**
dates for the office of President
of the United States

After an examination of the specific objections of
ROBERT C. LAITY to the designating certificate of the
Republican Party purporting to nominate delegates for

PIYASH "BOBBY" JINDAL as a candidate for the office of President of the United States, and the matter having been considered by the Commissioners of the State Board of Elections on February 23, 2016, the State Board finds that the objection raises issues which are beyond the ministerial scope of the State Board to determine and such objection is made in the incorrect venue, as no direct election for President of the United States occurs via election day ballots. Rather, the April 19, 2016 Presidential Primary is the ballot access process which provides for the election of delegates to a national party convention or a national party conference in 2016. Furthermore, no designating certificate was filed with the New York State Board of Elections seeking ballot access for Mr. Jindal, rendering this objection moot. Additionally, no proof of service of the objection was provided as required by statute. For the reasons cited herein, the objection is determined to be invalid and the designating certificate retains its presumption of validity.

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| <u>/s/ Todd D. Valentine</u> | <u>/s/ Robert A. Brehm</u> |
| Todd D. Valentine | Robert A. Brehm |
| Co-Executive Director | Co-Executive Director |

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NEW YORK STATE | **Board of Elections**

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Gregory P. Peterson
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Commissioner

Todd D. Valentine
Co-Executive Director

Robert A. Brehm
Co-Executive Director

February 23, 2016

STATE OF NEW YORK
STATE BOARD OF ELECTIONS

In the Matter of the objections
of ROBERT C. LAITY, to the
designating certificates of the
Republican Party purporting to
designate delegates for TED
CRUZ and MARCO RUBIO as
candidates for the office of Pres-
ident of the the United States

DETERMINATION

After an examination of the specific objections of
ROBERT C. LAITY to the designating certificates of
the Republican Party purporting to nominate dele-
gates for TED CRUZ and for MARCO RUBIO as

candidates for the office of President of the United States, and the matter having been considered by the Commissioners of the State Board of Elections on February 23, 2016, the State Board finds that the objection raises issues which are beyond the ministerial scope of the State Board to determine and such objection is made in the incorrect venue, as no direct election for President of the United States occurs via election day ballots. Rather, the April 19, 2016 Presidential Primary is the ballot access process which provides for the election of delegates to a national party convention or a national party conference in 2016. Additionally, no proof of service of the objections was provided as required by statute. For the reasons cited herein, the objection is determined to be invalid and the designating certificate retains its presumption of validity,

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|------------------------------|----------------------------|
| /s/ <u>Todd D. Valentine</u> | /s/ <u>Robert A. Brehm</u> |
| Todd D. Valentine | Robert A. Brehm |
| Co-Executive Director | Co-Executive Director |

App. 24

***State of New York
Court of Appeals***

***Decided and Entered on the
twenty-first day of November, 2017***

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2017-946
In the Matter of Robert C. Laity,
Appellant,
v.
State of New York et al.,
Respondents,
et al.,
Respondents.

Appellant having appealed and moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeal is dismissed, without costs, upon the ground that no substantial constitutional question is directly involved; and it is further

ORDERED, that the motion for leave to appeal is denied.

/s/ John P. Asiello
John P. Asiello
Clerk of the Court

NEW YORK STATE
BOARD OF ELECTIONS

Robert C. Laity, Complainant

v.

GENERAL AND
SPECIFIC
OBJECTION(S) AND
BALLOT ACCESS
CHALLENGE

Case Docket # _____

New York State, Respondent;
Marco Rubio, Republican
Candidate for President of the
United States of America,
Co-Respondent; **Rafael “Ted”
Cruz**, Republican Candidate
for President of the United
States, Co-Respondent; and
Piyash “Bobby” Jindal,
Republican Candidate for
President of the United States,
Co-Respondent, (Campaign
“Suspended”).

Dated: January 26,
2016

THE BOARD:

Peter S. Kosinski, Co-Chair

Douglas A. Kellner, Co-Chair

Andrew J. Spano, Commissioner

Gregory P. Peterson, Commissioner

GENERAL OBJECTION(S) AND
SPECIFIC OBJECTION(S) AND
BALLOT ACCESS CHALLENGE

GENERAL OBJECTION(S):

AS TO THE LACK OF CONSTITUTIONAL BONA-FIDES AND THE INELIGIBILITY OF CORRESPONDENTS MARCO RUBIO, RAFAEL "TED" CRUZ AND PIYASH "BOBBY" JINDAL TO BE PRESIDENT OF THE UNITED STATES AND TO BE ON THE ELECTION BALLOT IN THE STATE OF NEW YORK

SPECIFIC OBJECTION(S)

Part of the New York State Board of Election's mission statement regards the "preservation of Citizen confidence in the Democratic process". With that in mind I wish to challenge the bona-fides of three Republican Candidates for the Office of President of the United States.

The Challenge also involves a Federal Question as to the meaning of "Natural Born Citizen" as mandated by Article II, Section 1, Clause 5 of the United States Constitution as it pertains to New York State's misapplication of that criteria in NY State's presidential elections process.

It is claimed that New York's State has MISREPRESENTED that requirement in a manner inconsistent with the United States Constitution, by erroneously using the term "Born a Citizen" as opposed to the

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actual requirement in Art. II.Sec.1,Clause 5, that a President must be a "Natural Born Citizen".

The term "Natural Born Citizen" has been legally defined, affirmed and re-affirmed by the United States Supreme Court in several cases. It is long established and settled that a "Natural Born Citizen" is one born in the United States of Parents who are both United States Citizens themselves. See: *Minor v. Happersett, USSCt. (1875), et al.*

To be a "Natural Born Citizen" one must **first**, be born **in** the United States (U.S. Jus Soli or "of the soil" of the U.S.) **and secondly**, be born of parents who are both U.S. Citizens (100% Jus Saquinis or "of the Blood" of Americans).

The term "Born a Citizen" is not tantamount to "Natural Born Citizen".

To be a born as a Citizen, one need only be born in the U.S. (Jus soli) **or** have at least one U.S. Parent (50% Jus Sanquinis).

To be a "Natural Born Citizen" one **must be** born in the U.S. (U.S. Jus soli) **in addition to** being born to parents who are both U.S. Citizens themselves (100% Jus Sanquinis). Neither of the three aforementioned Republican candidates for the Office of President of the United States meets this Constitutional and mandatory eligibility criteria and therefore are ineligible to be included on the Official Presidential Election Ballot in the State of New York or any other State for that matter.

Marco Rubio, while being born in the United States was born to Parents neither of whom were citizens of the United States at the time of his birth. Marco Rubio's parents were still Cuban Citizens.

Rafael "Ted" Cruz was not born in the United States but in Calgary, Alberta, Canada and his parents were not both U.S. Citizens when he was born. Cruz's father was Cuban.

Piyash "Bobby" Jindal is also ineligible. Both his parents were citizens of India when he was born. The three co-respondents do **NOT** meet the long settled legal definition of "Natural Born Citizen" established, affirmed and reaffirmed by the United States Supreme Court as one born in the United States to Parents who are both U.S. Citizens themselves. *Minor v. Happersett, USSCt. (1875) et al.*

CONCLUSION

For the foregoing reasons, the failure of the State of New York to **exclude** Marco Rubio, Rafael "Ted" Cruz and Piyash "Bobby" Jindal from the New York State Presidential Elections ballot for 2016 would be in derogation of the U.S. Constitution and State and Federal Laws.

Respectfully Submitted,

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