

## 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*)

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.<sup>1</sup> On the day that the case was filed, Magistrate Judge Steven M. Gold set the case for hearing on September 9.<sup>2</sup> On September 7, Judge I. Leo Glasser set the September 9 hearing for his courtroom.<sup>3</sup>

Judge Glasser denied the plaintiff a preliminary injunction putting her on the ballot.<sup>4</sup> Judge Glasser issued an opinion explaining his ruling on September 14.<sup>5</sup>

The plaintiff complained of discrimination in rejecting her application to replace a candidate who had withdrawn from the committee primary election.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 Judge Glasser determined that omission from the plaintiff's ballot petition of a signed consent to replace the withdrawn candidate was a fatal defect and no discrimination was shown.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

On September 6, 2005, Judge Glasser signed a voluntary dismissal.<sup>8</sup>

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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.

3. Order to Show Cause, *id.* (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 (Sept. 9, 2004), D.E. 8.

5. Opinion, *Diaz*, No. 1:04-cv-3836 (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 (Sept. 6, 2005), D.E. 15.