

2020 Ballot-Petition Signature Requirements in West Virginia

*Wilson v. Justice (Thomas E. Johnston, 2:20-cv-526) and
West v. Warner (Irene C. Berger, 2:20-cv-570) (S.D. W. Va.)*

Southern District of West Virginia district judges denied 2020 independent candidates relief from West Virginia's ballot-petition signature requirements. Independent candidates for President and governor argued that the requirements were too onerous, especially during a global infectious pandemic.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; Covid-19; laches; interlocutory appeal; case assignment.

Prospective independent candidates in the 2020 general election were unsuccessful in persuading judges in the Southern District of West Virginia to relax West Virginia's ballot-petition signature requirements.

Gubernatorial Candidate

A prospective independent candidate for governor filed in the Southern District of West Virginia a federal complaint against West Virginia's governor and its secretary of state on August 4, 2020, challenging West Virginia's ballot-petition signature requirements for independent candidates in light of social distancing made necessary by a global Covid-19 infectious pandemic.¹ Nearly two weeks later, the plaintiff filed a motion for a temporary restraining order and a preliminary injunction.²

On the next day, Chief Judge Thomas E. Johnston set the case for a telephonic status conference on Friday, August 21.³ At the five-minute conference, Judge Johnston set the case for a hearing on Monday.⁴

The courthouse was mostly closed in the spring because of the pandemic, but it was mostly open in August.⁵ Because Chief Judge Johnston observed evidence of community transmission, he mostly closed the courthouse again in September.⁶ Because the hearing in this case was in August, however, it could be held in the courtroom.⁷ The hearing was open to the public, but it was not attended by very many members of the public.⁸ Participants were required to wear masks, except when speaking.⁹

1. Complaint, *Wilson v. Justice*, No. 2:20-cv-526 (S.D. W. Va. Aug. 4, 2020), D.E. 1.

2. Motion, *id.* (Aug. 17, 2020), D.E. 4.

3. Order, *id.* (Aug. 18, 2020), D.E. 5.

Tim Reagan interviewed Judge Johnston for this report by telephone on November 4, 2020.

4. Order, *Wilson*, No. 2:20-cv-526 (S.D. W. Va. Aug. 21, 2020), D.E. 11; Minutes, *id.* (Aug. 21, 2020), D.E. 10.

5. Interview with Hon. Thomas E. Johnston, Nov. 4, 2020.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*; see Transcript at 3, *Wilson*, No. 2:20-cv-526 (S.D. W. Va. Aug. 24, 2020, filed Sept.

Following a brief recess at the end of the hearing, Judge Johnston denied the plaintiff immediate relief.¹⁰ The primary basis for Judge Johnston’s ruling was laches, but Judge Johnston found other reasons that the requested relief would cause the state hardship and be detrimental to the public:

Plaintiff has proffered no reasonable justification for waiting to file suit and seeking emergency relief until August.

... Plaintiff’s delay, in bringing this suit at the eleventh hour and only after not satisfying the ballot access requirements[,] is inexcusable and unreasonable.

...
[It] threatens to disrupt the remaining election process. . . .

...
Now, even though the doctrine of laches resolves Plaintiff’s motion for preliminary injunction, the Court nonetheless finds that Plaintiff would not be entitled to preliminary injunctive relief.

...
The Court agrees with Defendants that the ballot access requirements imposed only modest burdens on the Plaintiff and, thus, intermediate scrutiny applies. . . .

...
Defendants have offered several justifications for enforcing the ballot access laws. . . .

...
Even if plaintiff had shown a likelihood of success on the merits, a preliminary injunction would not be appropriate because a modification of these election laws, at least at this juncture, would cause the government significant hardship and would be detrimental to the public. . . .

Issuing Plaintiff’s proposed injunction would not permit sufficient time for county boards of ballot commissioners to prepare ballots for printing and meet the September 18, 2020 ballot mailing deadline. Moreover, reducing the number of valid signatures at this stage could expand the pool of independent candidates and require more signature verification efforts on the . . . part of county officials. Finally, placing Plaintiff on the ballot would deprive the public of proper enforcement of West Virginia’s election laws and potentially result in disparate treatment of other prospective candidates who did not satisfy the signature gathering and deadline requirements.¹¹

Presidential Candidate

On Friday, August 28, Kanye West, a prospective independent candidate for President, filed in the Southern District a complaint against West Virginia’s secretary of state challenging his disqualification for the ballot as a result of

1, 2020), D.E. 16 [hereinafter *Wilson* Transcript] (“THE COURT: You can remove your mask when you’re speaking. I know it makes it difficult.”).

