

Correcting a Defective Candidacy Petition

Varner v. Husted

(Algenon L. Marbley, S.D. Ohio 2:11-cv-748)

A candidate filed a federal complaint claiming that her candidacy petition was wrongfully rejected because she had withdrawn a defective petition. Similar cases were pending before Ohio's supreme court, so the district judge set alternate dates for a preliminary-injunction hearing, depending upon how promptly the state court ruled. As it turned out, the state court's ruling was favorable to the federal plaintiff, who ultimately won her election.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; matters for state courts.

A federal complaint filed in the Southern District of Ohio on August 17, 2011, sought an order placing on the November ballot a candidate for fiscal officer of Noble Township in Defiance County, alleging that her denial of a place on the ballot was an improper response to her effort to correct a filing error.¹ With her complaint, she filed a motion for a temporary restraining order.² The court assigned the case to Judge Algenon L. Marbley, who set an in-person conference for August 22.³

Pending before Ohio's supreme court at the time were two mandamus petitions seeking relief similar to the relief sought in the federal action; the mandamus petitions concerned offices in Lucas County, the county that includes Toledo. Ohio's secretary of state had decided that candidates who withdrew their petitions could not refile.⁴ In comity and out of respect for the supreme court's proceedings, Judge Marbley made inquiries to the supreme court as to scheduling information.⁵ He wanted to balance deference to the state court with a prompt resolution of the action before him.⁶

On August 22, Judge Marbley decided that he would hold a preliminary-injunction hearing on September 6 if the mandamus actions had been decided by then, but he would hold the hearing on September 13 otherwise.⁷ Ohio's supreme court granted the mandamus petitions on September 9: Ohio law permitted the timely withdrawal of a defective candidacy petition and the filing of a valid new one.⁸

1. Complaint, *Varner v. Husted*, No. 2:11-cv-748 (S.D. Ohio Aug. 17, 2011), D.E. 3.

2. Temporary-Restraining-Order Motion, *id.* (Aug. 17, 2011), D.E. 4.

3. Order, *id.* (Aug. 17, 2011), D.E. 5.

Tim Reagan interviewed Judge Marbley for this report by telephone on July 11, 2012.

4. See Tyrel Linkhorn, *2 Candidates Who Refiled Forbidden from Ballot*, Toledo Blade, July 23, 2011.

5. Interview with Hon. Algenon L. Marbley, July 11, 2012.

6. *Id.*

7. Order, *Varner*, No. 2:11-cv-748 (S.D. Ohio Aug. 22, 2011), D.E. 6.

8. State *ex rel.* Coble v. Lucas Cty. Bd. of Elections, 130 Ohio St. 3d 132, 956 N.E.2d 282 (2011); State *ex rel.* Mahoney v. Lucas Cty. Bd. of Elections, 130 Ohio St. 3d 29, 955 N.E.2d 935 (2011); see Nolan Rosenkrans, *Court Rules Candidates to Stay on Ballot*, Toledo Blade,

On notice that Defiance County's board of elections was to consider the federal plaintiff's candidacy petition on September 13, Judge Marbley indefinitely postponed his injunction hearing.⁹ Judge Marbley granted a voluntary dismissal on September 15.¹⁰

The federal plaintiff won her election.¹¹

Sept. 9, 2011.

9. Order, *Varner*, No. 2:11-cv-748 (S.D. Ohio Sept. 13, 2011), D.E. 14.

10. Order, *id.* (Sept. 15, 2011), D.E. 16.

11. Election Summary Report, www.defiance-county.com/boardofelections/pdf/G11%20ELECTION%20SUMMARY%20REPORT.pdf, *archived at* web.archive.org/web/20160322202100/www.defiance-county.com/boardofelections/pdf/G11%20ELECTION%20SUMMARY%20REPORT.pdf (election results); Online Access to Defiance County Government, www.defiance-county.com/townships/noble.html, *archived at* web.archive.org/web/20120901173405/www.defiance-county.com/townships/noble.html (township officer roster, referring to the fiscal officer as clerk).