

Initiative Ballot-Petition Signature Requirements in Idaho During an Infectious Pandemic

Reclaim Idaho v. Little

(*B. Lynn Winmill, D. Idaho 1:20-cv-268*)

Because of social distancing made necessary by the global infectious Covid-19 pandemic, sponsors of a ballot initiative sought modifications to the ballot-petition signature requirements. A district judge decided that the plaintiffs were entitled to relief and suggested two possibilities. The state instead sought a stay of the injunction. Although the district court and the court of appeals denied the state a stay, the Supreme Court granted one, and online signature-collection efforts ceased. The plaintiffs then determined that court resolution of their case through the federal court's three levels would take too long to make certification of their initiative for the ballot possible.

Subject: Ballot measures. *Topics:* Covid-19; getting on the ballot; ballot measure; enforcing orders; interlocutory appeal; laches.

Reclaim Idaho—an organization supporting a ballot initiative—and its founder filed a federal complaint in the District of Idaho on June 6, 2020, seeking modifications to the ballot-petition signature requirement and the May 1 deadline in light of social distancing made necessary by the global Covid-19 infectious pandemic.¹ With their complaint, the plaintiffs filed an expedited motion for a preliminary injunction.²

On June 8, Judge B. Lynn Winmill ordered briefing complete by June 22,³ and on June 10, he set the case for a video hearing on June 23, posting connection information on the public docket sheet so that members of the public and news media could audit the hearing.⁴

Judge Winmill began the hearing by noting that he might rule from the bench and issue a written decision later.⁵ He appeared robed on video and reminded those listening to keep their phones mute.⁶ At the close of argument, Judge Winmill concluded that “absent a preliminary injunction, . . . the plaintiff will be unable to get the initiative on the ballot in November.”⁷

“As stated during the hearing, oral decision was warranted given the expedited nature of the situation and the rights at issue.”⁸ “If the State had been

1. Complaint, *Reclaim Idaho v. Little*, No. 1:20-cv-268 (D. Idaho June 6, 2020), D.E. 1; *Reclaim Idaho v. Little*, 469 F. Supp. 3d 988, 992 (D. Idaho 2020).

2. Preliminary-Injunction Motion, *Reclaim Idaho*, No. 1:20-cv-268 (D. Idaho June 6, 2020), D.E. 2; *Reclaim Idaho*, 469 F. Supp. 3d at 992.

3. Docket Sheet, *Reclaim Idaho*, No. 1:20-cv-268 (D. Idaho June 6, 2020) (D.E. 4).

4. *Id.* (D.E. 7); see *Reclaim Idaho*, 469 F. Supp. 3d at 992.

5. Transcript at 3–4, *Reclaim Idaho*, No. 1:20-cv-268 (D. Idaho June 23, 2020, filed June 26, 2020), D.E. 15.

6. *Id.* at 4–6.

7. *Id.* at 39.

8. *Reclaim Idaho*, 469 F. Supp. 3d at 992; see Betsy Z. Russell, *Reclaim Idaho Wins Lawsuit, Gets 2nd Chance to Get School Funding Initiative on Nov Ballot*, Idaho Press-Trib., June 24,

willing to extend the submission deadline or accept electronic signatures as urged by Reclaim Idaho, the State could have redressed the alleged injury.”⁹

Judge Winmill ordered Idaho to provide him by June 26 with “a notice detailing the reasonable accommodation they have chosen to make to preserve Plaintiffs’ core political speech rights.”¹⁰

The Court struggled in determining what would be an appropriate remedy. The Court is disinclined to tell the State how to run the initiative process. However, as the analysis herein explains, the First and Fourteenth Amendments do place some restrictions on the State’s authority through the preservation of constitutional rights.

The Court considered the following facts when fashioning its remedy and order of accommodations. First, Reclaim Idaho and its volunteers were well on their way in obtaining the signatures necessary for inclusion of the initiative on the November 2020 ballot. Due to Reclaim Idaho’s projected chance of success in obtaining the necessary signatures absent the extraordinary event of the COVID-19 pandemic, the first remedy the State can choose to provide is to certify the signatures that have been collected and place the initiative on the November 2020 ballot for voter consideration. In fashioning this remedy, the Court also considered, as argued by Reclaim Idaho during the hearing, that Idaho’s ballot conditions are more stringent than those found in other states. As such, the State providing some leeway in its requirements in this extraordinary moment is a viable option.

However, recognizing the State’s interest in upholding its conditions, specifically the numerical and geographical requirements, the Court provided that the State may instead choose to allow Reclaim Idaho an additional 48-days to gather signatures through online solicitation and submission. The Court declined to issue relief simply allowing the additional time for in-person signature collection. There is ongoing uncertainty surrounding the current and future spread of COVID-19. Close personal encounters still pose ongoing and substantial risks to health of Idaho’s citizens and Reclaim Idaho’s volunteers who would be contacting and communicating with them. Finally, the State has demonstrated it is comfortable relying on digital signature collection in both the voter registration and online ballot collection processes. Neither of these processes is different from the initiative process in that all require the verification and certification of the digital signature.¹¹

Instead of complying with Judge Winmill’s order, Idaho filed a motion to stay it,¹² which Judge Winmill denied on June 29.¹³ The plaintiffs moved on June 29 for an order certifying their initiative, observing, “Defendants have

2020, at A1.

