

## **Unsuccessful Federal Actions to Achieve Different Results from Unsuccessful State-Court Efforts to Get on a Ballot**

*Ramratan v. New York City Board of Elections* (Nicholas G. Garaufis and Dora L. Irizarry, 1:06-cv-4770), *Bert v. New York City Board of Elections* (Charles P. Sifton, 1:06-cv-4789), *Brown v. Board of Elections* (Kiyo A. Matsumoto, 1:08-cv-3512), *Fischer v. Suffolk County Board of Elections* (Joanna Seybert, 2:08-cv-4171), *Minnus v. Board of Elections* (Sandra L. Townes, 1:10-cv-3918), *Fischer v. NYS Board of Elections* (Joanna Seybert, 2:12-cv-5397), and *Pidot v. New York State Board of Elections* (Joseph F. Bianco, 2:16-cv-3527) (E.D.N.Y.) and *Williams-Bey v. Commissioners of Elections* (Katherine B. Forrest, 1:12-cv-3836), *Thomas v. New York City Board of Elections* (Shira A. Scheindlin, 1:12-cv-4223), and *Moore v. McFadden* (Edgardo Ramos, 1:14-cv-6643) (S.D.N.Y.)

In ten cases, district judges denied relief contrary to state-court results to prospective candidates in the Eastern District of New York in 2006, 2008, 2010, 2012, and 2016 and in the Southern District of New York in 2012 and 2014.

*Subject:* Getting on the ballot. *Topics:* Getting on the ballot; matters for state courts; primary election; pro se party; case assignment; laches; recusal.

In ten cases, federal district judges in New York denied relief to prospective candidates contrary to state-court results. The tenth case found a second life in another district, but the court of appeals ordered the case dismissed.

### **Eastern District of New York**

#### *2006: State Assembly and State Party Committee*

A federal complaint filed in the Eastern District of New York on August 31, 2006, sought an injunction putting on the September 12 Democratic primary-election ballot a candidate for state assembly and a candidate for female member of the party's state committee.<sup>1</sup> A suit in state court to achieve the same end was unsuccessful, pursuant to an August 22 decision by the su-

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1. Complaint, *Ramratan v. N.Y. City Bd. of Elections*, No. 1:06-cv-4770 (E.D.N.Y. Aug. 31, 2006), D.E. 1.

preme court's appellate division.<sup>2</sup> The federal court assigned the federal case to Judge Edward R. Korman as related to a case filed on July 27 challenging New York's requirement that witnesses to primary-election ballot-petition signatures be members of the party.<sup>3</sup> Because Judge Korman determined that the two cases were not sufficiently related to each other to require assignment to the same judge, the court reassigned the new case to Judge Nicholas G. Garaufis.<sup>4</sup>

On September 7, Judge Garaufis denied the plaintiffs a preliminary injunction, finding "extensive support" for the state court's conclusion that the prospective candidates' petition drives were "permeated with fraud."<sup>5</sup> On September 8, Judge Garaufis again denied the plaintiffs a preliminary injunction sought by a motion and an amended complaint filed that day.<sup>6</sup> On September 11, the plaintiffs filed a motion for reconsideration,<sup>7</sup> which Judge Dora L. Irizarry denied,<sup>8</sup> ruling in place of Judge Garaufis because of his unavailability and the time-sensitive nature of the motion.<sup>9</sup> Judge Garaufis signed a stipulated dismissal on October 17.<sup>10</sup>

#### *2006: State Senate*

Nine voters filed a federal complaint against New York City's elections board on September 1 seeking to place their preferred candidate on the primary-election ballot for state senate.<sup>11</sup> The court assigned the case to Judge Charles P. Sifton.<sup>12</sup> He was unavailable, and Judge Eric N. Vitaliano was on two-week miscellaneous duty, so Judge Vitaliano set the case for hearing before Judge Sifton on September 6.<sup>13</sup> On September 7, Judge Sifton denied the voters a preliminary injunction.<sup>14</sup>

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2. *Butler v. Duvalle*, 32 A.D.3d 514, 819 N.Y.S.2d 670 (N.Y. App. Div. 2006); see Opinion at 1–2, *Ramratan*, No. 1:06-cv-4770 (E.D.N.Y. Sept. 7, 2006), D.E. 8 [hereinafter *Ramratan* Opinion], 2006 WL 2583742.

