

A Meritless Suit for a Spot on the Ballot Filed by Apparently Fictitious Plaintiffs

Cruz v. Board of Elections
(*Victor Marrero, S.D.N.Y. 1:05-cv-7679*)

A prospective candidate's unsuccessful pro se suit to be included in a primary election for city council was remarkable for the alleged voter plaintiffs who never appeared and whose mail was returned to the court unopened.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; matters for state courts; pro se party; primary election; intervention.

A prospective candidate in the September 13, 2005, Democratic primary election for New York's city council filed a pro se federal complaint in the Southern District of New York on August 31, naming four voters as additional plaintiffs and seeking an order placing the prospective candidate's name on the ballot.¹

Judge Victor Marrero signed an order that the defendants show cause why relief should not be granted and set the case for hearing on September 6.² Judge Marrero denied the plaintiffs immediate relief from the bench and issued a published opinion that same day.³ Not only did the candidate fail to state a valid federal cause of action, but his claims were precluded by the *Rooker-Feldman* doctrine, which states that among federal courts only the Supreme Court has appellate jurisdiction over state-court proceedings.⁴ The candidate's federal action followed unsuccessful efforts in state court.⁵

Judge Marrero dismissed all of the candidate's claims and ordered the voters to show cause by September 9 why their claims should not be dismissed as well.⁶ At no time did the voters appear or file a paper.⁷ "In fact, all correspondence mailed to [the voter plaintiffs] was returned to the Court unopened."⁸ Following the primary election, Judge Marrero also ordered the

1. Docket Sheet, *Cruz v. Bd. of Elections*, No. 1:05-cv-7679 (S.D.N.Y. Aug. 31, 2005) (D.E. 1); *Cruz v. Bd. of Elections*, 396 F. Supp. 2d 354, 354 (S.D.N.Y. 2005); *Cruz v. Bd. of Elections*, 386 F. Supp. 2d 500, 500 (S.D.N.Y. 2005).

2. Order, *Cruz*, No. 1:05-cv-7679 (S.D.N.Y. Aug. 31, 2005), D.E. 2.

3. *Cruz*, 386 F. Supp. 2d 500; *Cruz*, 396 F. Supp. 2d at 354–55.

4. *Cruz*, 386 F. Supp. 2d at 500; *see* D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *see also* Martin A. Schwartz, Section 1983 Litigation 21–24 (Federal Judicial Center 3d ed. 2014).

5. *Cruz*, 386 F. Supp. 2d at 500.

6. *Id.* at 501; *Cruz*, 396 F. Supp. 2d at 355; *Cruz v. Bd. of Elections*, 392 F. Supp. 2d 667, 667 (S.D.N.Y. 2005).

7. *Cruz*, 392 F. Supp. 2d at 667 ("The Court did not receive any submission from the remaining plaintiffs in this action."); *Cruz*, 396 F. Supp. 2d at 355; *Cruz*, 386 F. Supp. 2d at 500 ("No plaintiff other than [the prospective candidate] appeared at the [September 6, 2005,] hearing.")

8. *Cruz*, 392 F. Supp. 2d at 667.

voters to show cause why the case had not become moot.⁹ On October 12, Judge Marrero dismissed the action for failure to prosecute.¹⁰

9. *Cruz*, 396 F. Supp. 2d at 355; *Cruz*, 392 F. Supp. 2d at 667.

10. *Cruz*, 392 F. Supp. 2d at 667–68.