

Paper Primary Ballots for Minor Parties and Machine Primary Ballots for Major Parties

Green Party of New York v. Weiner
(Gerard E. Lynch, S.D.N.Y. 1:00-cv-6639)

A minor party filed a federal complaint one week before a primary election challenging the use of paper ballots for minor parties and voting machines for major parties. Following a hearing two days later, the federal judge denied immediate relief on a finding that the use of paper ballots for a minor party would be unlikely to unduly delay the counting of votes. Following complete briefing, the judge granted the defendants summary judgment seventeen months later and declined jurisdiction over state law claims.

Subject: Voting procedures. *Topics:* Voting technology; primary election; matters for state courts; intervention; equal protection.

One week before a September 12, 2000, primary election in New York, the Green Party, three Green Party candidates for the U.S. Senate, and another Green Party voter filed a federal complaint in the Southern District of New York challenging election officials' plans to use paper ballots for the party's primary election in New York City while providing voting machines for major-party voters and using voting machines for the Green Party outside New York City.¹

Following a September 7 hearing, Judge Gerard E. Lynch denied the plaintiffs immediate relief on September 8.² The plaintiffs presented evidence of

troubling irregularities in the conduct of the Green Party presidential primary in March of this year, including failure to deliver paper ballots to polling places or to post copies of such ballots as required by state law, and occasional incidents in which poll workers denigrated Green Party members or provided misinformation about the primary.³

But

Board of Elections personnel have been properly cautioned to conduct the election according to proper procedure and with due regard for the dignity and constitutional rights of voters in smaller parties. On this record, there is

1. Docket Sheet, *Green Party of N.Y. v. Weiner*, No. 1:00-cv-6639 (S.D.N.Y. Sept. 5, 2000) (D.E. 1); *Green Party of N.Y. v. Weiner*, No. 1:00-cv-6639, 2000 WL 1280913, at *1, *3 (S.D.N.Y. Sept. 8, 2000); *Green Party of N.Y. v. Weiner*, 216 F. Supp. 2d 176, 181 (S.D.N.Y. 2002).

2. *Green Party*, 2000 WL 1280913; Docket Sheet, *supra* note 1; *Green Party*, 216 F. Supp. 2d at 182; see Steve Strunsky, *Paper Ballots for Green Party*, N.Y. Times, Sept. 8, 2000, at B10.

Judge Lynch was elevated to the court of appeals on September 18, 2009. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

3. *Green Party*, 2000 WL 1280913, at *2.

no reason to assume that any irregularities that might have occurred in previous paper-ballot primaries will be repeated.⁴

Observing that the voting machines would serve over two million registered Democrats in the city, Judge Lynch opined that providing paper ballots for 1,640 Green Party members voting in over five hundred electoral districts would not likely result in delayed results.⁵

“Plaintiffs have presented some interesting questions of New York State law,” but “it would be rash to consider demands for sweeping provisional relief on the basis of state law claims over which at most ancillary jurisdiction may exist.”⁶

Following the primary and general elections, Judge Lynch held a status conference on January 27, 2001, at which the Independence Party moved to intervene.⁷ On February 11, 2002, Judge Lynch awarded the defendants summary judgment on the federal claims and declined jurisdiction over the state law claims.⁸ Because the Independence Party’s proposed complaint alleged claims virtually identical to the Green Party’s unsuccessful claims, intervention was denied as moot.⁹

4. *Id.* at *3 (citation omitted).

5. *Id.* at *2–*3.

6. *Id.* at *1; *Green Party*, 216 F. Supp. 2d at 182.

7. *Green Party*, 216 F. Supp. 2d at 182.

8. *Id.* at 184–97.

9. *Id.* at 198.