3. Notice, *Ramratan*, No. 1:06-cv-4770 (E.D.N.Y. Aug. 31, 2006), D.E. 2; see Docket Sheet, *Maslow v. Wilson*, No. 1:06-cv-3683 (E.D.N.Y. July 27, 2006).

4. Docket Sheet, *Ramratan*, No. 1:06-cv-4770 (E.D.N.Y. Aug. 31, 2006).

5. *Ramratan* Opinion, *supra* note 2, at 5.

6. Order, *Ramratan*, No. 1:06-cv-4770 (E.D.N.Y. Sept. 8, 2006), D.E. 15; see Motion, *id.* (Sept. 8, 2006), D.E. 13, 14; Amended Complaint, *id.* (Sept. 8, 2006), D.E. 12.

7. Motion, *id.* (Sept. 11, 2006), D.E. 17.

8. Order, *id.* (Sept. 11, 2006), D.E. 20, 2006 WL 2614256.

9. *Id.* at 1 n.1.

10. Stipulated Dismissal, *id.* (Oct. 31, 2006), D.E. 22.

11. Complaint, *Bert v. N.Y. City Bd. of Elections*, No. 1:06-cv-4789 (E.D.N.Y. Sept. 1, 2006), D.E. 1.

12. Docket Sheet, *id.* (Sept. 1, 2006).

Judge Sifton died on November 9, 2009. Federal Judicial Center Biographical Directory of Article III Federal Judges [FJC Biographical Directory], [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

13. Order to Show Cause, *Bert*, No. 1:06-cv-4789 (E.D.N.Y. Sept. 1, 2006), D.E. 6; see Minutes, *id.* (Sept. 6, 2006), D.E. 11; Interview with Hon. Eric N. Vitaliano, Sept. 23, 2015.

Tim Reagan interviewed Judge Vitaliano for this report by telephone.

14. Opinion, *Bert*, No. 1:06-cv-4789 (E.D.N.Y. Sept. 7, 2006), D.E. 7, 2006 WL 2583741.

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The plaintiffs alleged that a proper hearing would result in the recertification of enough signatures to qualify their candidate for the ballot.<sup>15</sup> First, “Plaintiffs fail . . . to specify even now which signatures they propose to validate or why the Board was wrong in invalidating the signatures. . . . This Court cannot be expected to issue a preliminary injunction on mere conclusory statements by movants.”<sup>16</sup> Second, “there is reason to conclude that the plaintiffs are merely acting as the pawns of the candidate in order to give him a second bite at the apple in federal court. . . . [I]t seems likely that res judicata would bar plaintiffs’ claims if this case were to be heard on the merits.”<sup>17</sup> Third, “Whatever injury has been suffered as a result of any erroneous decision by the Board of Elections could not conceivably be remedied in the few days remaining before the election.”<sup>18</sup> The plaintiffs did not bring the federal action until more than three weeks after their candidate lost his case in state court.<sup>19</sup> Judge Sifton signed a stipulated dismissal on November 13, 2007.<sup>20</sup>

*2008: Congress*

On August 27, 2008, eleven voters filed a federal complaint seeking an injunction placing their candidate for Congress on the September 9 Democratic Party primary-election ballot.<sup>21</sup> Judge Kiyoo A. Matsumoto set the case for hearing on September 5, the Friday after Labor Day.<sup>22</sup>

