

Judicial Relief from a Tight Ballot-Petition Signature Schedule

Sharpe v. Como

(*Nicholas G. Garaufis, E.D.N.Y. 1:07-cv-1521*)

Because the winner of a special election to fill a city-council vacancy did not establish residency in the council district until after the election, the victor declined the victory and the mayor quickly scheduled a new special election, with the ballot-petition signature-collection period to begin immediately. Two prospective candidates filed a federal complaint alleging that they did not have enough notice and time to collect sufficient signatures. The district judge granted relief to one of the plaintiffs, who had collected the greater number of signatures and who had qualified for the first special election.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; case assignment; intervention.

Following unsuccessful efforts in state court,¹ two prospective candidates for an April 24, 2007, special election to fill a vacancy in New York's city council filed a federal complaint in the Eastern District of New York on April 12 seeking an injunction putting them both on the ballot.² Of the 1,002 petition signatures required for ballot qualification, Wellington Sharpe had 832 valid signatures and Maria Gina Faustin had 391.³

A special election had already been held on February 20, but circumstances suggested that the victor, Mathieu Eugene, did not live in the council district on the day of election, so he declined the post and, on March 8, publicly called for another special election.⁴ On the following day, the mayor declared that a second special election would be held on April 24, and candidates had from Friday, March 9, until Wednesday, March 21, to acquire ballot-petition signatures.⁵ A harsh winter storm, strong enough to close schools, hit the region on Friday, March 16.⁶

On the day that the complaint was filed, Judge Brian M. Cogan set the case for hearing before Judge Nicholas G. Garaufis on April 18.⁷ When an assigned

1. See Rachel Monahan, *Pol Position OK on New Ballot, Sez Judge*, N.Y. Daily News, Apr. 13, 2007, at 4.

2. Complaint, *Sharpe v. Como*, No. 1:07-cv-1521 (E.D.N.Y. Apr. 12, 2007), D.E. 1; Opinion at 1, *id.* (Apr. 19, 2007), D.E. 7, 2007 WL 1175221.

3. Opinion, *supra* note 2, at 5 & n.3; see Frank Lombardi, *Only Two Make Grade for Special Elex Ballot*, N.Y. Daily News, Apr. 12, 2007, at 1.

4. Opinion, *supra* note 2, at 2–3.

5. *Id.* at 3–4.

6. *Id.* at 4–5.

7. Order to Show Cause, *Sharpe*, No. 1:07-cv-1521 (E.D.N.Y. Apr. 12, 2007), D.E. 3; Opinion, *supra* note 2, at 6.

Tim Reagan interviewed Judge Garaufis for this report by telephone on October 14, 2015.

judge was unavailable at the time an emergency case was filed, the judge on miscellaneous duty handled the case until the assigned judge was available.⁸

In open court, Judge Garaufis granted Eugene's motion to intervene.⁹ On April 19, following a second day of hearing, Judge Garaufis ordered Sharpe added to the ballot, but not Faustin.¹⁰

Because Eugene controlled when he would decline the post and call for a second special election, his "manipulation gave him a head start against his would-be rivals" in setting in motion a petition drive.¹¹ Because of preparations required to launch a petition drive, and because of the winter storm, "both Sharpe and Faustin found it difficult or impossible to collect signatures on either of the two weekends that fell within the petitioning period."¹² Sharpe finished third in the first special election, and the second-place finisher did not run the second time, "suggesting that Sharpe will be an especially viable candidate in the Second Special Election."¹³ Judge Garaufis determined that the injury to first-time candidate Faustin was less.¹⁴

This decision is limited to the specific facts before me and should be read narrowly. What makes this case unique, and what compels me to order that Sharpe's name be added to the ballot, is that the Second Special Election became necessary because of the conduct of someone who intended to run in it, namely Matheiu Eugene.¹⁵

Eugene won the election, and Sharpe again placed third.¹⁶

Judge Garaufis signed a stipulated dismissal of the case on June 11, 2007.¹⁷

8. Interview with Hon. Nicholas G. Garaufis, Oct. 14, 2015.

9. Opinion, *supra* note 2, at 6.

10. *Id.* at 1, 6, 12–13; see John Marzulli, *Judge Lets Sharpe Be 3rd Man in 2nd Council Vote*, N.Y. Daily News, Apr. 20, 2007, at 75.

11. Opinion, *supra* note 2, at 12.

12. *Id.* at 5.

13. *Id.* at 10.

14. *Id.*

15. *Id.* at 12.

16. See Jonathan P. Hicks, *Haitian-Born Candidate Wins Again in Brooklyn*, N.Y. Times, Apr. 25, 2007, at B2; Frank Lombardi, *Déjà vu for Winner of Council Race*, N.Y. Daily News, Apr. 25, 2007, at 2.

17. Stipulated Dismissal, *Sharpe v. Como*, No. 1:07-cv-1521 (E.D.N.Y. June 11, 2007, filed July 12, 2007), D.E. 10.