

Trying to Get on the Ballot After Voting Has Started

Raiklin v. Virginia Department/Board of Elections
(*John A. Gibney, Jr., E.D. Va. 3:18-cv-288*)

A district judge denied immediate relief to a pro se plaintiff who filed an action challenging his exclusion from a primary election ballot, because he filed the complaint after early voting had started.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; laches; pro se party; primary election; early voting; absentee ballots.

Ivan Raiklin filed a pro se federal complaint in the Eastern District of Virginia’s Richmond courthouse on May 1, 2018, alleging that he was wrongfully excluded from the June 12 primary election ballot for United States Senator.¹ He styled his complaint as a “Complaint and Request for Emergency Injunction.”²

On May 9, Judge John A. Gibney found that laches precluded immediate relief.³

Raiklin may ultimately prevail on the merits of his claim, but the Court cannot equitably enjoin the defendants from printing primary ballots without Raiklin’s name when he knew of the defendants’ intentions to keep him off of the ballot in early April yet failed to bring this case until after primary ballots had already been printed and made available to the public for voting.⁴

Early voting began on April 27.⁵ “Between filing his motion and [the time of Judge Gibney’s ruling], Raiklin [had] not contacted the Court to request a hearing on his motion.”⁶

Judge Gibney dismissed the complaint without prejudice on July 9 for failure to prosecute the action, also noting mootness.⁷

1. Complaint, *Raiklin v. Va. Dep’t/Bd. of Elections*, No. 3:18-cv-288 (E.D. Va. May 1, 2018), D.E. 1; *see* Dismissal Opinion, *id.* (July 9, 2018), D.E. 12 (noting allegation of a refusal to properly count the candidate’s ballot petition signatures); *see also* Jenna Portnoy & Laura Vozzella, *Senate Hopeful Files Lawsuit Over Ballot Exclusion*, Wash. Post, May 2, 2018, at B4.

2. Complaint, *supra* note 1, D.E. 1, 3.

3. Preliminary Injunction Denial Opinion, *Raiklin*, No. 3:18-cv-288 (E.D. Va. May 9, 2018), D.E. 5; *see* Dismissal Opinion, *supra* note 1.

4. Preliminary Injunction Denial Opinion, *supra* note 3, at 2.

5. *See* Portnoy & Vozzella, *supra* note 1; *see also* Preliminary Injunction Denial Opinion, *supra* note 3.

6. Preliminary Injunction Denial Opinion, *supra* note 3, at 1.

7. Dismissal Opinion, *supra* note 1.