

Order of Names on the Ballot

Crim v. Tennessee Democratic Party (Kevin H. Sharp, M.D. Tenn. 3:12-cv-838)

A losing primary candidate filed a federal complaint alleging that the victor was improperly included on the ballot and improperly positioned on the ballot because his name was listed alphabetically first. On the next day, after a hearing, the district judge denied the plaintiff immediate relief, finding no wrongdoing and also observing that the plaintiff could have challenged the ballot before the election.

Subject: Voting procedures. *Topics:* Enjoining certification; getting on the ballot; laches; equal protection; intervention.

Thirteen days after the August 2, 2012, Democratic primary for United States Senate in Tennessee, losing candidate Larry Crim filed a federal complaint against the Democratic Party and the state division of elections alleging that winning candidate Mark Clayton was improperly placed on the ballot and he received a disproportionate number of votes because his name was listed alphabetically first.¹ The complaint sought a temporary restraining order and an emergency hearing.² News media reported that Clayton's victory in the primary election was an embarrassment to the party.³

Judge Kevin H. Sharp held a hearing on August 16, the day after the complaint was filed.⁴ He granted Clayton's motion to intervene.⁵ Judge Sharp also denied Crim immediate relief.⁶ Crim demonstrated no wrongdoing, and he could have challenged the ballot before the election.⁷

On August 30, Judge Sharp granted Crim a voluntary dismissal.⁸

1. Complaint, *Crim v. Tenn. Democratic Party*, No. 3:12-cv-838 (M.D. Tenn. Aug. 15, 2012), D.E. 1.

2. *Id.* at 17.

3. See Richard Locker, *Tenn. Democrats Disavow Winner of Senate Primary*, Memphis Commercial Appeal, Aug. 4, 2012, at 1.

4. Docket Sheet, *Crim*, No. 3:12-cv-838 (M.D. Tenn. Aug. 15, 2012); see Transcript Excerpt, *id.* (Aug. 16, 2012, filed Sept. 4, 2012), D.E. 19 (argument by the party's lawyer).

5. Order, *id.* (Aug. 16, 2012), D.E. 8; see Intervention Motion, *id.* (Aug. 16, 2012), D.E. 6.

6. Order, *id.* (Aug. 16, 2012), D.E. 9; see Tom Humphrey, *Judge Leaves U.S. Senate Candidate Clayton on Ballot*, Knoxville News-Sentinel, Aug. 17, 2012.

7. See *Mark Clayton Victory in Democratic Primary Upheld by Nashville Judge*, Nashville Tennessean, Aug. 16, 2012 (describing the hearing as "pointed and at times lively").

8. Order, *Crim*, No. 3:12-cv-838 (M.D. Tenn. Aug. 30, 2012), D.E. 17.