

Signature Requirements for Independent and New-Party Candidates

Delaney v. Bartlett

(Frank W. Bullock, Jr., M.D.N.C. 1:02-cv-741)

On September 6, 2002, a write-in candidate for the U.S. Senate filed a federal challenge to the state’s signature requirement for getting on the ballot as an independent candidate. The district court denied preelection relief, and the candidate was defeated. In 2004, the judge determined that general-election ballot signature requirements for independent candidates—based on the number of registered voters—and new-party candidates—based on the number of voters in the last gubernatorial election—were an unconstitutional combination. The state modified its requirement for independent candidates to be similar to its requirement for new-party candidates.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; equal protection.

“On September 6, 2002, approximately two months before the election and days before the absentee ballots were to be printed,” a write-in candidate to be one of North Carolina’s U.S. senators filed a federal complaint in the Middle District of North Carolina challenging the signature requirement for getting on the ballot as an independent candidate.¹ With their complaint, the plaintiffs—the candidate and two of his supporters—filed a motion for a temporary restraining order and a preliminary injunction.²

Judge Frank W. Bullock, Jr., heard the case on September 19 and denied the motions.³ One month later, he issued an opinion explaining his reasons.⁴ The candidate was defeated by Elizabeth Dole.⁵

On July 26, 2004, Judge Bullock determined that ballot signature requirements for independent and new-party candidates in the general election were an unconstitutional combination.⁶ Independent candidates had to submit by the last Friday in June a number of signatures equal to 2% of the total number of registered voters; a candidate running on behalf of a new party, however, could get the party and the candidate on the ballot for a number of signatures equal to 2% of the voters in the most recent gubernato-

1. *Delaney v. Bartlett*, 370 F. Supp. 2d 373, 374 (M.D.N.C. 2004); Docket Sheet, *Delaney v. Bartlett*, No. 1:02-cv-741 (M.D.N.C. Sept. 6, 2002) [hereinafter M.D.N.C. Docket Sheet].

2. M.D.N.C. Docket Sheet, *supra* note 1.

3. *Id.*

Judge Bullock retired on August 1, 2006. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

4. *Delaney*, 370 F. Supp. 2d at 374; M.D.N.C. Docket Sheet, *supra* note 1.

5. Opinion at 3, *Delaney*, No. 1:02-cv-741 (M.D.N.C. Dec. 24, 2003), D.E. 37, 2003 WL 23192145 (denying motions for summary judgment).

6. *Delaney*, 370 F. Supp. 2d 373.

rial election, submitted by the first day of June.⁷ “Given the potential magnitude of the disparity and the historical evidence of ballot exclusion, the burden on unaffiliated candidates *vis-à-vis* new party candidates appears unreasonable and discriminatory.”⁸ Moreover, the requirement based on voter registrations was unconstitutionally vague, because of uncertainty about what would be used as the authoritative record for comparison.⁹

An appeal was dismissed voluntarily on October 21.¹⁰ The signature requirement for independent candidates in North Carolina is now 1.5% of the most recent gubernatorial vote.¹¹

7. *Id.* at 375.

8. *Id.* at 378.

9. *Id.* at 382–85.

10. Docket Sheet, *Delaney v. Bartlett*, No. 04-2230 (4th Cir. Sept. 30, 2004).

11. N.C. Gen. Stat. § 163-122(a)(1).