

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)

In a congressional election in New York, the Republican Party alleged that the Working Families Party's primary winner falsely claimed to be a resident of the District of Columbia so that the Democratic Party nominee could be named also a replacement Working Families Party nominee. The complaint was filed on the Friday before the election, and the court heard arguments that day by telephone. The district judge granted the Republican Party an injunction at 10:17 p.m., and the court of appeals affirmed the injunction on Monday.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; party procedures; primary election.

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 preelection 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

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, *id.* (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-

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 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 dismissal.¹⁴

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.

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

14. Stipulated Dismissal, *N.Y. State Republican Comm. v. N.Y. State Bd. of Elections*, No. 1:08-cv-810 (W.D.N.Y. Dec. 2, 2008), D.E. 10.