Judge Matsumoto granted the plaintiffs an extension of five hours for service on the defendants, granted the defendants an additional day to respond, and reset the hearing for one hour later.<sup>23</sup> Finding no deprivation of federal rights in the candidate’s state-court efforts to reverse invalidation of ballot-petition signatures, Judge Matsumoto issued an opinion on September 8 denying the plaintiffs immediate relief.<sup>24</sup> Following a September 26 status conference,<sup>25</sup> Judge Matsumoto signed a stipulated dismissal of the case on September 29.<sup>26</sup>

*2008: State Senate*

A prospective candidate for state senate filed a pro se federal complaint on October 14, 2008, seeking an injunction putting him on the November 4 ballot as the Democratic Party’s nominee.<sup>27</sup> The court assigned the case to Judge

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15. *Id.* at 6.

16. *Id.* at 6, 10.

17. *Id.* at 15.

18. *Id.* at 9.

19. *Id.* at 8–9.

20. Stipulated Dismissal, *id.* (Nov. 14, 2007), D.E. 14.

21. Complaint, *Brown v. Bd. of Elections*, No. 1:08-cv-3512 (E.D.N.Y. Aug. 27, 2008), D.E. 1.

22. Order to Show Cause, *id.* (Aug. 28, 2008), D.E. 2; *see* Transcript, *id.* (Sept. 5, 2008, filed Sept. 30, 2008), D.E. 15.

23. Opinion at 2–4, *id.* (Sept. 8, 2008), D.E. 9.

24. *Id.* at 31.

25. Transcript, *id.* (Sept. 26, 2008, filed Oct. 1, 2008), D.E. 16.

26. Stipulated Dismissal, *id.* (Sept. 29, 2008), D.E. 14.

27. Complaint, *Fischer v. Suffolk Cty. Bd. of Elections*, No. 2:08-cv-4171 (E.D.N.Y. Oct.

Joanna Seybert as related to three previous pro se actions by the same plaintiff.<sup>28</sup>

Judge Seybert heard the case on October 23<sup>29</sup> and denied immediate relief on October 27.<sup>30</sup> Although the appellate division of New York's supreme court had affirmed, on October 16, a decision that the plaintiff had not submitted enough valid ballot-petition signatures,<sup>31</sup> the plaintiff argued that "the electorate wants a democratic candidate."<sup>32</sup> Judge Seybert determined that the federal action was barred by res judicata and the *Rooker-Feldman* doctrine, which states that among federal courts only the Supreme Court has appellate jurisdiction over state-court proceedings, because the federal case followed an unsuccessful similar action in state court.<sup>33</sup> Judge Seybert dismissed

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14, 2008), D.E. 1.

28. Notice, *id.* (Oct. 14, 2008), D.E. 5.

An October 31, 2007, complaint "alleges that Defendants have been using Plaintiff's software without obtaining a license for its use." Opinion at 2, *Fischer v. Talco Trucking, Inc.*, No. 2:07-cv-4564 (E.D.N.Y. Sept. 24, 2008), D.E. 1, 2008 WL 4415280; Second Amended Complaint, *id.* (June 29, 2009), D.E. 42; First Amended Complaint, *id.* (Nov. 15, 2007), D.E. 4; Complaint, *id.* (Oct. 31, 2007), D.E. 1. Judge Seybert dismissed the case on December 21, 2009. Opinion, *id.* (Dec. 21, 2009), D.E. 47, 2009 WL 5066902; Opinion, *id.* (Jan. 27, 2010), D.E. 50, 2010 WL 409104 (denying reconsideration).

