

Challenging a Victor's Residence Qualification

Harris v. Diaz (Richard M. Berman, S.D.N.Y. 1:04-cv-9124)

A district judge dismissed a postelection complaint that a victorious legislature candidate did not live in the district he was elected to represent. On the one hand, the appropriate proceeding would be a state-court quo warranto action; on the other hand, the time to challenge eligibility was before the election.

Subject: Voting irregularities. *Topics:* Enjoining certification; matters for state courts; laches.

Sixteen days after the November 2, 2004, general election, a voter filed a federal complaint in the Southern District of New York alleging that the victor in an election for New York's senate did not live in his district.¹

On the following day, Judge Richard M. Berman held a conference with the parties and denied the voter immediate relief.² Judge Berman dismissed the complaint on December 13.³ On the one hand, the proper procedure to litigate the plaintiff's claims would be a quo warranto action in state court.⁴ On the other hand, the time to challenge the senator's qualifications was more properly before the election.⁵

1. Complaint, *Harris v. Diaz*, No. 1:04-cv-9124 (S.D.N.Y. Nov. 18, 2004), D.E. 1; see David Saltonstall & Christina Silva, *Home Away from "Home,"* N.Y. Daily News, Nov. 30, 2004, at 19 (reporting also that the victor spent only a handful of nights each month at the address he listed as his residence).

2. Opinion at 3, *Harris*, No. 1:04-cv-9124 (S.D.N.Y. Dec. 14, 2004), D.E. 13, 2004 WL 2912888.

3. *Id.* at 11; see Bill Egbert, *Fed Judge Tosses Diaz Suit*, N.Y. Daily News, Dec. 17, 2004, at 3.

4. Opinion, *supra* note 2, at 9–11.

5. *Id.*