

On March 18 the legislature passed and the Governor signed Chapter 24 of Laws of 2020 (S.8058) setting March 20, 2020 as the last day to file designating petitions for the June 23, 2020 primary. Chapter 24 further provided that “the last day to commence an election law article 16 proceeding shall be adjusted accordingly.” Thus pursuant to Election Law § 16-102 which expressly provides that the last day to file a ballot access challenge is “within fourteen days after the last day to file the petition,” the deadline to commence a proceeding to challenge a designating petition is April 3, 2020.

On March 22, two days after EO 202.8 was issued by the Governor tolling procedural provisions, the Chief Judge issued an order clarifying the courts are open for the filing of “emergency Election Law applications.”

As a matter of law, election law ballot access proceedings “have preference over all other causes in all courts.” See Election Law § 16-116. In our opinion, the tolling provisions of Executive Order 202.8 do not apply to Chapter 24 of the Laws of 2020 adopted **two days** before the Executive Order was issued. The provisions of Election Law § 16-102 providing for invalidation proceeding are the sole basis for Supreme Court’s subject matter jurisdiction in such matters (*Matter of NYS Committee of Independence Party v NYS Board of Elections*, 87 AD 3d 806, 809 (3d Dept 2011), and Executive Order 202.8 does not evidence any intent to alter or waive the application of Election Law § 16-102.

This interpretation is consistent with the Governor’s Executive Orders and the Legislative enactment of Chapter 24 of the Laws of 2020. To place New York on pause, the end of petitioning and the filing of petitions and objections was truncated, not elongated. Now more than ever in order for the June 23, 2020 primary election to proceed in an orderly manner, there must be a ballot that is not delayed and the process getting us to a ballot cannot be shrouded in ambiguity. The necessity to quickly resolve ballot access challenges so the ballot can be printed, tested on machines and deployed to the citizenry is heightened by COVID-19 which places new and mounting administrative challenges on boards of elections as they work to advance the mechanics of our electoral democracy.