A November 21, 2007, notice of removal attempted to remove actions pending in Wyoming's state court involving a dispute over children of the plaintiff and the defendant. Amended Complaint, *Fischer v. Clark*, No. 2:07-cv-4871 (E.D.N.Y. Nov. 26, 2007), D.E. 2; Notice of Removal, *id.* (Nov. 21, 2007), D.E. 1. Judge Seybert dismissed the case on December 7 for lack of jurisdiction over a case removed from another state. Order, *id.* (Dec. 7, 2007), D.E. 5, 2007 WL 4327872. The plaintiff filed an original federal action on September 16, 2008, challenging removal of his children from New York to Wyoming by their mother. Complaint, *Fischer v. Clark*, No. 2:08-cv-3807 (E.D.N.Y. Sept. 16, 2008), D.E. 1; *see* Notice, *id.* (Oct. 15, 2008), D.E. 8 (assigning the case to Judge Seybert as related to the previous two pro se actions by the same defendant). On July 14, 2010, Judge Seybert dismissed the case. Order, *id.* (July 14, 2010), D.E. 22 (dismissing the case for failure to file an amended complaint); Opinion, *id.* (Sept. 24, 2009), D.E. 17, 2009 WL 3063313 (dismissing the case for lack of jurisdiction, but allowing amendment of the complaint).

29. Transcript, *Fischer*, No. 2:08-cv-4171 (E.D.N.Y. Oct. 23, 2008, filed Nov. 13, 2012), D.E. 33 [hereinafter *Fischer* Transcript]; Minutes, *id.* (Oct. 23, 2008), D.E. 17.

30. Opinion, *id.* (Oct. 27, 2008), D.E. 21 [hereinafter Oct. 27, 2008, *Fischer* Opinion], 2008 WL 4865941.

31. *Id.* at 3; *see* Rick Brand, *A First: LaValle Runs Unopposed*, *Newsday*, Oct. 12, 2008, at G5; Zachary Dowdy, *LaValle Challenger Seeks Ways to Fight On*, *Newsday*, July 30, 2008, at A24 ("Fischer had amassed 1,475 signatures in his effort to challenge the eight-term incumbent, but the Board of Elections ruled out 620 of them, leaving him 145 signatures short of qualifying for the ballot.").

32. *Fischer* Transcript, *supra* note 29, at 16.

33. Oct. 27, 2008, *Fischer* Opinion, *supra* note 30, at 6–10, *aff'd*, Order, *Fischer v. Suffolk Cty. Bd. of Elections*, No. 08-5329 (2d Cir. Nov. 3, 2008), *filed as* Order, *Fischer*, No. 2:08-cv-4171 (E.D.N.Y. Dec. 9, 2008), D.E. 29; Opinion, *Fischer*, No. 2:08-cv-4171 (E.D.N.Y. Oct. 31, 2008), D.E. 24 (denying reconsideration); *see* D.C. Ct. of Appeals 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).

the case on August 14, 2009.<sup>34</sup>

*2010: District Leader*

An incumbent female district leader and four other voters filed a federal complaint on August 25, 2010, seeking an injunction placing the incumbent on the September 14 primary-election ballot.<sup>35</sup> Judge Sandra L. Townes set the case for hearing on September 2.<sup>36</sup> On September 3, Judge Townes denied the plaintiffs immediate relief.<sup>37</sup> She noted, “The complaint is completely devoid of factual contentions and evidentiary support.”<sup>38</sup> Moreover, the plaintiffs challenged the constitutionality of state statutes without showing proper notice to the state’s attorney general.<sup>39</sup> A previous state-court proceeding challenging the incumbent’s removal from the ballot for failure to include the word “female” in the position title on ballot-petition papers was dismissed because neither the incumbent nor a qualified attorney appeared at court.<sup>40</sup>

On December 13, Judge Townes presided over a proceeding at which the incumbent’s attorney acknowledged that the plaintiffs no longer had a case, and he asked for a dismissal.<sup>41</sup> The attorney requested the proceeding so that the incumbent could address the court.<sup>42</sup>

*2012: Power Authority*

The prospective 2008 senate candidate filed another pro se federal complaint on October 26, 2012, with two other pro se plaintiffs, seeking an injunction putting them on the ballot for Long Island Power Authority trustee.<sup>43</sup> Assigned the case as related to the previous cases filed by the first plaintiff,<sup>44</sup> Judge Seybert set the case for hearing on November 1.<sup>45</sup> On October 31, she heard the plaintiffs ex parte, but denied them immediate relief, and reset the

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34. Opinion, *Fischer*, No. 2:08-cv-4171 (E.D.N.Y. Aug. 14, 2009), D.E. 30, 2009 WL 2524859.

