

Exclusion from Primary Election Ballots for Not Being Members of the Party

*Rider v. Mohr (John T. Elfvn, W.D.N.Y. 1:01-cv-610),
Sementilli v. Commissioners of Elections
(Richard Conway Casey, S.D.N.Y. 1:04-cv-6936),
and Soleil v. Board of Election
(Brian M. Cogan, E.D.N.Y. 1:10-cv-3565)*

A federal complaint filed in the Western District of New York's Buffalo courthouse on August 30, 2001, challenged the exclusion of the lead plaintiff from the Conservative Party's September 11 primary election ballot for member of Tonawanda's town board.¹ Candidates in a New York primary election must either be members of the party or receive the party's permission to run.² The plaintiff, an incumbent and a member of the Republican Party, alleged that he was excluded as improper punishment aimed at the Republican Party; another candidate who was not a member of the Conservative Party was allowed to remain on the ballot.³ With their complaint, the would-be candidate and two voters filed a motion for a preliminary injunction⁴ and an ex-parte motion for an expedited hearing.⁵

Judge John T. Elfvn set the case for hearing on September 4.⁶ On September 6, Judge Elfvn denied the plaintiffs immediate relief.⁷ Judge Elfvn noted that the party's county chair "has a duty to the members of his party to prevent candidates from deceiving them into thinking that he or she is in line with their political philosophy when in fact they are not."⁸

On April 22, 2002, Judge Elfvn dismissed the action for failure to prosecute.⁹

On August 26, 2004, supporters of a prospective candidate's inclusion as a candidate in a September 14 Democratic primary election for New York's assem-

1. [Docket Sheet](#), *Rider v. Mohr*, No. 1:01-cv-610 (W.D.N.Y. Aug. 30, 2001) (D.E. 1); [Rider v. Mohr](#), No. 1:01-cv-610, 2001 WL 1117157, at *1 (W.D.N.Y. Sept. 6, 2001).

2. [N.Y. Elec. Law § 6-120](#).

3. [Rider](#), 2001 WL 1117157, at *1; see T.J. Pignataro, *Rider Presses Bid for Conservative Line*, Buffalo News, Sept. 6, 2001, at B3 (reporting that to appear in the party's primary election persons not a member of the party need the party's endorsement, which the plaintiff did not obtain).

4. [Docket Sheet](#), *supra* note 1 (D.E. 3).

5. *Id.* (D.E. 2).

6. *Id.* (D.E. 4); see *id.* (D.E. 13, Minutes).

Judge Elfvn died on January 6, 2009. Federal Judicial Center Biographical Directory of Federal Judges, www.fjc.gov/history/home.nsf/page/judges.html.

7. [Rider](#), 2001 WL 1117157; see T.J. Pignataro, *Rider Denied Conservative Party Slot*, Buffalo News, Sept. 7, 2001, at C3.

8. [Rider](#), 2001 WL 1117157, at *2.

9. [Docket Sheet](#), *supra* note 1 (D.E. 22).

bly filed a federal complaint in the Southern District of New York.¹⁰ Judge Richard Conway Casey set the case for hearing on September 1.¹¹

The party denied another prospective candidate a spot on its primary ballot, so she named the plaintiff candidate as her replacement.¹² Judge Casey ruled that a candidate never eligible to be on the ballot cannot name a replacement as if the candidate were removed by circumstance.¹³ Judge Casey found New York's restrictions on eligibility for a party's primary election ballot to be reasonable.¹⁴

An attorney member of the Democratic Party, who wished to run in the September 14, 2010, Independence Party primary election for state assembly, filed a pro se federal complaint in the Eastern District of New York on August 3 challenging the requirement that he file a certificate accepting the Independence Party's permission for him to run in its primary election.¹⁵

Because of recusals by Judges David G. Trager and Eric N. Vitaliano, the court assigned the case to Judge Brian M. Cogan,¹⁶ who set the case for hearing on August 9.¹⁷ The parties agreed to a postponement until August 13, noting that there would be no Independence Party primary election for the assembly seat that the plaintiff wished to run for because no other candidate qualified for the ballot.¹⁸ Following an August 13 trial on the merits, Judge Cogan ruled in favor of the defendants.¹⁹

10. [Docket Sheet](#), *Sementilli v. Comm'rs of Elections*, No. 1:04-cv-6936 (S.D.N.Y. Aug. 26, 2004) (D.E. 1); [Injunction Denial](#), *id.* (Sept. 2, 2004), D.E. 6.

11. [Order](#), *id.* (Aug. 26, 2004), D.E. 2.

Judge Casey died on March 22, 2007. Federal Judicial Center Biographical Directory of Federal Judges, *supra* note 6.

12. [Injunction Denial](#), *supra* note 10, at 2.

13. *Id.*

14. *Id.* at 3.

15. Complaint, [Soleil v. Bd. of Election](#), No. 1:10-cv-3565 (E.D.N.Y. Aug. 3, 2010), D.E. 1.

16. [Docket Sheet](#), *id.* (Aug. 3, 2010) [hereinafter *Soleil* Docket Sheet].

Judge Vitaliano recused himself because of his previous two decades of service in the state assembly. Interview with Hon. Eric N. Vitaliano, Sept. 23, 2015; Federal Judicial Center Biographical Directory of Federal Judges, *supra* note 6.

Tim Reagan interviewed Judge Vitaliano for this report by telephone.

Judge Trager died on January 5, 2011. Federal Judicial Center Biographical Directory of Federal Judges, *supra* note 6.

17. Order to Show Cause, [Soleil](#), No. 1:10-cv-3565 (E.D.N.Y. Aug. 4, 2010), D.E. 4.

18. Letter, *id.* (Aug. 5, 2010), D.E. 6.

19. *Soleil* Docket Sheet, *supra* note 16; Judgment, [Soleil](#), No. 1:10-cv-3565 (E.D.N.Y. Aug. 16, 2010), D.E. 10.