

Exclusion from the Ballot Because of Invalid Ballot-Petition Signatures

Briscoe v. Biggs (Eric F. Melgren, D. Kan. 2:10-cv-2488)

A would-be independent candidate for Congress filed a pro se petition for a writ of mandamus ordering his inclusion on the November ballot on the grounds that he was excluded because of improperly invalidated ballot-petition signatures. The court denied immediate relief for lack of a likelihood of success on the merits and to protect the public interest in orderly elections.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; pro se party.

A would-be independent candidate for Congress filed on September 7, 2010, in the District of Kansas's Kansas City courthouse a pro se federal petition for a writ of mandamus ordering his inclusion on the November ballot on the grounds that he had been excluded because of improperly invalidated ballot-petition signatures.¹ On September 13, the candidate filed motions for a preliminary injunction and a temporary restraining order to expedite consideration of the case and for summary judgment.²

On September 16, Judge Eric F. Melgren denied the candidate immediate relief.³ “The Court cannot conclude that Plaintiff has demonstrated, or can demonstrate a likelihood of success on the merits, nor that the injunction would not adversely affect the public interest in orderly elections.”⁴

Ruling on pending motions, Judge Melgren dismissed the action on April 27, 2011, because of mootness, Eleventh Amendment immunity for state officials acting in official capacities, and quasijudicial immunity for state officials acting in their individual capacities.⁵

1. Petition, *Briscoe v. Biggs*, No. 2:10-cv-2488 (D. Kan. Sept. 7, 2010), D.E. 1.

2. Motions, *id.* (Sept. 13, 2010), D.E. 6–8.

3. Opinion, *id.* (Sept. 16, 2010), D.E. 11.

4. *Id.*

5. Opinion, *id.* (Sept. 7, 2010), D.E. 27.