

MOTION HEARING MINUTES**CASE NAME:**

David Price, et al.	VS	The New York State Board of Elections, et al.
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CAUSE: 42:1983 Civil Rights Act**DATE:** October 4, 2007**PROCEEDING:** Motion Hearing**LAW CLERKS:** _____**CASE NUMBER:** 1:06-cv-1083 (GLS/RFT)**TRIAL DATE:** **/**/****STENO:** Bonnie Buckley

Note: None

PRINT NAME	FIRM NAME	PARTY:
Thomas Marcelle, Esq.	Office of Thomas Marcelle	Plaintiffs
Todd Valentine, Esq.	New York State Board of Elections	Defendant

BEGINNING TIME: 10:05 A.M.**END TIME:** 10:25 A.M.

10:05 a.m. Attorney Appearances Made.

10:05 a.m. Court turns to strict scrutiny and rational basis review; plaintiff suggesting exception to process of commitment elected before process; goes to whether rational basis exist.

10:06 a.m. Atty. Marcelle states term expires on election day; seven day window; two arguments why irrational; can be certified up to 9 days later; absentee ballots take up to 7 days; could certify in 1 day but would be virtually impossible; certification took 6 days stated in record;

10:07 a.m. Court states 60 registered voters; currently exist is 10, 7 and 7. Two ballots under seal.

10:07 a.m. Atty. Marcelle states default mechanism. Very small number; did not affect on goings of Republican committee; up to 7 days for absentee ballot; issues a ballot has to be postmarked and then board tracks it; in with day or two after primary election; 7 day period is outside period; what makes irrational have certification process take longer than absentee no harm to state allowing absentees; in theory

the NYSBOEL, states DiCarlo case; the party chairman can make nomination; can happen delay of certification or absentee ballots; given ballots won't delay; COA has a solution that chairman can act; contest for committee seats are rare; if have to act there are several elections won't stop committee from having a quorum to act.

10:12 a.m. Atty. Valentine states longstanding, difference in case, absentee ballots not in right to vote; argument here is not about right to vote but privilege of absentee ballots; right to restrict in certain matters; not only votes that do not receive absentee ballots; limited to certain elections; distinction legislature drew; position of those voters; discusses certification time; discusses ballot canvassing; primary election was delayed.

10:18 a.m. Atty. Marcelle states has a hearing on October 9th for a conservative primary; will be filing a new action in Kingston; discusses New York State Election Law.

10:20 a.m. Court will RESERVE on decision; Court presumes that plaintiff should lose what would court do with sealed ballots.

10:20 a.m. Atty. Marcelle would present order to court to preserve those ballots until the appeal was perfected.

10:21 a.m. Court inquires what happened to ballots if plaintiff does not prevail.

10:21 a.m. Atty. Valentine states would be destroyed after 2 years of the election.