

## Excluding an Office from Absentee Ballots

*Price v. Albany County Board of Elections*

(Gary L. Sharpe, N.D.N.Y. 1:06-cv-1083)

Four days in advance of New York's September 12, 2006, primary election, the Albany County Republican Committee, a committee candidate, and two voters filed a federal complaint in the Northern District of New York's Albany courthouse alleging that New York's excluding county party committee positions from absentee ballots violated the First Amendment.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order.<sup>2</sup>

In New York, each political party has a county committee in each county.<sup>3</sup> An important committee function is the selection of party nominees when vacancies arise between early July and early November in an election year for that office.<sup>4</sup> Committee members are elected at the time of primaries in even years, the years of election for federal and state offices, rather than odd years, the years of election for local offices.<sup>5</sup> Terms expire immediately upon the holding of elections for committee positions; candidates usually run unopposed.<sup>6</sup> New York argued that allowing absentee votes for committee positions could result in a prolonged vacancy if the absentee votes decide an election.<sup>7</sup>

The lead plaintiff was one of three candidates for two positions in an election with approximately 27 eligible voters.<sup>8</sup>

On September 11, Judge Gary L. Sharpe held a hearing and decided to "grant a temporary restraining order as limited as is possible."<sup>9</sup> Judge Sharpe ordered absentee ballots prepared for Albany County party committees, but ordered that the ballots be segregated so that it could be determined after the election whether they would be counted.<sup>10</sup>

---

1. [Complaint](#), *Price v. Albany Cnty. Bd. of Elections*, No. 1:06-cv-1083 (N.D.N.Y. Sept. 8, 2006), D.E. 1; [Price v. New York State Bd. of Elections](#), 540 F.3d 101, 104–05 (2d Cir. 2008); see [Amended Complaint](#), *Price*, No. 1:06-cv-1083 (N.D.N.Y. Sept. 28, 2006), D.E. 9.

2. [Temporary Restraining Order Motion](#), *Price*, No. 1:06-cv-1083 (N.D.N.Y. Sept. 8, 2006), D.E. 3; *Price*, 540 F.3d at 105.

3. *Price*, 540 F.3d at 104.

4. *Id.* at 104.

5. *Id.* at 104, 111.

6. *Id.* at 105 & n.2, 111.

7. *Id.* at 110.

8. [Opinion](#), *Price v. Albany Cnty. Bd. of Elections*, No. 1:06-cv-1083 (N.D.N.Y. Oct. 22, 2007), D.E. 32 [hereinafter Oct. 22, 2007, Opinion], available at [2007 WL 3104327](#).

9. [Transcript](#) at 41, *id.* (Sept. 11, 2006, filed Jan. 24, 2007), D.E. 19; see [Minutes](#), *id.* (Sept. 11, 2006), D.E. 4.

10. [Order](#), *id.* (Sept. 11, 2006), D.E. 6.

Not counting the votes of the two plaintiffs who voted absentee, the lead plaintiff received 10 votes and each of the other two candidates received seven votes.<sup>11</sup>

On October 22, 2007, after full briefing and argument, Judge Sharpe determined that exclusion of county committee positions from absentee ballots passed constitutional muster.<sup>12</sup> The parties and the judge agreed that the two absentee votes would not be counted and the committee position election would remain uncertified.<sup>13</sup>

On August 22, 2008, the court of appeals determined that excluding county committee positions from absentee ballots did not pass constitutional muster.<sup>14</sup> The court found justifications for excluding the offices contrived and unpersuasive.<sup>15</sup> On December 4, 2009, Judge Sharpe awarded the plaintiffs \$105,695.74 in attorney fees and costs.<sup>16</sup>

---

11. [Oct. 22, 2007, Opinion](#), *supra* note 8, at 9; see Brian Nearing, *Legal Threat Called Tool for Ending County GOP Dispute*, Albany Times Union, Sept. 19, 2006, at B7 (reporting that the lead plaintiff won a seat on the committee and one of the other candidates lost).

12. [Oct. 22, 2007, Opinion](#), *supra* note 8.

13. [Order](#), *Price*, No. 1:06-cv-1083 (N.D.N.Y. Nov. 21, 2007), D.E. 36.

14. [Price v. New York State Bd. of Elections](#), 540 F.3d 101 (2d Cir. 2008).

15. *Id.* at 110–12.

16. [Order](#), *Price*, No. 1:06-cv-1083 (N.D.N.Y. Dec. 4, 2009), D.E. 63, available at [2009 WL 4730698](#).