35. Complaint, *Minnus v. Bd. of Elections*, No. 1:10-cv-3918 (E.D.N.Y. Aug. 25, 2010), D.E. 1.

36. Order to Show Cause, *id.* (Aug. 26, 2010, filed Aug. 30, 2010), D.E. 4.

Judge Townes died on February 8, 2018. FJC Biographical Directory, *supra* note 12.

37. Opinion, *Minnus*, No. 1:10-cv-3918 (E.D.N.Y. Aug. 26, 2010, filed Sept. 3, 2010), D.E. 9, 2010 WL 3528544.

38. *Id.* at 2 n.2.

39. *Id.* n.1.

40. *Id.* at 3–4.

41. Transcript, *id.* (Dec. 13, 2010, filed Dec. 16, 2010), D.E. 12.

42. *Id.*; *see id.* at 8 (“So for the record and moving forward, I know that there’s nothing that we can do about my situation right now but there is something that can be done in the future.”).

43. Complaint, *Fischer v. NYS Bd. of Elections*, No. 2:12-cv-5397 (E.D.N.Y. Oct. 26, 2012), D.E. 1; *see* Mark Harrington, *Sparring Over “Legitimacy” of LIPA’s Board*, *Newsday*, Oct. 28, 2012, at A26 (describing the repeat plaintiff as someone “who has filed lawsuits in state and federal court seeking to force LIPA to hold trustee elections”); Rick Brand, *Lawsuit: Hold Elections for LIPA Trustees*, *Newsday*, July 27, 2012, at A14.

44. Notice, *Fischer*, No. 2:12-cv-5397 (E.D.N.Y. Nov. 13, 2012), D.E. 11.

45. Order to Show Cause, *id.* (Oct. 26, 2012), D.E. 15.

November 1 hearing for November 2.<sup>46</sup> Judge Seybert found the action barred by the *Rooker-Feldman* doctrine as an improper appeal from the state courts' determination that the trustee position was properly a position that was appointed and not elected.<sup>47</sup> She dismissed the case on January 28, 2014.<sup>48</sup>

## **Southern District of New York**

### *2012: Congress*

A prospective candidate and two other voters filed a pro se federal complaint in the Southern District of New York on May 14, 2012, seeking an order placing the candidate's name on the Democratic primary-election ballot for a congressional district.<sup>49</sup>

Three days later, the court assigned the case to Judge Katherine B. Forrest,<sup>50</sup> who ruled that day that the suit was barred by the *Rooker-Feldman* doctrine.<sup>51</sup>

On May 29, an attorney filed a second federal complaint on behalf of five voters seeking an injunction putting the candidate on the ballot.<sup>52</sup> Judge Shira A. Scheindlin heard the case on May 30<sup>53</sup> and issued an opinion denying the plaintiffs relief on June 4.<sup>54</sup>

There are many potential grounds that would bar plaintiffs from obtaining relief from this Court. But because of the parties' need for a rapid resolution of this motion—and in accordance with the principle that the Court should not reach questions unnecessary for that resolution—I address only the two simplest ones here: (1) plaintiffs have not shown that the Board has deprived them of any constitutionally-protected interest and (2) even if such a deprivation did occur, plaintiffs have received due process through the putative candidate's challenge to his exclusion from the ballot.<sup>55</sup>

An appeal was dismissed on August 23 for failure to prosecute it.<sup>56</sup>

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46. Minutes, *id.* (Oct. 31, 2012), D.E. 13; Order to Show Cause, *id.* (Oct. 31, 2012), D.E. 12; *see* Minutes, *id.* (Nov. 2, 2012), D.E. 16.

