

## **A Disabled Candidate's Challenge to Signature-and-Contribution Statutes**

*Herschaf v. New York Board of Elections (1:00-cv-2748)  
and Herschaf v. New York City  
Campaign Finance Board (1:00-cv-3754)  
(Jack B. Weinstein and Carol B. Amon, E.D.N.Y.)*

A pro se federal complaint alleged that a six-week period for obtaining ballot-petition signatures failed to adequately accommodate a prospective candidate's history of schizophrenia. A companion complaint challenged contribution-reporting requirements for small contributions. Two district judges denied the plaintiff relief.

*Subject:* Getting on the ballot. *Topics:* Getting on the ballot; campaign finance; pro se party; recusal; case assignment.

A prospective independent candidate for New York's city council filed a pro se federal complaint in the Eastern District of New York on May 16, 2000, challenging the state's requirement that he qualify for the November 2001 ballot by obtaining ballot-petition signatures during a six-week period—from July 10 to August 21, 2001.<sup>1</sup> The plaintiff sought a year or more to gather the required 1,460 signatures to accommodate his schizophrenia, which was in remission.<sup>2</sup>

Judge Jack B. Weinstein heard the case two days later.<sup>3</sup> Judge Weinstein dismissed the case a week after the hearing, finding that the time limitation on collecting ballot-petition signatures violated neither the Americans with Disabilities Act (ADA) nor the Constitution.<sup>4</sup>

On November 3, 2000, the court of appeals affirmed Judge Weinstein's constitutional ruling but remanded the case for reconsideration of the ADA claim.<sup>5</sup> The court ordered reconsideration of the claim because of a letter from the plaintiff's clinical psychologist filed on Judge Weinstein's invitation at the May 18, 2000, hearing to file additional supporting documents within

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1. Docket Sheet, *Herschaf v. N.Y. Bd. of Elections*, No. 1:00-cv-2748 (E.D.N.Y. May 16, 2000) [hereinafter Signature Docket Sheet] (D.E. 1); *A. v. N.Y. Bd. of Elections*, 99 F. Supp. 2d 258, 259–60 (E.D.N.Y. 2000).

2. *A.*, 99 F. Supp. 2d at 259–60.

3. Signature Docket Sheet, *supra* note 1 (D.E. 6).

Judge Weinstein retired in 2020 and died in 2021. Federal Judicial Center Biographical Directory of Federal Judicial Center Biographical Directory of Article III Federal Judges Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges); see Alan Feuer, *At 98, a Judicial Lion Lays Down His Gavel to Pursue New Interests*, N.Y. Times, Feb. 18, 2020, at A19; Laura Mansnerus, *Jack B. Weinstein, Activist Judge Both Revered and Feared, Dies at 99*, N.Y. Times, June 16, 2021, at A22.

4. *A.*, 99 F. Supp. 2d 258; see 52 U.S.C. §§ 12101–12213.

5. *Herschaf v. N.Y. Bd. of Elections*, No. 00-7698, 2000 WL 1655036 (2d Cir. Nov. 3, 2000), 234 F.3d 1262 (table), *cert. denied*, 531 U.S. 1078 (2001).

one month.<sup>6</sup>

Meanwhile, the plaintiff filed another pro se federal action in the Eastern District of New York on June 26, 2000, seeking relaxation of the city's campaign-contribution reporting requirements for contributions less than ten dollars.<sup>7</sup> Judge Weinstein held a show-cause hearing three days later and granted the plaintiff's motion for recusal.<sup>8</sup> The court reassigned both cases to Judge Carol B. Amon.<sup>9</sup>

Reviewing an amended complaint filed on October 3,<sup>10</sup> Judge Amon dismissed the case on December 8.<sup>11</sup> Because the reporting requirements were tied to matching public funding, "The instant provisions are substantially related to significant governmental interests."<sup>12</sup> The court of appeals affirmed the dismissal on May 17, 2001.<sup>13</sup>

Reviewing an amended complaint filed in the first case on April 17, 2001,<sup>14</sup> Judge Amon granted the defendant board of elections summary judgment on August 13:<sup>15</sup> (1) "These undisputed facts are not sufficient to establish that plaintiff is presently substantially limited in a major life activity."<sup>16</sup> (2) "At best, . . . whether plaintiff's disability in fact precludes him from participating in the election is speculative."<sup>17</sup> (3) "It is the Court's opinion that an accommodation that would require a defendant to violate an otherwise constitutional state law is inherently unreasonable."<sup>18</sup> The court of appeals affirmed the judgment on May 13, 2002.<sup>19</sup>

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6. *Id.* at \*1.

7. Docket Sheet, *Herschaft v. N.Y. City Campaign Fin. Bd.*, No. 1:00-cv-3754 (E.D.N.Y. June 26, 2000) [hereinafter Contribution Docket Sheet] (D.E. 1); *Herschaft v. N.Y. City Campaign Fin. Bd.*, 127 F. Supp. 2d 164, 166–67 (E.D.N.Y. 2000).

8. Contribution Docket Sheet, *supra* note 7 (D.E. 2).

9. *Id.* (Aug. 3, 2000); Signature Docket Sheet, *supra* note 1 (June 29, 2000).

10. Contribution Docket Sheet, *supra* note 7 (D.E. 13).

11. *Herschaft*, 127 F. Supp. 2d 164; *see* *Herschaft v. N.Y. City Campaign Fin. Bd.*, 139 F. Supp. 2d 282 (E.D.N.Y. 2001) (denying reconsideration).

12. *Herschaft*, 127 F. Supp. 2d at 168.

13. *Herschaft v. N.Y. City Campaign Fin. Bd.*, 10 F. App'x 21 (2d Cir.), *cert. denied*, 534 U.S. 888 (2001).

14. Signature Docket Sheet, *supra* note 1 (D.E. 27).

15. *Herschaft v. N.Y. Bd. of Elections*, No. 1:00-cv-2748, 2001 WL 940923 (E.D.N.Y. Aug. 13, 2001).

16. *Id.* at \*4.

17. *Id.* at \*5.

18. *Id.* at \*6 (footnote omitted).

19. *Herschaft v. N.Y. Bd. of Elections*, 37 F. App'x 17 (2d Cir.), *cert. denied*, 537 U.S. 825 (2002).