

Requiring Minor Parties to Qualify for the Ballot in Advance of Major Parties

Barr v. Ireland

(John T. Copenhaver, Jr., S.D. W. Va. 2:08-cv-990)

The Libertarian Party, its candidates for President and Vice President, and two voters filed a federal complaint in the Southern District of West Virginia on August 13, 2008, complaining that the August 1 deadline for ballot petition signatures for minor parties was unfair in light of the major parties' not selecting their candidates until August 28 and September 4.¹ With their complaint, the plaintiffs filed a motion for a preliminary injunction extending the party's signature deadline until September 4.²

On August 18, Judge John T. Copenhaver, Jr., ordered service on the defendant secretary of state and set a conference and possible hearing for August 25.³ At the plaintiffs' request, Judge Copenhaver rescheduled the proceeding for August 27.⁴

On September 5, Judge Copenhaver dismissed the action.⁵ Judge Copenhaver found the August 1 deadline a reasonable period of time in advance of the September 23 deadline for distributing absentee ballots for signature verification.⁶ Moreover, Judge Copenhaver concluded that the party's failure to obtain enough signatures in time resulted from its late start in seeking them.⁷

On May 21, 2009, Judge Copenhaver denied a request from a non-party to reopen the case, intervene, and seek reconsideration.⁸

1. Complaint, *Barr v. Ireland*, No. 2:08-cv-990 (S.D. W. Va. Aug. 13, 2008), D.E. 1; *Barr v. Ireland*, 575 F. Supp. 2d 747, 749 (S.D. W. Va. 2008); see Tom Searls, *Libertarian Candidate Barr Doesn't Make Cut for State Ballot*, Charleston Gazette, Aug. 9, 2008, at 1A (reporting that the campaign hoped to have enough signatures soon after the deadline).

2. Preliminary Injunction Motion, *Barr*, No. 2:08-cv-990 (S.D. W. Va. Aug. 13, 2008), D.E. 3.

3. Order, *id.* (Aug. 18, 2008), D.E. 7.

4. Order, *id.* (Aug. 20, 2008), D.E. 9; see *Barr*, 575 F. Supp. 2d at 749; Minutes, *id.* (Aug. 27, 2008), D.E. 22 (preliminary injunction hearing); Minutes, *id.* (Aug. 27, 2008), D.E. 21 (pretrial conference).

5. *Barr*, 575 F. Supp. 2d 747; see *Judge Tosses Barr's W. Va. Ballot Access Lawsuit*, Charleston Gazette, Sept. 8, 2008, at 2A.

6. *Barr*, 575 F. Supp. 2d at 751–53.

7. *Id.* at 761.

8. Order, *Barr*, No. 2:08-cv-990 (S.D. W. Va. May 21, 2009), D.E. 25.