

## **Discrepancies Between the Residence Address and the Registration Address of a Ballot Petition Signer**

*Schintzius v. Showalter*

*(John A. Gibney, Jr., E.D. Va. 3:16-cv-740 and 3:16-cv-741)*

A prospective candidate for mayor of Richmond, Virginia, and six voters filed a complaint and petition for mandamus in Richmond’s circuit court on August 23, 2016, alleging that the voters’ ballot petition signatures were wrongfully rejected because the signers listed their residence addresses instead of their registration addresses, causing the candidate to fall short in the number of signatures required for a place on the November ballot.<sup>1</sup> Under certain circumstances, a voter can remain registered at a previous residence for a time.<sup>2</sup>

Defendant election officials for Richmond and Virginia removed the case to the U.S. District Court for the Eastern District of Virginia on Wednesday, September 7.<sup>3</sup> Also on September 7, the defendants removed an August 23 circuit court motion by the same plaintiffs for a temporary injunction.<sup>4</sup>

On September 8, Judge John A. Gibney, Jr., “had a conference call with all counsel [he] could reach in these cases. The Court was unable to reach counsel for the plaintiffs.”<sup>5</sup> Following the call, Judge Gibney consolidated the two cases under the second case number and set the case for hearing on Monday, September 12.<sup>6</sup>

Judge Gibney asked the plaintiff’s attorney to address the attorney’s and the attorney’s law firm’s ability to represent the plaintiff with the attorney’s also being a mayoral candidate.<sup>7</sup> At the hearing, an attorney different from the one with the potential conflict, but from the same firm, appeared for the plain-

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1. Complaint, *Schintzius v. Showalter*, No. CL16-3874-8 (Va. Cir. Ct. Richmond Aug. 23, 2016), *attached to* Notice of Complaint Removal, *Schintzius v. Showalter*, No. 3:16-cv-740 (E.D. Va. Sept. 7, 2016), D.E. 1; *see* Ned Oliver, *Schintzius Suing to Get Name on Ballot*, Richmond Times-Dispatch, Aug. 24, 2016, at 1B.

2. *See* Transcript at 12, *Schintzius v. Showalter*, No. 3:16-cv-741 (E.D. Va. Sept. 8, 2016, filed Sept. 13, 2016), D.E. 31 (argument by the plaintiffs’ attorney); *id.* at 62–63 (argument by a defense attorney).

3. Notice of Complaint Removal, *supra* note 1; *see* Ned Oliver, *Richmond Mayoral Hopeful’s Lawsuit Moved to Federal Court*, Richmond Times-Dispatch, Sept. 9, 2016, at 7A.

4. Notice of Injunction Removal, *Schintzius*, No. 3:16-cv-741 (E.D. Va. Sept. 7, 2016), D.E. 1, *attaching* Motion for Temporary Injunction, *Schintzius v. Showalter*, No. CL16-3875-1 (Va. Cir. Ct. Richmond Aug. 23, 2016).

5. Temporary Restraining Order Hearing Order at 1, *id.* (Sept. 8, 2016), D.E. 2.

6. *Id.* at 2; *see* Minutes, *id.* (Sept. 12, 2016), D.E. 20.

7. Temporary Restraining Order Hearing Order, *supra* note 5; *see also* Oliver, *supra* note 3 (reporting that the attorney also had been disbarred by the district court for insufficient truthfulness).

tiff.<sup>8</sup> “I don’t think there is any conflict whatsoever,” he said.<sup>9</sup> Following Judge Gibney’s explanation that there was at least a potential appearance of conflict,<sup>10</sup> the candidate submitted a hand-written waiver.<sup>11</sup>

At the hearing, Judge Gibney denied the plaintiffs immediate relief without an opinion.<sup>12</sup>

I think that the requirement that has been imposed here is more than reasonable. It is that somebody provide a valid registration address and—sorry, a valid residence address and use that as a proxy for the registration address. They require people to re-register promptly when they move. So I think they are entitled to assume that the residence and registration are the same address.

And it is a more than reasonable way of insuring that the people who sign the petition are the people who are folks who are allowed to do so.<sup>13</sup>

Judge Gibney ordered answers filed by the following day and set the case for trial two days after that.<sup>14</sup> Judge Gibney informed the election officials that although immediate relief had been denied, the defendants were still potentially subject to an injunction putting the plaintiff candidate on the ballot:

[DEFENSE COUNSEL]: Your Honor, one thing, if I can clarify. Are we permitted to print the ballots today?

THE COURT: You are permitted to do whatever you want to today, because there is no TRO, but if you lose on Thursday, you better be prepared to have yourself in gear.

...

THE COURT: . . . . You may have to pay some more, but if it turns out you lose this case, you are going to have to change the ballot.<sup>15</sup>

At trial, Judge Gibney granted judgment to the defendants.<sup>16</sup>

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8. Transcript, *supra* note 2; see Ned Oliver, *Federal Trial Set for Thursday in Richmond Mayoral Ballot Appeal*, Richmond Times-Dispatch, Sept. 13, 2016, at 2B (reporting that the candidate “was originally represented by his would-be opponent . . . , who is also a lawyer. But at the request of the defendants, the case was moved to federal court, where [the lawyer] is barred from practicing law.”).

9. Transcript, *supra* note 2, at 5.

10. *Id.* at 5–8.

11. Waiver, *Schintzius*, No. 3:16-cv-741 (E.D. Va. Sept. 12, 2016), D.E. 21.

12. Trial Order, *id.* (Sept. 12, 2016), D.E. 22; Transcript, *supra* note 2, at 76–78.

13. *Id.* at 78.

14. Trial Order, *supra* note 12; *id.* at 80, 82.

15. Transcript, *supra* note 2, at 82–83.

16. Minutes, *Schintzius*, No. 3:16-cv-741 (E.D. Va. Sept. 15, 2016), D.E. 33; see Frank Green, *Court Rejects Bid by Schintzius to Appear on City Mayoral Ballot*, Richmond Times-Dispatch, Sept. 16, 2016, at 5A (reporting that Judge Gibney “said he could not find that [the candidate’s] rights were violated and said the requirements for making the ballot were not overly burdensome”).