

State of New York

Court of Appeals

***Decided and Entered on the
nineteenth day of May, 2026***

Present, Hon. Rowan D. Wilson, *Chief Judge, presiding.*

Mo. No. 2026-354

In the Matter of Nickie Kane,

Appellant,

v.

Brad Lander, et al.,

Respondents.

(APL-2026-00062)

(App. Div. No. 2026-02422)

Appellant having appealed and moved for leave to appeal to the Court of Appeals from the portion of the Appellate Division order that resolved the appeal from the Supreme Court judgment dated April 28, 2026 and for financial relief 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; and it is further

ORDERED, that the motion for financial relief is dismissed as academic.



Heather Davis
Clerk of the Court

State of New York

Court of Appeals

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nineteenth day of May, 2026***

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(App. Div. No. 2026-02537)

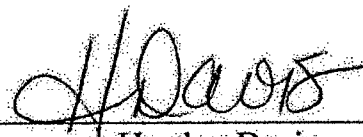
Appellant having appealed and moved for leave to appeal to the Court of Appeals from the portion of the Appellate Division order that resolved the appeal from the Supreme Court order dated April 30, 2026 and for financial relief in the above cause;

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 such portion of the order appealed from does not finally determine the proceeding within the meaning of the Constitution; and it is further

ORDERED, that the motion for leave to appeal is dismissed upon the ground that such portion of the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution; and it is further

ORDERED, that the motion for financial relief is dismissed as academic.



Heather Davis
Clerk of the Court

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

-----X

NICKIE KANE,

Petitioner-Candidate-Aggrieved,

- v -

BRAD LANDER,

Respondent-Candidate

-and-

BOARD OF ELECTIONS IN CITY OF NEW YORK,

Respondent-Board.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 12, 13, 14, 16, 17, 18, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for

ELECTION LAW - INVALIDATE PETITION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 12, 13, 14, 16, 17, 18, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for

ELECTION LAW - INVALIDATE PETITION

Upon the foregoing documents and oral arguments on the record on April 24, 2026, the petition is denied and dismissed.

In this special proceeding pursuant to Election Law §§ 16-100, 16-102, and 160-16, petitioner aggrieved candidate Nickie Kane seeks to invalidate the designating petition filed by respondent candidate Brad Lander 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.

Election Law § 16-116 provides that a special proceeding commenced pursuant to Article 16 must be heard “upon such notice to such officers, persons or committees as the court or justice shall direct” (see e.g. *Angletti v Morreale*, 25 NY3d 794, 797 [2015]; *Matter of Stark v Williams*, 216 AD3d 859, 861 [2d Dept 2023]). Longstanding appellate precedent consequently holds that, in any proceeding pursuant to Election Law § 16-102, “[t]he method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with” (*Matter of Stark v Williams*, 216 AD3d at 861, quoting *Matter of Hennessey v DiCarlo*, 21 AD3d 505, 505 [2d Dept 2005], *lv denied* 5 NY3d 706 [2005]; see *Sorli v Coveney*, 51 NY2d 713 [1980]; *Matter of O’Daniel v Hayduk*, 59 AD2d 706, 707 [2d Dept 1977], *affd* 42 NY2d 1062 [1977]; *Matter of Bruno v Ackerson*, 51 AD2d 1051 [2d Dept 1976], *affd* 39 NY2d 718 [1976]; *Matter of Felder v Tischler*, 208 AD3d 1288, 1289 [2d Dept 2022]; see also *Bacon v Nygard*, 232 AD3d 407 [1st Dept 2024] [same legal principle in non-Election Law setting]).

Petitioner bears the burden of establishing, by a preponderance of the evidence, that proper service was effected and that personal jurisdiction was thereby obtained over the respondent (see *Stewart v Volkswagen of America, Inc.*, 81 NY2d 203, 207 [1993]; *Siri Med. Assocs., PLLC v Paradise Court Mgt. Corp.*, 158 AD3d 516 [1st Dept 2018]; *Ragusa v Board of Elections*, 42 Misc3d 1231[A] [Sup Ct, Queens County 2014]).

Here, the order to show cause that the Court signed on April 20, 2026 provided, in relevant part, that:

service of a copy of this Order to Show Cause and Verified Petition, *together with the papers upon which it is granted*, shall be made by Petitioner upon: respondent Board of Elections ... by personal delivery upon the person designated by the Board to receive such service at 32 Broadway, New York, New York, on or before April 21, 2026, and ... upon Respondent-Candidate Brad Lander by ...