47. Opinion, *id.* (Nov. 7, 2012), D.E. 17 (noting that the state's court of appeals dismissed an appeal on October 18, 2012); Opinion, *id.* (May 28, 2013), D.E. 25, 2013 WL 2316665 (denying reconsideration and recusal).

48. Order, *id.* (Jan. 28, 2014), D.E. 29.

49. Complaint, *Williams-Bey v. Comm'rs of Elections*, No. 1:12-cv-3836 (S.D.N.Y. May 14, 2012), D.E. 1.

50. Order, *id.* (May 17, 2012), D.E. 4.

Judge Forrest resigned on September 11, 2018. FJC Biographical Directory, *supra* note 12.

51. Opinion, *Williams-Bey*, No. 1:12-cv-3836 (S.D.N.Y. May 17, 2012), D.E. 6.

52. Complaint, *Thomas v. N.Y. City Bd. of Elections*, No. 1:12-cv-4223 (S.D.N.Y. May 29, 2012), D.E. 1.

53. Docket Sheet, *id.* (May 29, 2012).

Judge Scheindlin retired on April 29, 2016. FJC Biographical Directory, *supra* note 12.

54. *Thomas v. N.Y. City Bd. of Elections*, 898 F. Supp. 2d 594 (S.D.N.Y. 2012).

55. *Id.* at 598.

56. Docket Sheet, *Thomas v. N.Y. City Bd. of Elections*, No. 12-2766 (2d Cir. July 13,

*2014: State Senate*

Three voters filed a pro se federal complaint in the Southern District on August 19, 2014, seeking an injunction putting a candidate they supported on the September 9 Democratic primary-election ballot for state senator.<sup>57</sup> Judge Edgardo Ramos issued an order on the following day that the defendants show cause on August 22 why relief should not be granted to the plaintiffs.<sup>58</sup> At the hearing, Judge Ramos took under advisement the plaintiffs' plea for a preliminary injunction.<sup>59</sup>

An attorney filed an amended complaint on the plaintiffs' behalf on August 25.<sup>60</sup> Judge Ramos denied the preliminary injunction two days later.<sup>61</sup> The candidate initially qualified for the ballot, but a few days after confirming the candidate's qualification based on a sufficient number of valid ballot-petition signatures, the county board of elections determined that the number of valid signatures was not sufficient.<sup>62</sup> A state-court challenge to the candidate's ballot exclusion was unsuccessful because of defective service on the person whose objection resulted in the candidate's disqualification.<sup>63</sup> On August 29, Judge Ramos explained in an opinion supporting his denial of the preliminary injunction that procedures offered the candidate to contest his exclusion from the ballot were adequate.<sup>64</sup>

The plaintiffs dismissed their action on September 1.<sup>65</sup>

**Eastern District**

*2016: Congress*

On the day before the June 28, 2016, congressional primary election, a prospective candidate and a voter filed a federal class action in the Eastern District to modify the primary-election date or otherwise remedy the candidate's exclusion from the ballot.<sup>66</sup> On June 24, following a three-day hearing, a state-court judge found that the candidate had submitted a sufficient number of valid signatures to merit a place on the ballot, but the judge also found that it was too late for a remedy.<sup>67</sup> On the day that the federal complaint was filed,

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2012) (D.E. 15).

57. Complaint, *Moore v. McFadden*, No. 1:14-cv-6643 (S.D.N.Y. Aug. 19, 2014), D.E. 2.

58. Order, *id.* (Aug. 20, 2014), D.E. 4.

59. Docket Sheet, *id.* (Aug. 19, 2014).

60. Amended Complaint, *id.* (Aug. 25, 2014), D.E. 7.

61. Order, *id.* (Aug. 27, 2014), D.E. 17.

62. Opinion at 3, *id.* (Aug. 29, 2014), D.E. 21.

63. *Id.* at 3–5.

64. *Id.* at 8–19.

