

David C. Indiano argues on behalf of Partido Nuevo Progresista (PNP) before First Circuit Court of Appeals in Boston, Massachusetts on June 6, 2012

On June 6, 2012 oral arguments were heard in Boston, Massachusetts before a three judge panel<sup>1</sup> of the United States Court of Appeals for the First Circuit in the case of *Gonzalez-Cancel v. Partido Nuevo Progresista*, No. 12-1243<sup>2</sup>. David C. Indiano, a partner at Indiano & Williams, P.S.C. in San Juan, Puerto Rico argued the case on behalf of Appellee Partido Nuevo Progresista (“PNP”), the Puerto Rico statehood party also known as the New Progressive Party (“NPP”).

The appeal was pursued by Ivan Gonzalez-Cancel and Jose Barbosa following the dismissal of their purported §1983 civil rights claim in the United States District Court for the District of Puerto Rico. Mr. Gonzalez-Cancel filed the federal lawsuit after the New Progressive Party refused to qualify him to run as a party candidate for governor in the March 2012 primary elections. Indiano & Williams, P.S.C. successfully moved for the dismissal of the federal claims due to a lack of subject matter jurisdiction, the failure to state a claim for relief could be granted, and *Pullman* abstention.

The District Court’s February 10, 2012 Opinion & Order<sup>3</sup> discussed the newly enacted Puerto Rico Electoral Code and the New Progressive Party’s nomination qualifying process along with the Constitutional rights of Mr. Gonzalez-Cancel and the established First Amendment rights of political parties, including the New Progressive Party. The District Court reiterated the prevailing caselaw that “not every electoral dispute at the state level warrants the scrutiny of the federal system” and ultimately concluded that Mr. Gonzalez-Cancel had failed to present a claim involving a discrete group of voters suffering a denial of equal protection, a purposeful or systematic discrimination against voters, or any deprivation of substantive due process. As the District Court explained, “the complaint falls *far* short of establishing the type of ‘broad-gauge unfairness’” required by the controlling First Circuit precedent. Given that conclusion, the District Court dismissed the case due to a lack of subject matter jurisdiction.

On appeal, the parties briefed and argued those jurisdictional and Constitutional issues along with the application of *Pullman* abstention given the adequate state remedies available to Mr. Gonzalez-Cancel. A ruling from the First Circuit Court of Appeals is expected in the next several weeks.

Just one month after the District Court dismissed Mr. Gonzalez-Cancel’s claims, Indiano & Williams, P.S.C. successfully obtained the dismissal of a similar case involving the New Progressive Party’s denial of a candidate’s request to run in the mayoral primaries for the city of Moca, Puerto Rico. Again, the United States District Court for the District of Puerto Rico refused to find subject matter jurisdiction to hear the local electoral claims or to otherwise intervene in Puerto Rico’s electoral processes. See *Valentin-Perez v. New Progressive Party*, \_\_\_ F.Supp.2d \_\_\_

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<sup>1</sup>The panel consisted of Chief Judge Honorable Sandra L. Lynch, Circuit Judge Honorable O. Rogeriee Thompson, and Senior Circuit Judge Honorable Kermit V. Lipez.

<sup>2</sup>Audio of the June 6, 2012 oral arguments in *Gonzalez-Cancel v. Partido Nuevo Progresista*, No. 12-1243 is available for thirty (30) days on the First Circuit Court of Appeals’ website. See [www.ca1.uscourts.gov/files/audio/audiorss.php](http://www.ca1.uscourts.gov/files/audio/audiorss.php)

<sup>3</sup>See *Gonzalez-Cancel v. Partido Nuevo Progresista*, CV 11-2149 (JAG), Docket No. 23.

2012 WL 851104 (D.P.R. 2012).