

Last-Minute Challenge to a Debate Exclusion

Barr v. Saddleback Valley Community Church

(*David O. Carter, C.D. Cal. 8:08-cv-927*)

A federal complaint alleged that incumbent school-board candidates, and not other candidates, were improperly allowed to appear before school-district staff meetings. Just over two weeks later, the district judge denied the plaintiffs immediate relief on a finding that the school board had not conspired to advance the incumbents' candidacies. The incumbents were defeated in the election.

Subject: Campaign activities. *Topics:* Early voting; intervention; equal protection.

At 3:43 p.m. on Friday, August 15, 2008, Bob Barr, the Libertarian Party's candidate for President, filed a complaint in the Central District of California's Santa Ana courthouse against the Saddleback Valley Community Church, alleging that a program scheduled by the church for the following afternoon would include Democratic and Republican presidential candidates but would exclude Barr without applying well-established objective criteria.¹ With their complaint, Barr and his vice presidential candidate filed an *ex parte* application for a preliminary injunction.²

Judge David O. Carter denied immediate relief on the day that the action was filed.³ "Plaintiffs have known about the pendency of this event since at least July . . ." ⁴ Noting that "[a]n *ex parte* Motion resides on the fringes of due process," Judge Carter observed that the late filing suggested hubris and that the plaintiffs were "manipulating the *ex parte* procedure rather than suffering an actual emergency."⁵ In addition, the action made a weak showing of merit.⁶

1. Complaint, *Barr v. Saddleback Valley Cmty. Church*, No. 8:08-cv-927 (C.D. Cal. Aug. 15, 2008), D.E. 1; see Maeve Reston & Seema Mehta, Chi. Trib., *At Megachurch, Candidates Talk of Personal Faith*, June 17, 2008, at 22 (describing the event).

2. *Ex Parte Application, Barr*, No. 8:08-cv-927 (C.D. Cal. Aug. 15, 2008), D.E. 6; Preliminary Injunction Motion, *id.* (Aug. 15, 2008), D.E. 3.

3. Opinion, *id.* (Aug. 15, 2008), D.E. 7.

4. *Id.* at 3.

5. *Id.*

6. *Id.* at 3–4.