65. Voluntary Dismissal, *id.* (Sept. 1, 2014), D.E. 22.

66. Complaint, *Pidot v. N.Y. State Bd. of Elections*, No. 2:16-cv-3527 (E.D.N.Y. June 27, 2016), D.E. 1 [hereinafter E.D.N.Y. *Pidot* Complaint]; see Proposed Order to Show Cause, *id.* (June 27, 2016), D.E. 10; see also Rick Brand, *Philip Pidot Lawsuit in 3rd C.D. Gets July 11 Hearing*, *Newsday*, June 30, 2016, at 12.

67. Opinion, *Pidot v. Macedo*, No. 3448/2016 (N.Y. Sup. Ct. June 24, 2016), *filed as Ex. A*, E.D.N.Y. *Pidot* Complaint, *supra* note 66; see Paul LaRocco, *Philip Pidot Bid for Primary Ballot "Impossible," Judge Says*, *Newsday*, June 25, 2016, at 10.

Judge Joseph F. Bianco denied the plaintiffs immediate relief upon a determination that they were not seeking to enjoin the next day's election but to enjoin certification of a victor for the candidate's party.<sup>68</sup> On July 6, Judge Bianco granted the plaintiffs a voluntary dismissal.<sup>69</sup>

### **Related Action in the Northern District of New York**

Adding an additional voter as a named plaintiff, the candidate filed a federal class-action complaint in the Northern District of New York on July 13.<sup>70</sup> New York's congressional primary-election date was set in advance of New York's customary September primary-election date by Northern District Judge Gary L. Sharpe in 2012 to comply with the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), which requires federal absentee ballots to be sent to overseas voters at least forty-five days before the general election.<sup>71</sup> On July 18, Judge Sharpe denied the candidate's request to regard the new case as related to the closed case resulting in the date order.<sup>72</sup>

At an August 17 hearing, Judge Frederick J. Scullin, Jr., dismissed the candidate's prospective primary-election opponent as a defendant, because the plaintiffs sought no relief against him, but permitted the opponent to intervene.<sup>73</sup> Judge Scullin granted the plaintiffs a special primary election to be held on October 6 and ordered election officials to seek a UOCAVA hardship waiver,<sup>74</sup> which the federal government granted.<sup>75</sup> The candidate's primary-election opponent filed a notice of appeal on August 30 challenging the order requiring him to face the candidate plaintiff in a primary election.<sup>76</sup>

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68. Order, *Pidot*, No. 2:16-cv-3527 (E.D.N.Y. June 27, 2016), D.E. 11.

Judge Bianco was elevated to the court of appeals on May 13, 2019. FJC Biographical Directory, *supra* note 12.

69. Order, *Pidot*, No. 2:16-cv-3527 (E.D.N.Y. July 6, 2016), D.E. 26; see Rick Brand, *Philip Pidot Drops Federal Suit, Plans New One*, *Newsday*, July 11, 2016, at 12.

70. Complaint, *Pidot v. N.Y. State Bd. of Elections*, No. 1:16-cv-859 (N.D.N.Y. July 13, 2016), D.E. 1.

71. Opinion, *United States v. New York*, No. 1:10-cv-1214 (N.D.N.Y. Jan. 27, 2012), D.E. 59, 2012 WL 254263; see Pub. L. No. 99-410, 100 Stat. 924, *as amended*, 52 U.S.C. §§ 20301–20311; see also Robert Timothy Reagan, *Overseas Voting: The Uniformed and Overseas Citizens Absentee Voting Act 11–12* (Federal Judicial Center 2016).

72. Order, *Pidot*, No. 1:16-cv-859 (N.D.N.Y. July 18, 2016), D.E. 11; see Notice, *id.* (July 14, 2016), D.E. 6.

73. Transcript at 3–4, 20, 24, *id.* (Aug. 17, 2016, filed Sept. 7, 2016), D.E. 116.

74. Order, *id.* (Aug. 17, 2016), D.E. 66; see Rick Brand, *Judge Orders Oct. 6 Primary in 3rd Congressional District*, *Newsday*, Aug. 18, 2016, at 8.

