

Illinois’s Ballot Access Requirements for a New Party

*Summers v. Smart (John J. Tharp, Jr., and
John Robert Blakey, N.D. Ill. 1:14-cv-5398) and Tripp
v. Smart (Michael J. Reagan, S.D. Ill. 3:14-cv-890)*

On July 15, 2014, the Green party, seven of its prospective candidates in the November 4 general election, and a voter filed a federal complaint in the Northern District of Illinois against members of the state board of elections challenging qualifying rules for new political parties.¹ The court assigned the case to Judge John J. Tharp, Jr.² On July 18, the plaintiffs filed a motion for a preliminary injunction placing them on the November ballot.³

The Green Party in Illinois was considered an established party from 2006 through 2010, but in 2010 its support failed to meet statutory criteria to retain that status.⁴ After a challenge to its signatures for the 2014 ballot, the party had fewer than the 25,000 valid signatures required.⁵

Judge Tharp heard the case on July 22⁶ and set a second hearing for August 13.⁷ Following the second hearing, Judge Tharp promised a decision on August 21.⁸

Two Green Party candidates and four party members filed a similar action in the Southern District of Illinois on August 13.⁹ Because of Judge J. Phil Gilbert’s recusal, the court reassigned the case to Judge Michael J. Reagan.¹⁰ On August 18, the plaintiffs filed a motion for a preliminary injunction.¹¹ On the following day, Judge Reagan decided that he should await the imminent decision in the Northern District, and he ordered the plaintiffs

1. Complaint, *Summers v. Smart*, No. 1:14-cv-5398 (N.D. Ill. July 15, 2014), D.E. 1; *Summers v. Smart*, 65 F. Supp. 3d 556, 560–61 (N.D. Ill. 2014).

2. Docket Sheet, *Summers*, No. 1:14-cv-5398 (N.D. Ill. July 15, 2014).

3. Preliminary Injunction Motion, *id.* (July 18, 2014), D.E. 5; *Summers*, 65 F. Supp. 3d at 561.

4. *Summers*, 65 F. Supp. 3d at 559; see Kurt Erickson, *Green Party to Miss Ballot*, Bloomington Pantagraph, Aug. 22, 2014, at A1 (“Eight years after its candidate for governor received more than 10 percent of the vote, the Illinois Green Party likely will find itself on the sidelines in the November election.”).

5. *Summers*, 65 F. Supp. 3d at 559–60.

6. Minutes, *Summers*, No. 1:14-cv-5398 (N.D. Ill. July 22, 2014), D.E. 9.

7. Minutes, *id.* (July 23, 2014), D.E. 10.

8. Minutes, *id.* (Aug. 13, 2014), D.E. 25.

9. Complaint, *Tripp v. Smart*, No. 3:14-cv-890 (S.D. Ill. Aug. 13, 2014), D.E. 2; see Amended Complaint, *id.* (Aug. 14, 2014), D.E. 4 (adding as plaintiffs the party and another voter).

10. Order, *id.* (Aug. 14, 2014), D.E. 3.

11. Preliminary Injunction Motion, *id.* (Aug. 18, 2014), D.E. 16.

to file a notice within four hours of the Northern District ruling of the effect of the ruling on Judge Reagan's case.¹²

Judge Tharp denied the Northern District plaintiffs immediate relief.¹³ Judge Tharp was skeptical of the constitutionality of certain requirements, such as Illinois's requirement that a new party run a full slate of candidates and the requirement that submissions of ballot signatures be notarized, but because the Green Party had complied with those requirements they were not good candidates for immediate relief.¹⁴ The party made no showing that their insufficient signatures arose from improper requirements, which the party did not challenge until after the signature-collection period was over.¹⁵

On August 22, Judge Reagan denied the Southern District plaintiffs emergency relief.¹⁶ "Plaintiffs have had since at least March 2014 to bring their constitutional concerns regarding Illinois ballot procedures to a federal forum. That Plaintiffs waited to sue until nine days before ballot certification (and filed the instant motion *one day* before ballot certification) does not mean notice was impossible, it means they should have sued earlier."¹⁷

Following an evidentiary hearing on September 2 and 4,¹⁸ Judge Reagan decided on September 10 to deny the plaintiffs a preliminary injunction.¹⁹ Judge Reagan shared Judge Tharp's skepticism about the constitutionality of Illinois's notarization requirement, but Judge Reagan concluded that the equities disfavored putting Green Party candidates on the November ballot who had obtained an insufficient number of petition signatures.²⁰ Following additional discovery and briefing, Judge Reagan issued a summary judgment against the plaintiffs on August, 17, 2016, finding that "the restrictions the plaintiffs complain about here don't severely burden their ballot access rights."²¹ An appeal is pending.²²

12. Docket Sheet, *id.* (Aug. 13, 2014) [hereinafter S.D. Ill. *Tripp* Docket Sheet] (D.E. 18); *see* Notice, *id.* (Aug. 21, 2014), D.E. 19.

13. *Summers v. Smart*, 65 F. Supp. 3d 556 (N.D. Ill. 2014); Minutes, *Summers v. Smart*, No. 1:14-cv-5398 (N.D. Ill. Aug. 21, 2014), D.E. 27; *see* Kevin P. Craver, *Judge Rejects Green Party Lawsuit Over Ballot Access*, N.W. Herald, Aug. 21, 2014.

14. *Summers*, 65 F. Supp. 3d at 563–69.

15. *Id.* at 568–69.

16. Opinion, *Tripp*, No. 3:14-cv-890 (S.D. Ill. Aug. 22, 2014), D.E. 22, 2014 WL 4179840.

17. *Id.* at 5–6 (noting also "the heavy tipping of the balance of equities in favor of Defendants and the public").

18. Transcript, *id.* (Sept. 4, 2014, filed May 21, 2015), D.E. 47; Minutes, *id.* (Sept. 2 and 4, 2014), D.E. 28, 31.

19. Opinion, *id.* (Sept. 10, 2014), D.E. 32, 2014 WL 4457200.

20. *Id.*

21. Opinion at 10, *id.* (Aug. 17, 2016), D.E. 81, 2016 WL 4379876; *see* S.D. Ill. *Tripp* Docket Sheet, *supra* note 12 (taxing costs of \$767.85 against the plaintiffs).

22. Docket Sheet, *Tripp v. Scholz*, No. 16-3469 (7th Cir. Sept. 19, 2016).

On January 15, 2015, the Northern District case was transferred to new District Judge John Robert Blakey.²³ On July 25, 2016, Judge Blakey dismissed the case as precluded by a September 11, 2014, defeat in state court.²⁴

23. Order, *Summers v. Smart*, No. 1:14-cv-5398 (N.D. Ill. Jan. 15, 2015), D.E. 34 (transferring 306 cases from 29 judges).

Judge Blakey joined the bench on December 19, 2014. Federal Judicial Center Biographical Directory of Federal Judges, www.fjc.gov/history/home.nsf/page/judges.html.

24. Opinion, *Summers*, No. 1:14-cv-5398 (N.D. Ill. July 25, 2016), D.E. 86, 2016 WL 3977012.