

Allowing Any Voter to Challenge Primary-Election Ballot Petitions

Queens County Republican Committee ex rel. Maltese v. New York State Board of Elections (Arthur D. Spatt, 2:02-cv-4836) and Soleil v. New York (David G. Trager and Allyne R. Ross, 1:04-cv-3247) (E.D.N.Y.)

A district judge denied a challenge to election laws that permit persons outside of a political party to challenge primary-election ballot petitions. In a case filed two years later, a different district judge in the same district agreed with the first judge's reasoning and dismissed a complaint alleging that persons not wishing to run should not be able to challenge ballot petitions.

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

The sole Republican candidate for a congressional seat in New York, who would be the party's November 5, 2002, general-election candidate because no other candidate qualified for the September 10 Republican Party primary election for the seat, filed a federal complaint in the Eastern District of New York on September 4 seeking to invalidate a challenge to his ballot-petition signatures, arguing that such challenges should be limited to party members.¹

Judge Arthur D. Spatt heard the case on September 13² and denied the plaintiffs immediate relief on September 21.³ "First, the laws apply equally to all parties, both major and minor."⁴ Further, "non-party challenges assist the state in making sure that a candidate has met the . . . signature ballot access requirement."⁵ The case was closed by stipulation on October 30.⁶

A lawyer wishing to run in the September 14, 2004, Democratic primary election for state senate and a voter filed a pro se federal class-action complaint in the Eastern District of New York on July 29, challenging the ability of persons other than competing candidates to challenge ballot petitions.⁷

1. Complaint, Queens Cty. Republican Comm. *ex rel. Maltese v. N.Y. State Bd. of Elections*, No. 2:02-cv-4836 (E.D.N.Y. Sept. 4, 2002), D.E. 1; Queens Cty. Republican Comm. *ex rel. Maltese v. N.Y. State Bd. of Elections*, 222 F. Supp. 2d 341, 343–44 (E.D.N.Y. 2002).

2. Docket Sheet, *Maltese*, No. 2:02-cv-4836 (E.D.N.Y. Sept. 4, 2002) [hereinafter *Maltese* Docket Sheet]; *Maltese*, 222 F. Supp. 2d at 345 ("All parties agreed that the determination of the request for the preliminary injunction is solely a question of law and that no evidentiary hearing is required.").

Judge Spatt died on June 12, 2020. Federal Judicial Center Biographical Directory of Article III Federal Judges [hereinafter FJC Biographical Directory], www.fjc.gov/history/judges.

3. *Maltese*, 222 F. Supp. 2d 341.

4. *Id.* at 349.

5. *Id.*

6. *Maltese* Docket Sheet, *supra* note 2 (D.E. 17).

7. Complaint, *Soleil v. New York*, No. 1:04-cv-3247 (E.D.N.Y. July 29, 2004), D.E. 1; Opinion at 5–6, *id.* (Mar. 22, 2005), D.E. 33 [hereinafter *Soleil* Opinion], 2005 WL 662682.

The court assigned the case to Judge David G. Trager as related to a case filed by the same lawyer in 1998.⁸

Judge Allyne R. Ross, who was on miscellaneous duty that week, presided over a hearing in the case on August 6 at which she denied the plaintiffs, for the second time, a temporary restraining order.⁹ She stated in court that she did not think the plaintiffs would prevail on their claim that voters should not be able to challenge ballot petitions.¹⁰ After the complaint was filed, the plaintiffs added a challenge in their papers to the accuracy of the board of elections' review of the plaintiffs' petition signatures, but Judge Ross did not see how the federal court had jurisdiction over that issue.¹¹

A state-court action filed on August 9 was dismissed on the next day because of the lawyer's procedural errors.¹²

Reviewing an amended complaint filed on August 12, Judge Trager denied the plaintiffs a preliminary injunction on September 2.¹³ The lawyer did not appear on the September 14 primary-election ballot.¹⁴

On March 22, 2005, Judge Trager dismissed the case.¹⁵ Agreeing with Judge Spatt's analysis in the 2002 case, Judge Trager concluded that it was constitutional for New York to allow voters to challenge ballot petitions.¹⁶ Judge Trager also noted the plaintiffs' ultimate concession that New York itself was immune from being a defendant in the case because of the Eleventh Amendment.¹⁷

8. Notice, *id.* (July 29, 2004), D.E. 2; see Docket Sheet, *Soleil v. Bd. of Elections*, No. 1:98-cv-5976 (E.D.N.Y. Sept. 25, 1998).

Judge Trager died on January 5, 2011. FJC Biographical Directory, *supra* note 2.

9. Transcript, *Soleil*, No. 1:04-cv-3247 (E.D.N.Y. Aug. 6, 2004, filed Aug. 9, 2004), D.E. 3 [hereinafter *Soleil* Transcript]; Minutes, *id.* (Aug. 6, 2004), D.E. 12; Order, *id.* (Aug. 2, 2004, filed Aug. 20, 2004), D.E. 22; *Soleil* Opinion, *supra* note 7, at 6–7.

10. *Soleil* Transcript, *supra* note 9, at 7, 10.

11. *Id.* at 8–18.

12. *Soleil* Opinion, *supra* note 7, at 7.

13. Minutes, *Soleil*, No. 1:04-cv-3247 (E.D.N.Y. Sept. 2, 2004), D.E. 25; *Soleil* Opinion, *supra* note 7, at 8; see Amended Complaint, *Soleil*, No. 1:04-cv-3247 (E.D.N.Y. Aug. 12, 2004), D.E. 8.

On September 7, 2004, the court assigned a related case to Judge Trager: a class action filed that day by a prospective primary-election candidate for the state's assembly and five supporters, Complaint, *Bowser v. Bd. of Elections*, No. 1:04-cv-3848 (E.D.N.Y. Sept. 7, 2004), D.E. 1; see Notice of Related Case, *id.* (Sept. 7, 2004), D.E. 2, which was withdrawn by stipulation on September 22, Stipulation, *id.* (Sept. 22, 2004), D.E. 7; see Docket Sheet, *id.* (Sept. 7, 2004) (noting the September 9, 2004, denial of a preliminary injunction); Order to Show Cause, *id.* (Sept. 7, 2004), D.E. 8 (setting the case for hearing on September 9).

14. *Soleil* Opinion, *supra* note 7, at 8.

15. *Id.* at 16.

16. *Id.* at 3–4, 11–16.

17. *Id.* at 3–4.