

## Opportunity to Cure an Insufficient Number of Ballot-Petition Signatures

*Douglas v. Niagara County Board of Elections*  
(Richard J. Arcara, W.D.N.Y. 1:07-cv-609)

On the day before a primary election, a complaint alleged that the plaintiff was wrongfully denied a place on the ballot. After the election, the judge concluded that the plaintiff was not entitled to relief.

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

On the day before New York's September 18, 2007, primary election, a postal worker filed a federal complaint in the Western District of New York's Buffalo courthouse alleging that he was wrongfully denied a position on the ballot as Niagara Falls' first African American candidate for mayor.<sup>1</sup> The plaintiff alleged that he was wrongfully denied an opportunity to cure an insufficient number of petition signatures.<sup>2</sup> With his complaint, the plaintiff filed a motion for a temporary restraining order and a preliminary injunction<sup>3</sup> and a motion to expedite the case.<sup>4</sup>

On September 19, Judge Richard J. Arcara granted expedition and set a hearing on injunctive relief for October 4.<sup>5</sup> Judge Arcara presided over the hearing on October 4, 5, and 11.<sup>6</sup>

On October 16, Judge Arcara granted the defendants' motion to dismiss.<sup>7</sup> Although Judge Arcara noted deficiencies in the notice procedures of Niagara County's board of elections,<sup>8</sup> Judge Arcara denied the plaintiff relief because

(1) he did not have a protected property or liberty interest in his candidacy for Mayor of Niagara Falls; and (2) even if he did have a protected interest, the availability of an expedited judicial procedure to review the BOE's determination afforded him with an adequate pre-deprivation opportunity to be heard.<sup>9</sup>

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1. Complaint, *Douglas v. Niagara Cty. Bd. of Elections*, No. 1:07-cv-609 (W.D.N.Y. Sept. 17, 2007), D.E. 3; see Thomas J. Prohaska, *Douglas Sues to Get Back in Mayoral Race*, Buffalo News, Sept. 22, 2007, at D3.

2. Complaint, *supra* note 1; see also Thomas J. Prohaska, *Elections Board Rules Anello Out of Primary Race*, Buffalo News, Aug. 10, 2007, at D1 (reporting that the incumbent also failed to qualify for the ballot).

3. Motion, *Douglas*, No. 1:07-cv-609 (W.D.N.Y. Sept. 17, 2007), D.E. 1.

4. Motion, *id.* (Sept. 17, 2007), D.E. 2.

5. Order, *id.* (Sept. 19, 2007), D.E. 4; see Prohaska, *supra* note 1.

6. Docket Sheet, *Douglas*, No. 1:07-cv-609 (W.D.N.Y. Sept. 17, 2007); see Dan Herbeck, *Hoping for Court to Rekindle Candidacy*, Buffalo News, Oct. 5, 2007, at D1.

7. Opinion, *Douglas*, No. 1:07-cv-609 (W.D.N.Y. Oct. 16, 2007), D.E. 23, 2007 WL 3036809.

8. *Id.* at 9; see Dan Herbeck, *Douglas Loses Bid for Ballot in Falls*, Buffalo News, Oct. 17, 2007, at B1.

9. Opinion, *supra* note 7, at 11; see Herbeck, *supra* note 8.