

Fraudulently Withdrawing from a Ballot

*New York State Republican Committee v.
New York State Board of Elections
(Richard J. Arcara, W.D.N.Y. 1:08-cv-810)*

New York’s Republican Party filed a federal complaint on Friday, October 31, 2008, in the Western District of New York’s Buffalo courthouse to prevent the Democratic Party’s nominee for a congressional seat from being named also as the Working Families Party’s nominee.¹ The complaint alleged that the winner of the Working Families Party primary falsely claimed to be a resident of the District of Columbia so that the Democratic nominee could be named as his replacement.² With its complaint, the Republican Party filed a motion for a temporary restraining order³ and a motion for expedited hearing.⁴

Judge Richard J. Arcara heard oral arguments that same day by telephone.⁵ At 10:17 p.m., Judge Arcara granted the Republican Party an injunction, enjoining the disqualification of the Working Families Party primary winner.⁶ The disqualification was unconstitutional for two reasons: (1) “it is solely for Congress, not a state court to determine who is qualified to serve in Congress,” and (2) neither Congress nor the Constitution has established a pre-election residency requirement.⁷ Moreover: “You simply can’t change the parties on the ballot after [absentee] voting has started.”⁸

The defendants immediately sought an interlocutory appeal.⁹ The clerk of court for the court of appeals was walking with family on the streets of Boston when she got a call about the appeal.¹⁰ Over her Blackberry, she selected a panel and arranged for briefing over the weekend.¹¹ On Monday, the court of appeals heard the case and affirmed the preliminary injunction.¹²

Defendants’ application to expedite proceedings is GRANTED. The application of defendants for immediate vacatur of the temporary restraining order entered by the District Court, and the application to direct the District Court to dismiss the complaint *sua*

1. [Complaint](#), N.Y. State Republican Comm. v. N.Y. State Bd. of Elections, No. 1:08-cv-810 (W.D.N.Y. Oct. 31, 2008), D.E. 1.

2. *Id.*

3. [Temporary Restraining Order Motion](#), N.Y. State Republican Comm., No. 1:08-cv-810 (W.D.N.Y. Oct. 31, 2008), D.E. 2.

4. [Expedition Motion](#), *id.* (Oct. 31, 2008), D.E. 3.

5. [Docket Sheet](#), *id.* (Oct. 31, 2008).

6. [Temporary Restraining Order](#), *id.* (Oct. 31, 2008), D.E. 6; Transcript, *id.* (Oct. 31, 2008, filed Nov. 3, 2008), D.E. 8.

7. Transcript, *supra* note 6, at 2–3.

8. *Id.* at 4.

9. Docket Sheet, [N.Y. State Republican Comm. v. N.Y. State Bd. of Elections](#), No. 08-5327 (2d Cir. Nov. 3, 2008) [hereinafter 2d Cir. Docket Sheet].

10. Interview with Catherine Wolfe, Oct. 11, 2012. Tim Reagan interviewed Ms. Wolfe for this report by telephone.

11. *Id.*

12. 2d Cir. Docket Sheet, *supra* note 9.

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sponte for lack of jurisdiction are each hereby DENIED. We MODIFY the district court's order . . . to strike the word "Permanently." In entering these orders we express no view on the ultimate merits of the claims of the parties. Any further appeal in this action shall be assigned to another panel of the Court in the normal course.¹³

On December 2, the parties stipulated to a dismissal.¹⁴

13. Order, *N.Y. State Republican Comm. v. N.Y. State Bd. of Elections*, No. 08-5327 (2d Cir. Nov. 3, 2008).

14. [Stipulated Dismissal](#), *N.Y. State Republican Comm.*, No. 1:08-cv-810 (W.D.N.Y. Dec. 2, 2008), D.E. 10.