

## Pro Se Challenge to a Slate's Ballot Exclusion

*Sloan v. Kellner*

*(Mae A. D'Agostino, N.D.N.Y. 1:14-cv-1071)*

The district court denied an injunction putting plaintiffs on a primary-election ballot on the merits and because of issue preclusion.

*Subject:* Getting on the ballot. *Topics:* Getting on the ballot; matters for state courts; pro se party; primary election; interlocutory appeal.

A pro se federal complaint filed on August 29, 2014, in the Northern District of New York challenged the exclusion of four of the nine plaintiffs from the September 9 Democratic primary election for governor, lieutenant governor, comptroller, and attorney general.<sup>1</sup> Judge Mae A. D'Agostino issued an order on September 2 that defendants show cause by September 5 why the candidate plaintiffs should not be on the ballot.<sup>2</sup>

The federal complaint followed unsuccessful efforts in state court to overcome exclusion from the ballot for insufficient ballot-petition signatures.<sup>3</sup> Following submissions by the defendants, Judge D'Agostino denied the plaintiffs a preliminary injunction: (1) according to the *Rooker-Feldman* doctrine, among federal courts only the Supreme Court has appellate jurisdiction over state-court proceedings; (2) the action was barred by issue preclusion; and (3) the complaint failed on the merits.<sup>4</sup>

On March 24, 2015, the court of appeals dismissed an interlocutory appeal as moot.<sup>5</sup> On November 16, Magistrate Judge Christian F. Hummel recommended dismissal of the action for failure to serve the defendants.<sup>6</sup> Judge D'Agostino adopted that recommendation on December 14.<sup>7</sup>

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1. Complaint, *Sloan v. Kellner*, No. 1:14-cv-1071 (N.D.N.Y. Aug. 29, 2014), D.E. 1.

2. Order, *id.* (Sept. 2, 2014), D.E. 6.

3. Opinion, *id.* (Sept. 8, 2014), D.E. 10.

4. *Id.*; see D.C. Ct. of App. v. Feldman, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); see also Martin A. Schwartz, Section 1983 Litigation 21–24 (Federal Judicial Center 3d ed. 2014).

5. Order, *Sloan v. N.Y. State Bd. of Elections*, No. 14-3342 (2d Cir. Mar. 24, 2015), D.E. 128.

6. Order, *Sloan*, No. 1:14-cv-1071 (N.D.N.Y. Nov. 16, 2015), D.E. 21.

7. Order, *id.* (Dec. 14, 2015), D.E. 26.