

Fatal Defect in a Petition to Replace a Primary-Election Candidate

Diaz v. New York City Board of Elections
(*I. Leo Glasser, E.D.N.Y. 1:04-cv-3836*)

The district judge denied a discrimination claim filed by a plaintiff who was excluded as a replacement candidate for a primary election, because the plaintiff's replacement application omitted a required signed consent to replace the withdrawn candidate.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; equal protection; primary election; intervention.

A prospective candidate for female member of the Democratic State Committee for the 54th Assembly District filed a federal complaint in the Eastern District of New York on September 3, 2004, challenging her exclusion from the September 14 primary-election ballot.¹ On the day that the case was filed, Magistrate Judge Steven M. Gold set the case for hearing on September 9.² On September 7, District Judge I. Leo Glasser set the September 9 hearing for his courtroom.³

Judge Glasser denied the plaintiff a preliminary injunction putting her on the ballot.⁴ He issued an opinion explaining his ruling on September 14.⁵

The plaintiff complained of discrimination in rejecting her application to replace a candidate who had withdrawn from the committee primary election.⁶ Judge Glasser determined that omission from the plaintiff's ballot petition of a signed consent to replace the withdrawn candidate was a fatal defect and no discrimination was shown.⁷

On September 6, 2005, Judge Glasser signed a voluntary dismissal.⁸

1. Complaint, *Diaz v. N.Y. City Bd. of Elections*, No. 1:04-cv-3836 (E.D.N.Y. Sept. 3, 2004), D.E. 1.

2. Order to Show Cause, *id.* (Sept. 3, 2004), D.E. 3.

Judge Gold retired on January 4, 2021. Judicial Milestones, www.uscourts.gov/judicial-milestones/steven-m-gold.

3. Order to Show Cause, *Diaz*, No. 1:04-cv-3836 (E.D.N.Y. Sept. 7, 2004), D.E. 2.

4. *Diaz v. N.Y. City Bd. of Elections*, 335 F. Supp. 2d 364 (E.D.N.Y. 2004); Minutes, *Diaz*, No. 1:04-cv-3836 (E.D.N.Y. Sept. 9, 2004), D.E. 8.

5. Opinion, *Diaz*, No. 1:04-cv-3836 (E.D.N.Y. Sept. 14, 2004), D.E. 7, 335 F. Supp. 2d 364.

6. Complaint, *supra* note 1; *Diaz*, 335 F. Supp. 2d at 365–67.

7. *Diaz*, 335 F. Supp. 2d at 365–68.

8. Order, *Diaz*, No. 1:04-cv-3836 (E.D.N.Y. Sept. 6, 2005), D.E. 15.