

No Relief from New York’s Ballot-Petition Signature Requirements During the Covid-19 Pandemic

*Murray v. Cuomo (Mary Kay Vyskocil, 1:20-cv-3571)
and Eisen v. Cuomo (Philip M. Halpern, 7:20-cv-5121)
(S.D.N.Y.)*

A plaintiff, whose ballot-petition signatures for a primary election were ruled invalid because the signatures had not been collected or witnessed by a member of the party, was denied relief from a signature requirement that was shortened both in time and in number because of an infectious pandemic. Later, a different judge denied another prospective congressional candidate relief from ballot-petition signature requirements.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; Covid-19; matters for state courts; primary election; party procedures.

Prospective congressional candidates in New York were unable to persuade federal judges to provide them with relief from New York’s ballot-petition signature requirements during the global Covid-19 infectious pandemic.

The Primary Election

A prospective candidate for Congress filed a federal complaint in the Southern District of New York on May 7, 2020, seeking an order placing her on the June 23 Republican primary-election ballot.¹ On May 8, Judge Mary Kay Vyskocil signed an order that defendants show cause, at a telephone conference on May 15, why relief should not be granted, with briefing to be completed by May 13.²

On May 18, Judge Vyskocil denied the plaintiff immediate relief.³

Observing that the plaintiff had been unsuccessful in a related state-court proceeding, Judge Vyskocil rejected the defendants’ argument that the action was foreclosed by the *Rooker-Feldman* doctrine, which states that among federal courts only the Supreme Court has appellate jurisdiction over state-court proceedings,⁴ because the state-court ruling did not cause the plaintiff’s alleged injury.⁵ The issue of res judicata had not been briefed adequately for a ruling on that.⁶

Observing also that all of the signatures submitted to support the plaintiff’s ballot application were ruled invalid because they were not collected or witnessed by a member of the Republican Party, Judge Vyskocil ruled that it was

1. Complaint, *Murray v. Cuomo*, No. 1:20-cv-3571 (S.D.N.Y. May 7, 2020), D.E. 1.

2. Order, *id.* (May 8, 2020), D.E. 6 (providing contact information in the public record).

3. *Murray v. Cuomo*, 460 F. Supp. 3d 430 (S.D.N.Y. 2020).

4. *See* D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

5. *Murray*, 460 F. Supp. 3d at 438–39.

6. *Id.* at 439–42.

reasonable for the governor to cut short the time allowed to collect signatures, while substantially reducing the number required in light of the Covid-19 infectious pandemic.⁷

The plaintiff withdrew an interlocutory appeal on May 29⁸ and voluntarily dismissed the case on June 7.⁹

The General Election

A prospective independent candidate for Congress in the November general election filed a federal complaint in the Southern District on July 3, 2020, challenging New York’s in-person signature and witnessing requirements for ballot petitions.¹⁰ One week later, the plaintiff filed a proposed order to show cause why relief should not be granted.¹¹ He filed a letter motion for expedited consideration four days after that.¹²

Judge Philip M. Halpern set the case for a telephone conference on July 17, publishing telephone-access information in the public record.¹³ On July 17, Judge Halpern set the case for hearing on July 27.¹⁴ “Counsel for defendants appeared in the courtroom and plaintiff’s counsel by means of videoconference. Court heard argument from the parties. Neither party called any witnesses. The Court denied the motion for a preliminary injunction.”¹⁵ At the hearing, Judge Halpern concluded, with respect to signature requirements as modified because of the pandemic, that “the restrictions are not severe, but reasonable and nondiscriminatory.”¹⁶

The parties stipulated dismissal of the case on August 12.¹⁷

7. *Id.* at 444–48.

8. Order, *Murray v. Cuomo*, No. 20-1584 (2d Cir. May 29, 2020), D.E. 20.

9. Notice, *Murray v. Cuomo*, No. 1:20-cv-3571 (S.D.N.Y. June 7, 2020), D.E. 18.

10. Complaint, *Eisen v. Cuomo*, No. 7:20-cv-5121 (S.D.N.Y. July 3, 2020), D.E. 1; *see* Amended Complaint, *id.* (July 20, 2020), D.E. 28 (adding as a plaintiff a candidate for the state legislature).

11. Proposed Order, *id.* (July 10, 2020), D.E. 18.

12. Letter, *id.* (July 14, 2020), D.E. 24.

13. Endorsed Letter, *id.* (July 15, 2020), D.E. 25.

14. Order, *id.* (July 17, 2020), D.E. 27.

15. Docket Sheet, *id.* (July 3, 2020); *see* Order, *id.* (July 27, 2020), D.E. 36.

16. Transcript at 25, *id.* (July 27, 2020, filed Aug. 5, 2020), D.E. 39.

17. Stipulation, *id.* (Aug. 12, 2020), D.E. 42.