

## Changing Party Affiliation for a Primary Election

*Van Wie v. Pataki (David N. Hurd, 1:00-cv-322), Van Allen v. Cuomo (Gary L. Sharpe, 1:07-cv-722), and Van Allen v. Walsh (Lawrence E. Kahn, 1:08-cv-876) (N.D.N.Y.)*

Two weeks before a presidential primary election, two voters filed a federal complaint challenging a law that allowed new voter registrants to enroll in a political party up to twenty-five days before a primary election but did not allow a change in party enrollment for already registered voters to go into effect until after the next general election. One week later, after oral argument, the district judge dismissed the complaint, finding compelling the incentive to register for new voters. Actions initiated in 2007 and 2008 were similarly unsuccessful.

*Subject:* Registration procedures. *Topics:* Registration procedures; primary election; intervention; pro se party.

Despite the Supreme Court’s 1973 ruling in *Rosario v. Rockefeller* that New York’s lockbox procedure for changing party affiliation is constitutional,<sup>1</sup> New York voters filed unsuccessful emergency complaints in 2000, 2007, and 2008 seeking a different result. The Supreme Court held that New York could delay the effectiveness of a change in party affiliation until after the following general election “to inhibit party ‘raiding,’ whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party’s primary.”<sup>2</sup>

Two weeks before New York’s March 7, 2000, presidential primary election, two voters filed a federal complaint in the Northern District of New York challenging New York’s law that allowed new voter registrants to enroll in a political party up to twenty-five days before a primary election but did not allow a change in party enrollment for already-registered voters to go into effect until after the next general election.<sup>3</sup> Two days later, Judge David N. Hurd issued an order to show cause why New York should not give effect to recent party-enrollment changes.<sup>4</sup>

Judge Hurd held oral argument in Utica on February 29, one week before the election.<sup>5</sup> He denied a motion by the Independence Party to intervene as

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1. 410 U.S. 752 (1973).

2. *Id.* at 760.

3. Docket Sheet, *Van Wie v. Pataki*, No. 1:00-cv-322 (N.D.N.Y. Feb. 22, 2000) [hereinafter *Van Wie* Docket Sheet] (D.E. 1); *Van Wie v. Pataki*, 267 F.3d 109, 112 (2d Cir. 2001); *VanWie v. Pataki*, 87 F. Supp. 2d 148, 150 (N.D.N.Y. 2000); see Tom Precious, *Suit Filed to Open State’s Primary to Independents*, Buffalo News, Feb. 25, 2000, at A11 (suggesting that the suit’s success would benefit John McCain’s candidacy against George W. Bush).

4. *Van Wie* Docket Sheet, *supra* note 3 (D.E. 4); *VanWie*, 87 F. Supp. 2d at 150; see Lara Jakes, *Non-Affiliated Voters Take Heart in Court Victory*, Albany Times Union, Feb. 25, 2000, at B2.

5. *Van Wie* Docket Sheet, *supra* note 3 (D.E. 8); *VanWie*, 87 F. Supp. 2d at 150; *Van Wie*, 267 F.3d at 112.

a defendant, but he permitted the party to participate as an amicus curiae.<sup>6</sup> That day, he also dismissed the complaint, finding compelling New York's interest in providing an incentive for new voters to register.<sup>7</sup>

An appeal was heard on January 23, 2001; on October 4, the court of appeals determined that the case was moot.<sup>8</sup> The appellate court vacated the district court's ruling.<sup>9</sup>

A voter filed a similar complaint in the same district on July 12, 2007, seeking an injunction allowing him to vote in the September primary election.<sup>10</sup> At a hearing one week later, Judge Gary L. Sharpe denied the plaintiff a temporary restraining order and dismissed the complaint.<sup>11</sup> Hearing a pro se appeal, the court of appeals affirmed Judge Sharpe's ruling on September 17, 2010.<sup>12</sup>

While the 2007 plaintiff's case was on appeal, the plaintiff and two other voters filed a similar complaint in the Northern District on August 15, 2008.<sup>13</sup> Judge Lawrence E. Kahn denied the plaintiffs relief on September 8 both on the merits and pursuant to res judicata.<sup>14</sup> A different panel of the court of appeals affirmed the judgment on March 25, 2010.<sup>15</sup>

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6. *VanWie*, 87 F. Supp. 2d at 150.

7. *Id.* at 152–53; *Van Wie*, 267 F.3d at 112; see Lara Jakes, *Independent Voters Lose Fight for Primary Rights*, Albany Times Union, Mar. 1, 2000, at B2; Tom Precious, *Judge Rejects Effort to Allow Independents to Vote in New York Primary*, Buffalo News, Mar. 1, 2000, at A5.

8. *Van Wie*, 267 F.3d 109.

9. *Id.* at 116.

10. Complaint, *Van Allen v. Cuomo*, No. 1:07-cv-722 (N.D.N.Y. July 1, 2007), D.E. 1; *Van Allen v. Cuomo*, 621 F.3d 244, 246 (2d Cir. 2010).

11. Opinion, *Van Allen*, No. 1:07-cv-722 (N.D.N.Y. July 19, 2007), D.E. 24, 2007 WL 2091192; Transcript, *id.* (July 19, 2007, filed Nov. 15, 2007), D.E. 31; Minutes, *id.* (July 19, 2007), D.E. 22; *Van Allen*, 621 F.3d at 246–47.

12. *Van Allen*, 621 F.3d 244.

13. Complaint, *Van Allen v. Walsh*, No. 1:08-cv-876 (N.D.N.Y. Aug. 15, 2008), D.E. 1.

14. Opinion, *id.* (Sept. 8, 2008), D.E. 17.

15. *Van Allen v. Walsh*, 370 F. App'x 235 (2d Cir. 2010) (noting that the appeal was pro se).