

## Speculative Complaint About Polling-Place Interference

*Loeber v. Spargo*  
(*Lawrence E. Kahn, N.D.N.Y. 1:04-cv-1193*)

A pro se complaint filed a few weeks before the 2004 general election challenged New York districting, among other things. After a hearing on concerns that a United Nations body would oversee New York elections, the district judge dismissed the complaint as speculative and for not naming as defendants parties against whom an injunction would provide the plaintiffs with their desired relief. In 2010, the court of appeals affirmed dismissal of an amended complaint for failure to state a federal cause of action.

*Subject:* Polling-place activities. *Topics:* Pro se party; malapportionment; Help America Vote Act (HAVA); interlocutory appeal; three-judge court; case assignment.

A twelve-plaintiff pro se federal complaint filed in the Northern District of New York on October 15, 2004, challenged New York gerrymandering and other features of elections in New York.<sup>1</sup> Ten days later, the court reassigned the case from Judge Gary L. Sharpe to Judge Lawrence E. Kahn.<sup>2</sup>

A hearing before Judge Kahn on October 27 focused on the plaintiffs' concern that a United Nations body had been invited to oversee the November 2 election.<sup>3</sup> On Friday, October 29, Judge Kahn denied the plaintiffs an injunction.<sup>4</sup> First, the plaintiffs did not name as defendants parties whose behavior could be enjoined to achieve the remedy that the plaintiffs desired, such as county election officials.<sup>5</sup> Second, the plaintiffs' concerns were speculative.<sup>6</sup>

On August 15, 2005, the court of appeals reversed Judge Kahn's dismissal of the case.<sup>7</sup> "The complaint here, while prolix and burdensome both for the court and for the appellees, can nonetheless be read and comprehended to plead at least some claims that are not frivolous on their face."<sup>8</sup>

Reviewing an amended complaint,<sup>9</sup> Judge Kahn dismissed various claims and defendants on January 8, 2008, including the plaintiffs' "claim that Defendants wrongfully counted the voting age population, rather than using the

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1. Complaint, *Loeber v. Spargo*, No. 1:04-cv-1193 (N.D.N.Y. Oct. 15, 2004), D.E. 1.

2. Order, *id.* (Oct. 25, 2004), D.E. 2.

3. Transcript, *id.* (Oct. 27, 2004, filed Dec. 7, 2004), D.E. 16; Minutes, *id.* (Oct. 27, 2004), D.E. 4; *see* Complaint, *supra* note 1, at 25.

4. Opinion, *Loeber*, No. 1:04-cv-1193 (N.D.N.Y. Oct. 29, 2004), D.E. 5, 2004 WL 2432484.

5. *Id.* at 2–3.

6. *Id.* at 3–4.

7. *Loeber v. Spargo*, 144 F. App'x 168 (2d Cir. 2005); *see* Judgment, *Loeber*, No. 1:04-cv-1193 (N.D.N.Y. Oct. 29, 2004), D.E. 6.

8. *Loeber*, 144 F. App'x at 170.

9. Amended Complaint, *Loeber*, No. 1:04-cv-1193 (N.D.N.Y. Jan. 8, 2008), D.E. 81.

citizen voting age population, thereby using imprecise numbers in redistricting and determining eligibility for funds under the [Help America Vote Act].”<sup>10</sup>

In 2010, the court of appeals affirmed Judge Kahn’s July 31, 2008, dismissal of the case.<sup>11</sup>

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10. Opinion, *id.* (Jan. 8, 2008), D.E. 81, 2008 WL 111172; *see* Pub. L. No. 107-252, 116 Stat. 1666 (2002), *as amended*, 52 U.S.C. §§ 20901–21145; *see also* Marie Leary & Robert Timothy Reagan, *The Help America Vote Act 18* (Federal Judicial Center 2012).

11. *Loeber v. Spargo*, 391 F. App’x 55 (2d Cir. 2010) (“An independent review of the amended complaint confirms that it did not present any discernable federal constitutional claim related to reapportionment.”), *aff’g* Opinion, *Loeber*, No. 1:04-cv-1193 (N.D.N.Y. July 31, 2008), D.E. 109, *cert. denied*, 563 U.S. 1029 (2011); *see also* Docket Sheets, Nos. 04-5890, 05-6536, 05-6956, and 08-739 (2d Cir. Dec. 9, 2004, to Feb. 13, 2008) (reflecting unsuccessful requests for relief from the court of appeals).