

Requiring Minor Parties to Qualify for the Ballot in Advance of Major Parties

Barr v. Ireland

(John T. Copenhaver, Jr., S.D. W. Va. 2:08-cv-990)

A minor party complained that it was unfair to require it to submit ballot-petition signatures in advance of major parties' declaring their candidates. The district judge dismissed the complaint, finding the deadline reasonable in light of the time required to verify signatures before the preparation of absentee ballots. The judge also concluded that the reason that the party did not meet the deadline was that it started collecting signatures too late.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; intervention; absentee ballots.

The Libertarian Party, its candidates for President and Vice President, and two voters filed a federal complaint in the Southern District of West Virginia on August 13, 2008, complaining that the August 1 deadline for ballot-petition signatures for minor parties was unfair in light of the major parties' not selecting their candidates until August 28 and September 4.¹ With their complaint, the plaintiffs filed a motion for a preliminary injunction extending the party's signature deadline until September 4.²

On August 18, Judge John T. Copenhaver, Jr., ordered service on the defendant secretary of state and set a conference and possible hearing for August 25.³ At the plaintiffs' request, Judge Copenhaver rescheduled the proceeding for August 27.⁴

On September 5, Judge Copenhaver dismissed the action.⁵ Judge Copenhaver found the August 1 deadline a reasonable period of time in advance of the September 23 deadline for distributing absentee ballots for signature verification.⁶ Moreover, Judge Copenhaver concluded that the party's failure to obtain enough signatures in time resulted from its late start in seeking them.⁷

1. Complaint, *Barr v. Ireland*, No. 2:08-cv-990 (S.D. W. Va. Aug. 13, 2008), D.E. 1; *Barr v. Ireland*, 575 F. Supp. 2d 747, 749 (S.D. W. Va. 2008); see Tom Searls, *Libertarian Candidate Barr Doesn't Make Cut for State Ballot*, *Charleston Gazette*, Aug. 9, 2008, at 1A (reporting that the campaign hoped to have enough signatures soon after the deadline).

2. Preliminary-Injunction Motion, *Barr*, No. 2:08-cv-990 (S.D. W. Va. Aug. 13, 2008), D.E. 3.

3. Order, *id.* (Aug. 18, 2008), D.E. 7.

4. Order, *id.* (Aug. 20, 2008), D.E. 9; see *Barr*, 575 F. Supp. 2d at 749; Minutes, *Barr*, No. 2:08-cv-990 (S.D. W. Va. Aug. 27, 2008), D.E. 22 (preliminary-injunction hearing); Minutes, *id.* (Aug. 27, 2008), D.E. 21 (pretrial conference).

5. *Barr*, 575 F. Supp. 2d 747; see *Judge Tosses Barr's W. Va. Ballot Access Lawsuit*, *Charleston Gazette*, Sept. 8, 2008, at 2A.

6. *Barr*, 575 F. Supp. 2d at 751–53.

7. *Id.* at 761.

On May 21, 2009, Judge Copenhaver denied a request from a non-party to reopen the case, intervene, and seek reconsideration.⁸

8. Order, *Barr*, No. 2:08-cv-990 (S.D. W. Va. May 21, 2009), D.E. 25.