10. Order, *id.* (Aug. 24, 2020), D.E. 15; Minutes, *id.* (Aug. 24, 2020), D.E. 14; *Wilson* Transcript, *supra* note 9, at 44–61.

11. *Wilson* Transcript, *supra* note 9, at 49, 51, 53, 57, 59–61.

the invalidation of about half of his ballot-petition signatures.¹² On Monday, West filed a motion for a preliminary injunction.¹³

Judge Irene C. Berger issued an order on Monday requiring prompt service on the secretary and a response to West's motion by September 8.¹⁴

Unsuccessful Consolidation

On September 3, the governor and the secretary moved to consolidate the two cases or transfer the second case to Judge Johnston.¹⁵ Judge Berger had made consideration of the preliminary-injunction motion a priority, but the consolidation motion created a small delay.¹⁶ Judge Berger declined consolidation six days later.¹⁷ The first case arose because an insufficient number of signatures were collected; the second case arose because an insufficient number of signatures were deemed valid.¹⁸ In addition, because Judge Johnston had already ruled on an injunction motion in his case, the cases were in different procedural postures.¹⁹

Judge Berger's Decision

Because the facts were not in dispute, a hearing on West's injunction motion was not necessary.²⁰ Even if the pandemic had not made proceedings challenging, Judge Berger probably would not have deemed a hearing necessary.²¹ She denied West a preliminary injunction on September 14, finding reasonable West Virginia's methods for validating ballot-petition signatures.²²

West filed on September 15 a notice of appeal²³ and on September 16 a motion to stay his claims for declaratory relief pending interlocutory appeal.²⁴ On October 18, the court of appeals denied a motion to expedite the appeal.²⁵ On September 21, Judge Berger denied the stay motion, finding that appellate review of the injunction decision would be unlikely to affect the merits of the remaining claims.²⁶

12. Complaint, *West v. Warner*, No. 2:20-cv-570 (S.D. W. Va. Aug. 28, 2020), D.E. 1.

13. Preliminary-Injunction Motion, *id.* (Aug. 31, 2020), D.E. 4.

14. Order, *id.* (Aug. 31, 2020), D.E. 7.

Tim Reagan interviewed Judge Berger for this report by telephone on October 29, 2020.

15. Consolidation Motion, *West*, No. 2:20-cv-570 (S.D. W. Va. Sept. 3, 2020), D.E. 12; Consolidation Motion, *Wilson*, No. 2:20-cv-526 (S.D. W. Va. Sept. 3, 2020), D.E. 17.

16. Interview with Hon. Irene C. Berger, Oct. 29, 2020.

17. Opinion, *West*, No. 2:20-cv-570 (S.D. W. Va. Sept. 9, 2020), D.E. 19, 2020 WL 5414354.

18. *Id.*

19. *Id.* at 3.

20. Interview with Hon. Irene C. Berger, Oct. 29, 2020.

21. *Id.*

22. See Amended Opinion, *West*, No. 2:20-cv-570 (S.D. W. Va. Sept. 15, 2020), D.E. 24, 2020 WL 5524868; see also Lacie Pierson, *Federal Judge Denies Kanye West's Bid to Get on Ballot in WV*, *Huntington Herald-Dispatch*, Sept. 15, 2020, at A2.

23. Notice of Appeal, *West*, No. 2:20-cv-570 (S.D. W. Va. Sept. 15, 2020), D.E. 25.

24. Stay Motion, *id.* (Sept. 16, 2020), D.E. 27.

25. Order, *West v. Warner*, No. 20-1994 (4th Cir. Sept. 18, 2020), D.E. 14.

26. Opinion, *West*, No. 2:20-cv-570 (S.D. W. Va. Sept. 21, 2020), D.E. 29; see Scheduling Order, *id.* (Sept. 22, 2020), D.E. 30 (provisionally setting a scheduling conference for No-

On September 28, the court of appeals granted West's voluntary dismissal of the appeal,²⁷ and Judge Berger granted his voluntary dismissal of the case.²⁸

Voluntary Dismissal of Judge Johnston's Case

Following Judge Berger's lead, Judge Johnston denied the consolidation motion on September 23.²⁹ Judge Johnston granted a voluntary dismissal on October 14.³⁰

vember 10).

27. Order, *West*, No. 20-1994 (4th Cir. Sept. 28, 2020), D.E. 16.

28. Order, *West*, No. 2:20-cv-570 (S.D. W. Va. Sept. 28, 2020), D.E. 32.

29. Order, *Wilson v. Justice*, No. 2:20-cv-526 (S.D. W. Va. Sept. 23, 2020), D.E. 20.

30. Order, *id.* (Oct. 14, 2020), D.E. 23.