Signing a Ballot Petition Too Long Before It Is Filed

Myers v. Johnson
(Linda V. Parker, E.D. Mich. 4:16-cv-13255)

Disappointed by their results in state court, signers of a ballot petition for an initiative challenged in federal court a state law deeming signatures over 180 days old presumptively invalid. The district judge concluded that the federal suit was precluded by the state-court result and also filed too close to the election for nondisruptive relief.

Topics: Getting on the ballot; ballot measure; matters for state courts; laches.

Following an adverse ruling by Michigan's supreme court on Wednesday, September 7, 2016, two signers of a petition for a proposed ballot initiative filed a federal complaint in the Eastern District of Michigan on September 8.[1] The plaintiffs supported a ballot initiative enabling access to medical marijuana and they opposed a Michigan law requiring extra verification of ballot-petition signatures executed more than 180 days before the filing of the ballot petition.[2] With their complaint, the plaintiffs filed a motion for a temporary restraining order after hours on Thursday.[3]

Judge Linda V. Parker set the case for hearing at noon on Tuesday, September 13.[4] Following a recess of seven minutes, Judge Parker denied the plaintiffs immediate relief.[5]

> First, the Res Judicata Doctrine bars the Plaintiffs' claims. Michigan's Board of State Canvassers denied ballot access to the Plaintiffs' petition on June 9th. On June 14th, Plaintiff[s] filed suit in the Michigan Court of Claims against the Michigan Secretary of State, the Defendants here . . . .
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> On August 23rd, the Court of Claims granted the Defendants' Motion for Summary Disposition. Obviously, the Plaintiffs appealed the decision to

1. Complaint, Myers v. Johnson, No. 4:16-cv-13255 (E.D. Mich. Sept. 8, 2016), D.E. 1; *see* Mich. Comprehensive Cannabis Law Reform Comm. v. Sec'y of State, 884 N.W.2d 294(1) (Mich. 2016) (denying a complaint for superintending control); Mich. Comprehensive Cannabis Law Reform Comm. v. Sec'y of State, 884 N.W.2d 294(2) (Mich. 2016) (denying review); Order, Mich. Comprehensive Cannabis Law Reform Comm. v. Sec'y of State, No. 334560 (Mich. Ct. App. Sept. 7, 2016) (denying an appeal); *see* Bill Laitner, *Pot Legalization Group Loses High Court Fight*, Detroit Free Press, Sept. 8, 2016, at A5.

2. Complaint, *supra* note 1, at 1–3.

3. Temporary-Restraining-Order Motion, *Myers*, No. 4:16-cv-13255 (E.D. Mich. Sept. 8, 2016), D.E. 2; *see* Transcript at 7, *id.* (Sept. 13, 2016), *filed as* Ex. A, Defendants' Reply Brief, *id.* (Dec. 9, 2016), D.E. 23.

4. Notice, *id.* (Sept. 9, 2016), D.E. 6.

5. Order, *id.* (Sept. 13, 2016), D.E. 14; Transcript, *supra* note 3, at 26–31; *see* Brad Devereaux, *Group Plans 2018 Marijuana Petition Drive*, Flint J., Sept. 24, 2016, at A2; *see also* Karen Hopper Usher, *Future of Ballot Initiatives Uncertain*, Big Rapids Pioneer, Oct. 24, 2016, at 5 ("For the first time since 1968, Michigan voters won't face a statewide ballot question when they cast their votes in the presidential election.").

> the Michigan Court of Appeals which denied the appeal for lack of merit and the grounds presented. Supreme Court denied the Plaintiffs' leave to appeal and here we are.[6]

Second, "regardless of what this Court does here it really is too late to have any real effect on the ballot presented to Michigan voters on November 8th, or at least to do so in a way that does not threaten the disruption of an orderly election."[7]

Considering an amended complaint filed on September 28, Judge Parker dismissed the action on May 12, 2017, as both barred by res judicata and failing on the merits: Judge Parker could not conclude that the 180-day rule either had a disparate impact on African American voters or infringed on a constitutionally protected right to travel.[8]

6. Transcript, *supra* note 3, at 27–28.

7. *Id.* at 30.

8. Opinion, *Myers*, No. 4:16-cv-13255 (E.D. Mich. May 12, 2017), D.E. 26, 2017 WL 2021064; *see* Amended Complaint, *id.* (Sept. 28, 2016), D.E. 15.