- (a) enclosing the same in a securely sealed and duly postpaid wrapper addressed to such Respondent-Candidate at the address set forth in the designating petition and by mailing/sending the same by overnight USPS delivery, UPS, FedEx or any other recognized overnight, next business day courier with no receiving signature required on or before Tuesday, April 21, 2026; or
- (b) by affixing the same to the inside or outside of the door of the address set forth in said designating petition and by enclosing the same in a securely sealed and duly postpaid wrapper addressed to such Respondent-Candidate at the address set forth in said designating petition and by mailing/sending the same by overnight USPS delivery, UPS, FedEx or any other recognized overnight, next business day courier on or before Tuesday, April 21, 2026, with no receiving signature required;
- (c) by personal delivery of same to such Respondent-Candidate on or before Tuesday, April 21, 2026 [NYSCEF Doc. No. 10 (emphasis added)].

The fourth affirmative defense raised in Lander's verified answer asserts lack of personal jurisdiction due to improper service, in that "[t]he purported service in this matter did not comply with this Court's Order to Show Cause because it did not include all the 'papers upon which it was granted'" (NYSCEF Doc. No. 20, ¶¶ 11-12). Specifically, the answer stated that: "[t]he documents purportedly served via 'Nail and Mail' on Respondent-Candidate BRAD LANDER contained *only* the Order to Show Cause, Petition, and Notice of Electronic filing. The purported service *did not contain* the Exhibits to the Petition, RJI, Emergency Affirmation, Proposed OSC, Application for Waiver of Court Costs/Fees/Expenses, or any other of the 'papers upon which [the OSC] was granted' as required by this Court's Order to Show Cause at Page 4" (*id.* ¶ 15 [emphasis in original]). The answer continued: "Given that Petitioner's sole purported claim here is that she emailed Respondent-Candidate-BRAD LANDER about purported issues with his petitioning team, Exhibit A 'E-Mail to Brad Lander' (NYSCEF Doc. No. 4)

is indisputably among the 'papers upon which [the OSC] was granted'" (NYSCEF Doc. No. 20, ¶ 17).

At the return date hearing of the order to show cause, counsel for Lander produced the documents that purportedly had been served on the co-respondents and noted that copies of the supporting exhibits were not included with copies of the petition and order to show cause that the Court had signed on April 20, 2026. Kane admitted that she had not, in fact, included copies of the exhibits with copies of the petition and order that she had prepared for service. That omission contradicts the Court's instruction that Kane serve the co-respondents with copies of the order to show cause "together with the papers upon which it is granted" (NYSCEF Doc. No. 10). As previously noted, a petitioner's failure to strictly comply with the method of service specified in an order to show cause constitutes a jurisdictional defect that mandates the dismissal of a petition to invalidate (*see Stark*, 216 AD3d at 861; *Ruine v Hines*, 57 AD3d 369, 370 [1st Dept 2008] [the petitioner's service did not comply with the order to show cause where incomplete papers were served]).

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.

<u>4/28/2026</u>			
DATE		MATTHEW V. GRIECO, J.S.C.	
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☐ GRANTED ☒ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE

**SUPREME COURT OF THE STATE OF NEW
YORK NEW YORK COUNTY**

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

-----X

NICKIE KANE,

Petitioner,

- v -

BRAD LANDER, BOARD OF ELECTIONS IN CITY OF NEW
YORK,

Respondents.

-----X

INDEX NO. 451585/2026

MOTION DATE 04/28/2026

MOTION SEQ.
NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 36, 37, 38
were read on this motion to/for REARGUMENT/RECONSIDERATION

Upon the foregoing documents, petitioner's motion for leave to reargue and
renew is denied.

On April 28, 2026, this Court denied and dismissed (NYSCEF Doc. No. 35)
petitioner's petition to invalidate the designating petition filed by respondent candidate
Brad Lander 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. This Court held that petitioner had failed to serve respondent candidate
Lander with the papers upon which the Order to Show Cause ("OSC") was granted, as
specified in the OSC (*id.*).

On April 28, 2026, petitioner moved to reargue and renew the Court's
determination pursuant to CPLR 2221(d) and (e) (NYSCEF Doc. No. 38). Petitioner has
not identified matters of fact or law that were overlooked or misapprehended by the
Court, nor has she offered new facts that would change this Court's prior determination.

Accordingly, it is

ORDERED that petitioner's motion for leave to reargue and renew is denied; and
it is further

ORDERED that, within 30 days from entry of this order, respondent candidate 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 above 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 and order of the Court.

<u>4/30/2026</u> DATE		 MATTHEW V. GRIECO, J.S.C.	
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☐ GRANTED	☒ DENIED	☐ GRANTED IN PART
APPLICATION:	☐ SETTLE ORDER		☐ OTHER
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ SUBMIT ORDER	
		☐ FIDUCIARY APPOINTMENT	☐ REFERENCE

**Additional material
from this filing is
available in the
Clerk's Office.**