

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Thurgood Marshall United
States Courthouse, 40 Foley Square, in the City of New York,
on the 16th day of September, two thousand sixteen.

PRESENT: DENNIS JACOBS,
BARRINGTON D. PARKER,
DEBRA A. LIVINGSTON,
Circuit Judges.

- - - - -X
JACK MARTINS,
Defendant-Intervenor-
Appellant,

-v.-

16-3028

PHILIP PIDOT, NANCY HAWKINS, STEVEN
AXELMAN,
Plaintiffs-Appellees,

AND

NEW YORK STATE BOARD OF ELECTIONS,
SUFFOLK COUNTY BOARD OF ELECTIONS,
NASSAU COUNTY BOARD OF ELECTIONS,
BOARD OF ELECTIONS IN THE CITY OF NEW
YORK, PETER KOSINSKI, DOUGLAS

1 KELLNER, ANDREW J. SPANO, GREGORY P.
2 PETERSON, TODD D. VALENTINE, ROBERT
3 A. BREHM, IN THEIR OFFICIAL
4 CAPACITIES AS BOARD MEMBERS,
5 COMMISSIONERS, AND EXECUTIVE
6 DIRECTORS OF THE NEW YORK STATE BOARD
7 OF ELECTIONS,

8 Defendants-Appellees

9
10 AND

11
12 TOM SUOZZI

13 Intervenor-Appellee*

14
15 - - - - -X

16
17 FOR APPELLANT JACK MARTINS:

JASON TORCHINSKY, SHAWN
TOOMEY, STEVE ROBERTS,
Holtzman Vogel Joesefiak
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23 PAUL DEROHANNESIAN,
24 DANIELLE R. SMITH,
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27 York

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29 FOR APPELLEES PHILLIP PIDOT, NANCY HAWKINS, STEVEN AXELMAN:

30 JERRY H. GOLDFEDER, DAVID
31 V. SIMUNOVICH, Stroock,&
32 Stroock & Lavan LLP, New
33 York, New York

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35 FOR APPELLEE BOARD OF ELECTIONS IN THE CITY OF NEW YORK:

36 JANET L. ZALEON, *for*
37 *Zachary W. Carter,*
38 *Corporation Counsel of the*
39 *City of New York, New York,*
40 *New York (Susan Greenberg,*
41 *on the brief)*

42

*The Clerk of Court is directed to amend the caption as
set forth above.

1 FOR APPELLEES NEW YORK STATE BOARD OF ELECTIONS, PETER
2 KOSINSKI, DOUGLAS KELLNER, ANDREW J. SPANO, GREGORY P.
3 PETERSON, TODD D. VALENTINE, ROBERT A. BREHM, IN THEIR
4 OFFICIAL CAPACITIES AS BOARD MEMBERS, COMMISSIONERS, AND
5 EXECUTIVE DIRECTORS OF THE NEW YORK STATE BOARD OF
6 ELECTIONS:

7 BRIAN QUAIL, WILLIAM
8 MCCANN, JR, New York, New
9 York

10
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12 FOR APPELLEE TOM SUOZZI:

13 ABHA KHANNA, MARTIN E.
14 GILMORE, Perkins Coie LLP,
15 New York, New York
16

17 Appeal from judgment of the United States District
18 Court for the Northern District of New York (Scullin, J.).

19 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
20 **AND DECREED** that the injunction of the district court be
21 **VACATED**, and that the case is remanded with direction to
22 dismiss.

23 This appeal, heard on an expedited basis, is taken from
24 an injunction that directs a special election for the
25 Republican nomination to stand for Congress in the Third
26 Congressional District of New York. Appellant Jack Martins
27 stood unopposed in the Republican general primary on June 28
28 while litigation was ongoing in the New York state courts as
29 to whether a potential opponent for the Republican
30 nomination, Phillip Pidot, had submitted sufficient
31 signatures to get on the ballot. The signatures on Pidot's

1 petition were validated by the state court four days before
2 the primary, by which point it was found to be impossible to
3 make the arrangements for Pidot to appear on the ballot and
4 to arrange compliance with the other requirements of state
5 and federal law. After the original primary date, the
6 United States District Court for the Northern District of
7 New York (Scullin, J.) issued an injunction requiring that
8 the primary election, with Pidot now on the ballot, be
9 conducted on October 6.

10 Appellant Martins challenges the injunction on several
11 grounds, including voter confusion, the burden holding an
12 election would place on the local boards of election, and
13 the brevity of the interval between the new primary and the
14 general election.

15 We conclude that Martins has standing to appeal the
16 district court's order; that the Rooker-Feldman doctrine
17 does not apply because Pidot was a state court *winner*, and,
18 in any event, did not invite review of the state court's
19 legal judgment; that collateral estoppel is not a bar to
20 this suit, in part because the district court found no
21 privity between Pidot and the voter plaintiffs and in part
22 because the issues involved in the federal action--i.e.
23 UOCAVA and the First Amendment--were neither actually
24 litigated nor necessarily decided in the state action; and

1 that Pidot has not precipitated delays sufficient to entail
2 the application of the doctrine of laches. We assume
3 arguendo that Pidot's suit is not barred by res judicata.

4 Our review of the record indicates that the district
5 court's resolution of Pidot's application for an injunction
6 failed to address the applicable injunction standards.

7 A party seeking a preliminary injunction must
8 ordinarily establish (1) irreparable harm, (2) a likelihood
9 of success on the merits, and (3) that issuance of an
10 injunction is in the public interest. See New York ex rel.
11 Schneiderman v. Actavis PLC, 787 F.3d 638, 650 (2d Cir.
12 2015). The district court's decision here to order a
13 special primary is a form of permanent injunction. See Pope
14 v. County of Albany, 687 F.3d 565, 569-70 (2d Cir. 2012).
15 "The requirements for a permanent injunction are essentially
16 the same as for a preliminary injunction, except that the
17 moving party must demonstrate actual success on the merits."
18 New York Civil Liberties Union v. New York City Transit
19 Auth., 684 F.3d 286, 294 (2d Cir. 2011). We properly
20 reverse an order of a permanent injunction where the
21 district court decision rests on an error of law. Pope, 687
22 F.3d at 570-71.

23 Our decision in Rivera-Powell v. New York City Board of
24 Elections, 470 F.3d 458 (2d Cir. 2006), forecloses Pidot's

1 claim. After review, we conclude that Martins did not waive
2 his Rivera-Powell argument in the district court, and that
3 we can construe Pidot's First Amendment claim in this case
4 as analogous to a due process claim, as was done in Rivera-
5 Powell itself. Id. at 469. Under Rivera-Powell, "when a
6 candidate raises a First Amendment challenge to his or her
7 removal from the ballot based on the allegedly unauthorized
8 *application* of an admittedly valid restriction," such as
9 here, "the state has satisfied the First Amendment if it has
10 provided due process." Id. at 469-70. Pidot does not
11 allege that the state failed to afford him due process. We
12 therefore vacate the injunction on that ground.

13 Further, Pidot failed to establish--and the district
14 court failed to find--that the balance of equities tipped in
15 his favor or that the injunction would be in the public
16 interest. Accordingly, Pidot is not entitled to the
17 injunctive relief which he seeks.

18 For the foregoing reasons, and finding no merit in
19 Pidot's other arguments, we hereby **VACATE** the order of the
20 district court and direct the court to enter judgment in
21 favor of the defendants.

22 FOR THE COURT:
23 CATHERINE O'HAGAN WOLFE, CLERK
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Catherine O'Hagan Wolfe