

Challenge to a Voter-Registration Form Stating That Party Affiliation Is Required for Primary-Election Voting

Fitzgerald v. Berman
(Norman A. Mordue, N.D.N.Y. 1:02-cv-926)

As voters supporting open primary elections began a voter-registration drive as part of their effort to create a new Non-Affiliated Voters Party, they filed a federal complaint challenging voter-registration-form language stating that only registered members of political parties could vote in primary elections. The district judge considered but denied immediate relief fifteen days later. Two years after that, the district judge dismissed the complaint for lack of standing because all established parties wished to retain closed primary elections.

Subject: Registration procedures. *Topics:* Primary election; registration procedures; pro se party.

Represented by counsel, six voters filed a federal complaint in the Northern District of New York on July 16, 2002, challenging voter-registration-form language that allegedly asserted falsely that party membership was required for primary-election voting.¹ Seeking to establish a new political party called the Non-Affiliated Voters Party, the plaintiffs argued that the First Amendment entitled a party to invite nonmembers to vote in its primary elections.² The complaint was filed one week after the plaintiffs began circulating gubernatorial nominating petitions.³ Six days later, the plaintiffs filed an application for a temporary restraining order.⁴

On July 24, Judge Norman A. Mordue issued an order that defendants show cause at a July 31 telephonic hearing why the plaintiffs should not be granted relief.⁵ At the ten-minute hearing, Judge Mordue denied the plaintiffs immediate relief.⁶

He denied the plaintiffs a preliminary injunction on September 30, 2003, for lack of standing.⁷ Although established political parties in New York held

1. Complaint, *Fitzgerald v. Berman*, No. 1:02-cv-926 (N.D.N.Y. July 16, 2002), D.E. 1; see Andrew Tilghman, *Ruling Delayed on Election Law*, Albany Times Union, Aug. 8, 2002, at B4.

2. Complaint, *supra* note 1, at 5–8.

3. *Id.* at 5.

4. Temporary-Restraining-Order Application, *Fitzgerald*, No. 1:02-cv-926 (N.D.N.Y. July 22, 2002), D.E. 2.

5. Order to Show Cause, *id.* (July 24, 2002), D.E. 4, 5.

Judge Mordue died on December 29, 2022. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

6. Minutes, *Fitzgerald*, No. 1:02-cv-926 (N.D.N.Y. July 31, 2002), D.E. 17 (noting that the hearing lasted from 8:30 to 8:40 a.m.).

7. Opinion, *id.* (Sept. 30, 2003), D.E. 24, *aff'd*, 112 F. App'x 800 (2d Cir. 2004).

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closed primary elections, the plaintiffs could not show that if their planned party became established New York would prevent them from holding open primary elections.⁸ Judge Mordue dismissed the complaint on March 22, 2006, with leave to amend it.⁹

On October 31, 2006, Judge Mordue dismissed without prejudice a pro se amended complaint as almost incomprehensible.¹⁰ On December 1, he dismissed as “if anything, more prolix and confusing than the amended complaint” a second amended complaint.¹¹

8. *Id.*

9. Opinion, *id.* (Mar. 22, 2006), D.E. 36, 2006 WL 752785.

10. Opinion, *id.* (Oct. 31, 2006), D.E. 54, 2006 WL 6549889; *see* Amended Complaint, *id.* (Apr. 7, 2006), D.E. 37.

11. Opinion, *id.* (Dec. 1, 2006), D.E. 54, 2006 WL 3489051, *appeal dismissed*, Order, No. 07-51 (2d Cir. Apr. 30, 2007) (dismissing the appeal for failure to prosecute it); *see* Second Amended Complaint, *id.* (Nov. 20, 2006), D.E. 55.