

Certification as a Write-In Candidate

Pearlman v. Gonzales (Martha Vázquez, 6:98-cv-1160)
and Pearlman v. Vigil-Giron
(Bruce D. Black, 1:00-cv-1475) (D.N.M.)

A pro se litigant filed a federal complaint challenging his exclusion from the gubernatorial ballot as a Green Party candidate because the secretary of state determined that the Green Party had become a major party requiring nomination by primary election. The district judge opined that the plaintiff's exclusion was improper, but she held that the action was barred by the Eleventh Amendment. Two years later, the plaintiff filed another federal complaint seeking an order that the state provide for write-in presidential candidates. A different district judge also determined that the suit was barred by the Eleventh Amendment, and moreover it had been filed too late for the equitable relief sought.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; write-in candidate; matters for state courts; laches; pro se party; primary election.

A pro se litigant filed a federal complaint in the District of New Mexico on September 23, 1998, challenging the refusal by New Mexico's secretary of state to certify the plaintiff as a write-in Green Party candidate for governor.¹ One reason for the refusal was that the Green Party had become a major political party, so its candidate had to be selected in a primary election.² Approximately three weeks later, Judge Martha Vázquez determined that "[t]he reasons cited by Secretary Gonzales for declining Pearlman's candidacy are not supported by fact or law."³ Judge Vázquez also determined, however, that the suit was barred by the Eleventh Amendment.⁴ "The proper venue for the resolution of this dispute is not with the federal courts but in the New Mexico Supreme Court."⁵ The plaintiff had already failed to prevail there.⁶

On October 24, 2000, the pro se litigant filed another federal complaint against New Mexico's secretary of state, this time seeking certification as a write-in candidate for President and an injunction requiring New Mexico to provide a space on the ballot for write-in presidential candidates.⁷ On the following day, Judge Bruce D. Black opined that the difference in office to

1. Complaint, *Pearlman v. Gonzales*, No. 6:98-cv-1160 (D.N.M. Sept. 23, 1998), D.E. 1; *see* Amended Complaint, *id.* (Sept. 28, 1998), D.E. 3.

2. Opinion, *id.* (Oct. 15, 1998), D.E. 9.

3. *Id.* at 14.

4. *Id.* at 17–21.

5. *Id.* at 20.

6. *See High Court Won't Reconsider Bid*, Albuquerque J., Sept. 23, 1998, at C3.

7. Complaint, *Pearlman v. Vigil-Giron*, No. 1:00-cv-1475 (D.N.M. Oct. 24, 2000), D.E. 1; *see Would-Be Write-In Candidate Sues State*, Albuquerque J., Oct. 25, 2000, at B3; *see also* Michael Janofsky, *Forget Third Party, These Presidential Hopefuls Offer Array of Choices*, N.Y. Times, July 8, 2000, at A10.

which the plaintiff aspired did not negate New Mexico's Eleventh Amendment immunity.⁸ Moreover, the litigant's filing suit after the ballots had already been printed weighed against the equitable relief he sought.⁹ On January 8, 2001, Judge Black granted the secretary's motion to dismiss the action.¹⁰

8. Opinion at 2, *Pearlman*, No. 1:00-cv-1475 (D.N.M. Oct. 25, 2000), D.E. 2 [hereinafter Black Opinion].

Judge Black retired on January 1, 2017. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

9. Black Opinion, *supra* note 8, at 2–3.

10. Docket Sheet, *Pearlman*, No. 1:00-cv-1475 (D.N.M. Oct. 24, 2000).