

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

*Rider v. Mohr (John T. Elfvin, 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)*

In 2001, a candidate for town board filed a federal complaint in the Western District of New York challenging his exclusion from the primary-election ballot for the Conservative Party, of which he was not a member. The district judge concluded that the party was entitled to scrutinize nonmembers for adherence to party philosophy before accepting them as candidates. Three years later, a district judge in the Southern District of New York determined that a prospective candidate for a state-assembly primary-election ballot who was excluded for not being a member of the party was not entitled to name a replacement candidate. In 2010, a district judge in the Eastern District of New York denied relief to a pro se attorney who refused to file a certificate accepting the Independence Party's permission to run in the party's assembly primary election.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; primary election; party procedures; pro se party; recusal; case assignment.

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 had to 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

1. Docket Sheet, *Rider v. Mohr*, No. 1:01-cv-610 (W.D.N.Y. Aug. 30, 2001) [hereinafter *Rider Docket Sheet*] (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 a person who was not a member of the party needed the party's endorsement, which the plaintiff did not obtain).

4. *Rider Docket Sheet*, *supra* note 1 (D.E. 3).

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

Judge John T. Elfvin set the case for hearing on September 4.⁶ On September 6, he denied the plaintiffs immediate relief.⁷ He 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 Elfvin 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 assembly 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 hear-

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

Judge Elfvin died on January 6, 2009. Federal Judicial Center Biographical Directory of Article III Federal Judges [hereinafter FJC Biographical Directory], www.fjc.gov/history/judges.

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. *Rider* Docket Sheet, *supra* note 1 (D.E. 22).

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 [hereinafter *Rider* Injunction Denial].

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

Judge Casey died on March 22, 2007. FJC Biographical Directory, *supra* note 6.

12. *Rider* 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; FJC Biographical Directory, *supra* note 6.

Tim Reagan interviewed Judge Vitaliano for this report by telephone.

Judge Trager died on January 5, 2011. FJC Biographical Directory, *supra* note 6.

ing 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

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.