

## **Challenge to Voter Registration Form Stating That Party Affiliation Is Required for Primary Voting**

*Fitzgerald v. Berman*

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

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.<sup>1</sup> 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.<sup>2</sup> The complaint was filed one week after the plaintiffs began circulating gubernatorial nominating petitions.<sup>3</sup> Six days later, the plaintiffs filed an application for a temporary restraining order.<sup>4</sup>

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.<sup>5</sup> At the ten-minute hearing, Judge Mordue denied the plaintiffs immediate relief.<sup>6</sup>

Judge Mordue denied the plaintiffs a preliminary injunction on September 30, 2003, for lack of standing.<sup>7</sup> Although established political parties in New York held closed primaries, the plaintiffs could not show that if their planned party became established New York would prevent them from holding open primary elections.<sup>8</sup> Judge Mordue dismissed the complaint on March 22, 2006, with leave to amend.<sup>9</sup>

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

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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.

6. Minutes, *id.* (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).

8. *Id.*

9. Opinion, *id.* (Mar. 22, 2006), D.E. 36, *available at* [2006 WL 752785](#).

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

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