

## **No Relief from State-Court Judgment Allowing Ballot-Petition Signers to Withdraw Their Signatures**

*Davis v. Stapleton*

*(Dana L. Christensen, D. Mont. 6:20-cv-62)*

A state court vacated certification of a minor political party for a general-election ballot after ballot-petition signers withdrew their signatures when they found out that they were collected by a different political party. Ostensible minor-party candidates and voters were denied relief in federal court from the state-court judgment, because allowing signers to withdraw their signatures was not obviously improper.

*Subject:* Getting on the ballot. *Topics:* Enjoining certification; getting on the ballot; matters for state courts; party procedures; primary election; intervention; interlocutory appeal; Covid-19.

An August 11, 2020, federal complaint filed in the District of Montana by two Green Party candidates and two Green Party primary-election voters challenged an August 7 state-court ruling vacating Montana's March 6 qualification of the Green Party for the November 3 general-election ballot on a finding that enough signers of the party's ballot petition had withdrawn their support to yield an insufficient number of remaining signatures.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>2</sup>

On the following day, Judge Dana L. Christensen ordered a response to the motion by August 17.<sup>3</sup>

The state's Democratic Party, the plaintiff in the state-court action, moved to intervene in the federal case on Thursday, August 13.<sup>4</sup> Judge Christensen granted the motion on the next day.<sup>5</sup> On Monday, Judge Christensen granted a motion by the Republican Party to appear as an amicus curiae.<sup>6</sup>

Judge Christensen denied the plaintiffs immediate relief on August 19.<sup>7</sup> He found that the signatures were collected by agents of the Republican Par-

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1. Complaint, *Davis v. Stapleton*, No. 6:20-cv-62 (D. Mont. Aug. 11, 2020), D.E. 1; *Davis v. Stapleton*, 480 F. Supp. 3d 1099, 1102 (D. Mont. 2020).

2. Motion, *Davis*, No. 6:20-cv-62 (D. Mont. Aug. 11, 2020), D.E. 3; *Davis*, 480 F. Supp. 3d at 1102.

3. Order, *Davis*, No. 6:20-cv-62 (D. Mont. Aug. 12, 2020), D.E. 6.

4. Intervention Motion, *id.* (Aug. 13, 2020), D.E. 8; *Davis*, 480 F. Supp. 3d at 1102.

5. Order, *Davis*, No. 6:20-cv-62 (D. Mont. Aug. 14, 2020), D.E. 11; *Davis*, 480 F. Supp. 3d at 1102.

6. Order, *Davis*, No. 6:20-cv-62 (D. Mont. Aug. 17, 2020), D.E. 13; *see* Motion, *id.* (Aug. 17, 2020), D.E. 12; *see* *Davis*, 480 F. Supp. 3d at 1102.

7. *Davis*, 480 F. Supp. 3d 1099.

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ty and not the Green Party.<sup>8</sup> Allowing voters to withdraw their signatures was not obviously improper:

Before this case, there was no clear procedure by which signers supporting ballot access could withdraw their signatures, likely because there was no precedent for a situation in which signers would seek to withdraw their signatures *en masse*. Voters did not reasonably rely on the absence of a procedure for signature withdrawal as decisive proof that signatures cannot be withdrawn.<sup>9</sup>

Both Judge Christensen<sup>10</sup> and the court of appeals<sup>11</sup> denied the plaintiffs an injunction pending appeal. The court of appeals ordered briefing complete as late as November 4.<sup>12</sup> By the end of September, both courts had granted the plaintiffs voluntary dismissals.<sup>13</sup>

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8. *Id.* at 1104–05.

9. *Id.* at 1107–08.

10. Order, *Davis*, No. 6:20-cv-62 (D. Mont. Aug. 20, 2020), D.E. 24.

11. Order, *Davis v. Stapleton*, No. 20-35734 (9th Cir. Sept. 22, 2020), D.E. 20.

12. *Id.*

13. Order, *id.* (Aug. 22, 2020), D.E. 20; Order, *Davis*, No. 6:20-cv-62 (D. Mont. Sept. 18, 2020), D.E. 32.