

## Pro Se Suit to Nullify All Absentee Ballots

*Freeman v. McKnight*

(Gary L. Sharpe, N.D.N.Y. 1:07-cv-1123)

A candidate who earned more voting-booth votes than his opponent, but who trailed after absentee ballots were counted, filed a pro se action to nullify absentee ballots because their mailing envelopes had been discarded so timely mailing could not be verified. The judge determined that the plaintiff had not provided the defendants with proper notice or shown entitlement to immediate injunctive relief.

*Subject:* Absentee and early voting. *Topics:* Absentee ballots; pro se party; enjoining certification.

On October 24, 2007, a candidate for the Democratic primary election for a seat in Albany County's legislature filed a pro se federal complaint in the Northern District of New York, seeking the invalidation of all absentee ballots so that he would be declared the winner of the primary election.<sup>1</sup>

There are thirty-nine seats in Albany's legislature.<sup>2</sup> The plaintiff was four votes ahead of the incumbent after the September-18-election-day votes were counted.<sup>3</sup> After absentee ballots were counted, however, the incumbent was ahead 282 to 278.<sup>4</sup> Before he filed the federal action, the candidate plaintiff filed an action in state court to nullify all of the absentee ballots because their mailing envelopes had been discarded so mailing by the required deadline could not be verified.<sup>5</sup>

On October 30, the plaintiff filed a motion for an order to show cause.<sup>6</sup> On November 2, Judge Gary L. Sharpe denied the motion because the plaintiff had neither provided the defendants with proper notice nor shown entitlement to immediate injunctive relief.<sup>7</sup> On February 7, 2008, Judge Sharpe granted the defendants summary judgment.<sup>8</sup>

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1. Complaint, *Freeman v. McKnight*, No. 1:07-cv-1123 (N.D.N.Y. Oct. 24, 2007), D.E. 1.

2. Albany County Legislature, [www.albanycounty.com/government/departments/county-legislature](http://www.albanycounty.com/government/departments/county-legislature).

3. See Jordan Carleo-Evangelist, *Party Backing No Sure Thing*, Albany Times Union, Sept. 20, 2007, at D1.

4. See Carol DeMare, *Loser in Primary Challenges Results*, Albany Times Union, Oct. 3, 2007, at D6.

5. See Complaint, *supra* note 1; DeMare, *supra* note 4.

6. Motion, *Freeman*, No. 1:07-cv-1123 (N.D.N.Y. Oct. 30, 2007), D.E. 4.

7. Order, *id.* (Nov. 2, 2007), D.E. 5.

8. Order, *id.* (Feb. 7, 2008), D.E. 10.