

## **Exclusion from the Ballot Because of Invalid Ballot Petition Signatures**

*Briscoe v. Biggs*

*(Eric F. Melgren, D. Kan. 2:10-cv-2488)*

A would-be independent candidate for Congress filed on September 7, 2010, in the Kansas City federal courthouse a pro se petition for a writ of mandamus ordering his inclusion on the November ballot on the grounds that he had been excluded because of improperly invalidated ballot petition signatures.<sup>1</sup> On September 13, the candidate filed motions for a preliminary injunction and a temporary restraining order, to expedite consideration of the case, and for summary judgment.<sup>2</sup>

On September 16, Judge Eric F. Melgren denied the candidate immediate relief.<sup>3</sup> “The Court cannot conclude that Plaintiff has demonstrated, or can demonstrate a likelihood of success on the merits, nor that the injunction would not adversely affect the public interest in orderly elections.”<sup>4</sup>

Ruling on pending motions, Judge Melgren dismissed the action on April 27, 2011, because of mootness, Eleventh Amendment immunity for state officials acting in official capacities, and quasi-judicial immunity for state officials acting in their individual capacities.<sup>5</sup>

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1. Petition, [Briscoe v. Biggs](#), No. 2:10-cv-2488 (D. Kan. Sept. 7, 2010), D.E. 1.

2. Motions, *id.* (Sept. 13, 2010), D.E. 6–8.

3. Opinion, *id.* (Sept. 16, 2010), D.E. 11.

4. *Id.*

5. Opinion, [Briscoe](#), No. 2:10-cv-2488 (D. Kan. Sept. 7, 2010), D.E. 27.