Injunction Against Purging of Minor Party Registrations for Party's Failure to Qualify as an Established Party

Green Party of New York State v. New York State Board of Elections (John Gleeson, E.D.N.Y. 1:02-cv-6465)

On December 10, 2002, following New York's 2002 gubernatorial election, the state's Green Party and six supporters filed a federal complaint in the Eastern District of New York challenging state law that would strip party members' registered membership if the party failed to maintain recognized party status by obtaining at least 50,000 votes in the election to be certified on December 13.[1] "New York is one of only three states (Iowa and Kansas are the others) that limit the voters' enrollment choices to parties that have received a certain level of political support."[2]

> The sole purpose of that statute, the State Board argued, "is to provide a list of people who can vote in primary elections." The State Board conceded that whatever the intended purpose of the voter enrollment scheme, the enrollment lists published by the local boards of elections are in fact *used* by political parties for associational purposes, including get-out-the-vote efforts and disseminating information about party positions.[3]

Judge John Gleeson heard the case on December 10 and 12.[4] Judge Gleeson granted the plaintiffs a temporary restraining order.[5]

> I concluded that plaintiffs had convincingly alleged that the law imposed a severe burden on their First and Fourteenth Amendment rights to associate and express their political beliefs, and that the State's purported interests in protecting Green Party candidates and the more-established political parties were neither compelling nor reasonable. Given that the harm was to take effect on December 13, 2002, plaintiffs had therefore demonstrated an irreparable injury and a likelihood of success on the merits.[6]

On December 17, Judge Gleeson issued an interim injunction giving minor parties recognized status so long as they obtained at least 50,000 votes in either the 1998 or the 2002 gubernatorial election and ordering defendant election officials

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1. Complaint, Green Party of N.Y. State v. N.Y. State Bd. of Elections, No. 1:02-cv-6465 (E.D.N.Y. Dec. 10, 2002), D.E. 1; Green Party of N.Y. State v. N.Y. State Bd. of Elections, 389 F.3d 411, 415–16 (2d Cir. 2004); Green Party of N.Y. State v. N.Y. State Bd. of Elections, 267 F. Supp. 2d 342, 348 (E.D.N.Y. 2003).

2. *Green Party of N.Y. State*, 267 F. Supp. 2d at 345; *see id.* at 344 ("there are political organizations that are commonly and correctly referred to as political parties that are not 'parties' within the meaning of New York law").

3. *Id.* at 349.

4. Docket Sheet, *Green Party of N.Y. State*, No. 1:02-cv-6465 (E.D.N.Y. Dec. 10, 2002) (D.E. 4, 5); *Green Party of N.Y. State*, 267 F. Supp. 2d at 348.

Judge Gleeson retired on March 9, 2016. Federal Judicial Center Biographical Directory of Federal Judges, www.fjc.gov/history/home.nsf/page/judges.html.

5. Temporary Restraining Order, *Green Party of N.Y. State*, No. 1:02-cv-6465 (E.D.N.Y. Dec. 17, 2002, filed Jan. 17, 2003), D.E. 9; *Green Party of N.Y. State*, 389 F.3d at 417; *Green Party of N.Y. State*, 267 F. Supp. 2d at 349–50 & n.8; *see* Joel Siegel, *3 Parties Not Yet Over for N.Y. Voters*, N.Y. Daily News, Dec. 13, 2002, at 52.

6. Temporary Restraining Order, *supra* note 5, at 1–2.

to show cause on January 16, 2003, why the plaintiffs' relief should not be extended in time.[7] On May 30, 2003, Judge Gleeson issued a published preliminary injunction.[8]

On July 18, 2003, Judge Gleeson granted motions to intervene by the Liberal Party, the Right to Life Party, the Libertarian Party, and the Marijuana Reform Party.[9] On September 18, Judge Gleeson modified the injunction

> to require the State Board to open New York's voter enrollment scheme to all of the plaintiff political parties by placing an "Other" line on the state's voter registration form and directing the local boards of elections to maintain and update the enrollment information of voters who indicate their affiliation with the Green, Liberal, Libertarian, Marijuana Reform, or Right to Life Parties.[10]

Judge Gleeson also ordered New York to cease regarding Green Party members as unenrolled on the board of elections' website.[11]

On July 7, 2005, Judge Gleeson issued a stipulated fee award to the original plaintiffs of $132,528.91.[12] Stipulated fee awards of $27,103.45 to the Marijuana Reform Party[13] and $26,037.90 to the Liberal Party[14] were issued in August and September. Awards of $39,447.65 to the Libertarian Party and $76,602.50 to the Right to Life Party were issued in 2006.[15]

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7. Order, *Green Party of N.Y. State*, No. 1:02-cv-6465 (E.D.N.Y. Dec. 17, 2002), D.E. 2; *Green Party of N.Y. State*, 267 F. Supp. 2d at 349; *see* Docket Sheet, *supra* note 4 (D.E. 13); *Green Party of N.Y. State*, 389 F.3d at 417; *Green Party of N.Y. State*, 267 F. Supp. 2d at 350.

8. *Green Party of N.Y. State*, 267 F. Supp. 2d 342, *aff'd*, 389 F.3d 411; *see* Andy Newman, *Judge Rules for Small Parties Seeking to Remain in Business*, N.Y. Times, June 4, 2003, at B6.

9. *See* Opinion at 79–80, *Green Party of N.Y. State*, No. 1:02-cv-6465 (E.D.N.Y. Sept. 18, 2003), D.E. 80 [hereinafter Injunction Modification], 2003 WL 22170603; *Green Party of N.Y. State*, 389 F.3d at 414, 417; *see* Elizabeth Benjamin, *Ruling Boosts Minor Parties*, Albany Times Union, July 17, 2003, at B2.

On July 1, 2004, Judge Gleeson denied intervention to pro se litigants seeking to challenge New York's delaying the effect of a change in party enrollment until after an intervening general election. Opinion, *Green Party of N.Y. State*, No. 1:02-cv-6465 (E.D.N.Y. July 1, 2004), D.E. 106, *appeal dismissed*, Order, Strunk v. Green Party of N.Y. State, No. 04-1085 (2d Cir. Oct. 5, 2005), *filed as* Mandate, *Green Party of N.Y. State*, No. 1:02-cv-6465 (E.D.N.Y. July 11, 2006), D.E. 157.

10. Injunction Modification, *supra* note 9, at 9; *see Green Party of N.Y. State*, 389 F.3d at 414, 417; *see* Elizabeth Benjamin, *Court Spares Minor Political Parties*, Albany Times Union, Sept. 25, 2003, at B2.

11. Order, *Green Party of N.Y. State*, No. 1:02-cv-6465 (E.D.N.Y. Sept. 18, 2003), D.E. 81, 2003 WL 22170605; *Green Party of N.Y. State*, 389 F.3d at 418.

12. Stipulated Order, *Green Party of N.Y. State*, No. 1:02-cv-6465 (E.D.N.Y. July 7, 2005), D.E. 135.

13. Stipulated Order, *id.* (Aug. 29, 2005), D.E. 149.

14. Stipulated Order, *id.* (Sept. 9, 2005), D.E. 152.

15. Order, *id.* (Apr. 10, 2006), D.E. 156.