

Modification of Utah’s Signature Requirements for a Prospective Candidate During an Infectious Pandemic

*Garbett v. Herbert (2:20-cv-245) and
Brown v. Herbert (1:20-cv-52) (Robert J. Shelby, D. Utah)*

A district court modified the ballot-petition signature requirement for a prospective gubernatorial candidate because of social distancing during the Covid-19 global infectious pandemic. Even with the modified requirement, the plaintiff was unable to qualify for the primary-election ballot. After the injunction was issued, a prospective legislative candidate sought relief from the ballot-petition signature requirements, but the court denied the second plaintiff relief.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; Covid-19; case assignment; primary election; interlocutory appeal; intervention; pro se party.

A district judge modified the ballot-petition signature requirement for a prospective gubernatorial candidate because of social distancing during the Covid-19 global infectious pandemic. The judge declined to extend the relief to a legislative candidate.

Gubernatorial Candidate

A prospective candidate for the Republican gubernatorial primary election in Utah filed a federal complaint in the District of Utah on April 13, 2020—the deadline for submitting ballot-petition signatures—alleging that Utah had failed to provide prospective candidates with adequate methods of collecting signatures during the Covid-19 pandemic.¹ On the next day, the plaintiff filed a motion for a preliminary injunction² and a motion for expedited briefing and hearing.³ Two days after that, she filed a stipulated motion for expedited briefing, hearing, and decision before the April 29 certification of candidates for the ballot.⁴ On April 16, Judge Robert J. Shelby agreed to order briefing on the injunction completed by the end of the day on April 24.⁵

1. Complaint, *Garbett v. Herbert*, No. 2:20-cv-245 (D. Utah Apr. 13, 2020), D.E. 2; *Garbett v. Herbert*, 458 F. Supp. 3d 1328, 1331, 1335 (D. Utah 2020).

2. Preliminary-Injunction Motion, *Garbett*, No. 2:20-cv-245 (D. Utah Apr. 14, 2020), D.E. 6; *Garbett v. Herbert*, 514 F. Supp. 3d 1342, 1344 (D. Utah 2021); *Garbett*, 458 F. Supp. 3d at 1335.

3. Motion, *Garbett*, No. 2:20-cv-245 (D. Utah Apr. 14, 2020), D.E. 7.

4. Motion, *id.* (Apr. 16, 2020), D.E. 15; *Garbett*, 458 F. Supp. 3d at 1335.

5. Order, *Garbett*, No. 2:20-cv-245 (D. Utah Apr. 16, 2020), D.E. 16.

The court initially assigned the case to Magistrate Judge Paul M. Warner, but the filing of a preliminary-injunction motion triggered random reassignment to a district judge. Docket Sheet, *id.* (Apr. 13, 2020) [hereinafter *Garbett* Docket Sheet] (D.E. 1, 13, 14).

Tim Reagan interviewed Judge Shelby for this report by telephone on October 14, 2020.

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At a telephonic hearing on April 27, Judge Shelby granted the candidate relief,⁶ issuing an opinion on April 29 explaining the decision.⁷

One way the State could have narrowly tailored its election framework in response to the COVID-19 pandemic would have been to reduce the number of required signatures proportional to the time lost for signature-gathering due to health concerns. . . . Thus, to appear on the ballot, the court will require Garbett to produce sixty-eight percent of the normal signature requirement⁸

The hearing was open to the public.⁹ Contact information was posted on the court’s calendar and in the docket sheet.¹⁰ Persons on the call were told that recording the hearing was not permitted.¹¹ Because the hearing did not include testimony from witnesses, it was not held by videoconference.¹² Later during the pandemic, after videoconference capabilities had been enhanced, it might have been held by videoconference even without witnesses.¹³

On May 2, Utah submitted to the court a tally of the plaintiff’s submitted ballot-petition signatures, an amount insufficient to qualify for the ballot under the court’s revised requirement.¹⁴ On May 4, the court of appeals approved the plaintiff’s voluntary dismissal of an interlocutory appeal.¹⁵

Legislative Candidate

On April 30—over two weeks after learning that her signature count was short—a prospective candidate for Utah’s legislature filed a motion to intervene in the gubernatorial candidate’s case to benefit from the injunction.¹⁶ She also moved for expedited consideration.¹⁷ Acting as her own attorney, she filed a separate action on Friday, May 1, seeking an extension of the signature deadline and allowance for electronic submission of signatures.¹⁸ On Monday, she filed a motion for a temporary restraining order or a preliminary injunction¹⁹ and a motion for expedited briefing.²⁰

6. *Garbett* Docket Sheet, *supra* note 5 (D.E. 25); *see* Order, *Garbett*, No. 2:20-cv-245 (D. Utah May 1, 2020), D.E. 40 (denying reconsideration).

7. *Garbett*, 458 F. Supp. 3d 1328.

8. *Id.* at 1352; *see* *Garbett v. Herbert*, 514 F. Supp. 3d 1342, 1344 (D. Utah 2021).

9. Interview with Judge Robert J. Shelby, Oct. 14, 2020.

10. *Garbett* Docket Sheet, *supra* note 5 (D.E. 18); Interview with Judge Robert J. Shelby, Oct. 14, 2020.

11. Interview with Judge Robert J. Shelby, Oct. 14, 2020.

12. *Id.*

13. *Id.*

14. Notice, *Garbett v. Herbert*, No. 2:20-cv-245 (D. Utah May 2, 2020), D.E. 42; *see* *Garbett v. Herbert*, 514 F. Supp. 3d 1342, 1344, 1347 (D. Utah 2021).

15. Order, *Garbett v. Herbert*, No. 20-4051 (May 4, 2020); *see* *Garbett* 514 F. Supp. 3d at 1347.

16. Intervention Motion, *Garbett*, No. 2:20-cv-245 (D. Utah Apr. 30, 2020), D.E. 32.

17. Motion, *id.* (Apr. 30, 2020), D.E. 33.

18. Complaint, *Brown v. Herbert*, No. 1:20-cv-52 (D. Utah May 1, 2020), D.E. 2; *see* Amended Complaint, *id.* (May 1, 2020), D.E. 3.

19. Motion, *id.* (May 4, 2020), D.E. 11.

20. Motion, *id.* (May 4, 2020), D.E. 13.

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Judge Bruce S. Jenkins granted the defendants' motion to transfer the second case to Judge Shelby.²¹ At a May 6 telephonic status conference, Judge Shelby set the case for hearing on May 13, noting the defendants' agreement not to mail ballots involving the legislative district at issue before May 14.²² At the telephonic hearing, Judge Shelby denied the plaintiff immediate relief.²³ Judge Shelby granted a stipulated dismissal on May 26.²⁴

Summary Judgment

Determining on January 22, 2021, that the case was moot, Judge Shelby granted summary judgment to the defendants in the gubernatorial candidate's action.²⁵

21. Transfer Order, *id.* (May 4, 2020), D.E. 10; *see* Transfer Motion, *id.* (May 4, 2020), D.E. 6.

22. Docket Sheet, *id.* (May 1, 2020) (D.E. 15).

23. *Id.* (D.E. 21).

24. Order, *id.* (May 26, 2020), D.E. 23.

25. *Garbett v. Herbert*, 514 F. Supp. 3d 1342 (D. Utah 2021).