“In all, there are only 246 military and overseas absentees that could play a role in the Oct. 6 GOP primary. State election officials say there are 1,012 military and absentee ballots that could be affected in the general election.” Rick Brand, *Military Ballots Go Out for 3rd District Congressional Primary*, *Newsday*, Aug. 24, 2016, at 10.

75. Notice, *Pidot*, No. 1:16-cv-859 (N.D.N.Y. Aug. 29, 2016), D.E. 99; see Michael Gormley, *Jack Martins Loses Bid to Stop Absentee Ballots in 3rd CD Race*, *Newsday*, Sept. 7, 2016, at 12.

76. Notice of Appeal, *Pidot*, No. 1:16-cv-859 (N.D.N.Y. Aug. 30, 2016), D.E. 101; see Michael Gormley, *Jack Martins Considers Appeal After Denied Moving 3rd CD Election*, *News-*



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Judge Scullin granted a motion by the opposing political party's nominee to intervene to oppose any effort to move the date of the general election.<sup>77</sup> Judge Scullin also accepted an amicus curiae brief from the Reserve Officers Association urging a delay in the general election for the one congressional seat to allow enough time for overseas voters to participate.<sup>78</sup> On August 30, Judge Scullin decided not to order a change in the general-election date.<sup>79</sup>

At the conclusion of oral argument on September 14, the court of appeals vacated Judge Scullin's injunction and ordered the district court to dismiss the complaint.<sup>80</sup> In a summary order issued two days later, the court explained that although the *Rooker-Feldman* doctrine did not bar the relief that Judge Scullin ordered, because the candidate actually won in state court, injunctive relief was not supported by the equities, especially because the disappointing outcome of failing to be included on the primary-election ballot nevertheless resulted from due process.<sup>81</sup>

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day, Sept. 1, 2016, at 33.

77. Docket Sheet, *Pidot*, No. 1:16-cv-859 (N.D.N.Y. July 13, 2016) [hereinafter N.D.N.Y. *Pidot* Docket Sheet] (D.E. 98); see Intervention Motion, *id.* (Aug. 25, 2016), D.E. 81; see also Michael Gormley, *Martins Appeals to Move 3rd CD General Election to December*, Newsday, Sept. 2, 2016, at 11.

78. Amicus Brief, *Pidot*, No. 1:16-cv-859 (N.D.N.Y. Aug. 26, 2016), D.E. 91; N.D.N.Y. *Pidot* Docket Sheet, *supra* note 77 (D.E. 90).

79. Opinion, *Pidot*, No. 1:16-cv-859 (N.D.N.Y. Aug. 31, 2016), D.E. 103; Transcript at 25, *id.* (Aug. 30, 2016, filed Sept. 6, 2016), D.E. 115; Minutes, *id.* (Aug. 30, 2016), D.E. 102; see Michael Gormley, *Judge Keeps Key LI Congressional Election in November*, Newsday, Aug. 31, 2016, at 6.

80. Oral Argument, *Pidot v. N.Y. State Bd. of Elections*, No. 16-3028 (2d Cir. Sept. 14, 2016), D.E. 132, [ww3.ca2.uscourts.gov/decisions/isysquery/b4e03066-0e5e-4942-801c-69efd89e4c32/1/doc/16-3028.mp3](http://ww3.ca2.uscourts.gov/decisions/isysquery/b4e03066-0e5e-4942-801c-69efd89e4c32/1/doc/16-3028.mp3) (audio recording); see Order to Expedite, *id.* (Sept. 2, 2016), D.E. 33; see also Rick Brand, *Federal Appeals Court Rejects GOP Primary in 3rd CD*, Newsday, Sept. 15, 2016, at 14.

81. *Martins v. Pidot*, 663 F. App'x 14 (2d Cir. 2016).