9. *Reclaim Idaho*, 469 F. Supp. 3d at 998.

10. *Id.* at 1003.

11. *Id.* at 1002–03.

12. Stay Motion, *Reclaim Idaho*, No. 1:20-cv-268 (D. Idaho June 26, 2020), D.E. 16; see Rachel Spacek, *State Chooses Neither Option in Judge’s Order to Give Reclaim Idaho a 2nd Chance at Ballot Initiative*, Idaho Press-Trib., June 27, 2020, at A3.

13. Order, *Reclaim Idaho*, No. 1:20-cv-268 (D. Idaho June 29, 2020), D.E. 17; see Betsy Z. Russell, *Judge Rejects State’s Bid to Stay Reclaim Idaho Decision*, Idaho Press-Trib., June 30, 2020, at A1.

made it clear that they do not intend to comply with either option that the Court ordered them to choose.”¹⁴ On June 30, Judge Winmill instead ordered Idaho to modify the deadline and accept electronic-signature collections.¹⁵ Idaho filed a notice of appeal that day challenging the original injunction.¹⁶

According to the *Idaho Press-Tribune*, “Just three hours in, Idaho’s first online signature drive for a voter initiative already had gathered 1,500 signatures on Monday morning.”¹⁷

Over a dissent, the court of appeals denied Idaho a stay of Judge Winmill’s orders and ordered briefing completed by August 3.¹⁸ The Supreme Court, however, granted Idaho a stay on July 30 with two justices dissenting.¹⁹

The plaintiffs complied with the Supreme Court’s stay by suspending their online signature drive, and then they determined that their case could never be resolved in time to qualify their initiative for the ballot.²⁰ But Idaho was unwilling to voluntarily dismiss its appeal without an order vacating Judge Winmill’s orders.²¹

Again over a dissent, the court of appeals remanded the case to Judge Winmill on September 1.²²

The practical effect of the [Supreme Court’s] stay is that even if we affirm the district court’s injunction, the Supreme Court is not likely to lift the stay until after the September 7, 2020 deadline to place the Initiative on the November 2020 ballot, likely rendering this action moot as to this election cycle.

...
... [W]e remand to allow the parties to develop the record and brief the district court on whether this controversy is “capable of repetition, yet evading review,” and so the district court can decide this issue in the first instance.²³

Judge Winmill granted the plaintiffs a voluntary dismissal on December 11.²⁴

14. Enforcement Motion, *Reclaim Idaho*, No. 1:20-cv-268 (D. Idaho June 29, 2020), D.E. 18.

15. Order, *id.* (June 30, 2020), D.E. 19; see Betsy Z. Russell, *Judge: State Must Allow Reclaim Idaho to Collect Signatures Electronically*, *Idaho Press-Trib.*, July 1, 2020, at A3.

16. Notice of Appeal, *Reclaim Idaho*, No. 1:20-cv-268 (D. Idaho June 30, 2020), D.E. 20; see Docket Sheet, *Reclaim Idaho v. Little*, No. 20-35584 (July 1, 2020).

17. Betsy Z. Russell, *Initiative Drive to Boost School Funding Goes Online*, *Idaho Press-Trib.*, July 14, 2020, at A5.

18. Order, *Reclaim Idaho*, No. 20-35584 (July 9, 2020), D.E. 14; see Nathan Brown, *Signature Gathering to Restart on Education Measure*, *Idaho Press-Trib.*, July 10, 2020, at A1.

19. *Little v. Reclaim Idaho*, 591 U.S. ___, 140 S. Ct. 2616 (2020); see Betsy Z. Russell, *Idaho Asks U.S. Supreme Court to Block Online Initiatives Signature Drive*, *Idaho Press-Trib.*, July 16, 2020, at A8.

20. See Order, *Reclaim Idaho*, No. 20-35584 (Aug. 14, 2020), D.E. 46; see also Betsy Z. Russell, *Reclaim Idaho Ends Online Petition Drive for School Funding Measure*, *Idaho Press-Trib.*, Aug. 14, 2020, at A9.

21. Notice, *Reclaim Idaho*, No. 20-35584 (Aug. 24, 2020), D.E. 47.

22. *Reclaim Idaho v. Little*, 826 F. App’x 592 (9th Cir. 2020).

23. *Id.* at 594–95.

24. Order, *Reclaim Idaho v. Little*, No. 1:20-cv-268 (D. Idaho Dec. 11, 2020), D.E. 38.