

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)*

After failing to obtain enough signatures to appear on the 2014 general election ballot, a minor party filed a federal complaint in the Northern District of Illinois challenging ballot signature requirements for new parties. The district judge denied the party immediate relief, because the party had met the constitutionally suspect criteria. A district judge similarly denied immediate relief in a Southern District case. A new judge in the Northern District later dismissed the case there as precluded by an earlier result in state court. The federal court of appeals later concluded that the ballot access requirements were constitutional.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; laches; recusal; case assignment; matters for state courts.

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.

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.

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 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 eq-

9. Complaint, *Tripp v. Smart*, No. 3:14-cv-890 (S.D. Ill. Aug. 13, 2014), D.E. 2; *Tripp v. Scholz*, 872 F.3d 857, 859–60 (7th Cir. 2017); see Amended Complaint, *Tripp*, No. 3:14-cv-890 (S.D. Ill. Aug. 14, 2014), D.E. 4 (adding as plaintiffs the party and another voter).

10. Order, *Tripp*, No. 3:14-cv-890 (S.D. Ill. Aug. 14, 2014), D.E. 3.

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

12. Docket Sheet, *id.* (Aug. 13, 2014) [hereinafter S.D. Ill. 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*, 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.

The court of appeals determined in other litigation on September 22, 2017, that the full-slate requirement was unconstitutional. *Libertarian Party of Ill. v. Scholz*, 872 F.3d 518 (7th Cir. 2017) ("For a minor party and its nominees, Illinois's full-slate requirement extinguishes [the fundamental right to political association] unless the party fields candidates in races it may want no part of.").

15. *Summers*, 65 F. Supp. 3d 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 [hereinafter S.D. Ill. Sept. 10, 2014, Opinion], 2014 WL 4457200; *Tripp v. Scholz*, 872 F.3d 857, 862 (7th Cir. 2017).

unities 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

On January 15, 2015, the Northern District case was transferred to new District Judge John Robert Blakey.²² On July 25, 2016, Judge Blakey dismissed the case as precluded by a September 11, 2014, defeat in state court.²³

The court of appeals affirmed Judge Reagan’s summary judgment on October 6, 2017: “Although each circulator must notarize each of their petition signature sheets, nothing prevents a circulator from notarizing all of their sheets at the same time, before the same notary.”²⁴

20. S.D. Ill. Sept. 10, 2014, Opinion, *supra* note 19.

21. Opinion at 10, *Tripp*, No. 3:14-cv-890 (S.D. Ill. Aug. Aug. 17, 2016), D.E. 81, 2016 WL 4379876; *see Tripp*, 872 F.3d at 862; S.D. Ill. Docket Sheet, *supra* note 12 (taxing costs of \$767.85 against the plaintiffs).

22. 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/judges.

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

24. *Tripp*, 872 F.3d at 871, *cert. denied*, 584 U.S. ___, ___ S. Ct. ___, 2018 WL 837995 (2018).