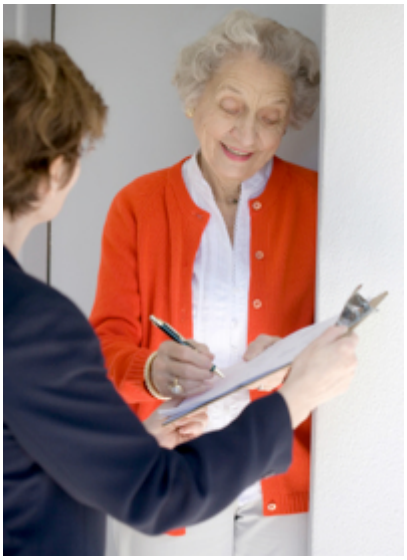
Written by **Michael Tennant** on January 16, 2012

Judge Rules Against GOP Candidates in Lawsuit Seeking Va. Ballot Access



Gibney, an appointee of President Barack Obama, found that some of the plaintiffs' arguments had merit; but he turned down their request for a mandatory preliminary injunction, which would have forced ballots to be reprinted to include their names, because they had waited too long to file their lawsuit. The plaintiffs, he bluntly stated,

> knew the rules in Virginia many months ago; the limitations on circulators affected them as soon as they began to circulate petitions. The plaintiffs could have challenged the Virginia law at that time. Instead, they waited until after the time to gather petitions had ended and they had lost the political battle to be on the ballot; then, on the eve of the printing of absentee ballots, they decided to challenge Virginia's laws. In essence, they played the game, lost, and then complained that the rules were unfair.

It is too late in the game, Gibney asserted, for the court to strike down any of the provisions in question and wait to see if the candidates are then able to meet the remaining requirements — "the absentee ballots must go out now."

Gibney could simply have left it at that, but he chose to address the plaintiffs' claims, knowing that the case stands a good chance of being appealed.

The judge agreed with the candidates that the requirement that petition circulators be Virginia residents is a violation of the First Amendment's free speech clause, citing numerous prior cases challenging similar laws. "Had the case been timely filed," he wrote, "the Court would have ordered the [Virginia State Board of Elections] not to enforce the residency requirement for petition circulators, and the plaintiffs could have tried, with the expanded pool of campaign workers, to get the 10,000 signatures." However, he had earlier expressed some skepticism as to whether this was really the cause of their failure to obtain the required number of signatures, noting that "Jerry Kilgore, the campaign manager for Perry in Virginia, testified that he collected over 13,000 valid signatures on a 'shoe string' budget using friends and family members during the 1997 election for Attorney General of Virginia."

While concurring with the candidates' challenge to the residency requirement, Gibney believed that "the plaintiffs are not likely to prevail on their challenge to the 10,000 signature requirement," such

laws having been upheld on many previous occasions. Moreover, he pointed out:

> Virginia's requirement of 10,000 signatures is a minimal number. It represents 0.2% of the Commonwealth's registered voters. It is only 0.5% of the voters who turned out in the last statewide election. No one can seriously argue that the rule is unduly burdensome. Six candidates made the same ballot four years ago under the same rules.

For that matter, both Mitt Romney and Ron Paul satisfied the law's requirements to appear on the 2012 ballot.

It's worth noting, however, that until recently the Virginia GOP apparently did not bother to verify that the signatures submitted by candidates were valid; any candidate who submitted at least 10,000 signatures would automatically make the ballot. The party began checking the signatures only in 2011 in response to a lawsuit. Thus, while the 2012 candidates are technically under the same rules as the 2008 candidates were, they are subject to stricter enforcement of those rules. This, it seems, was the cause of Gingrich's failure to make the ballot: He says he submitted 11,050 signatures, but the party found that fewer than 10,000 were valid.

Gibney also took the occasion to highlight a bit of hypocrisy on the part of the plaintiffs, all of whom claim to be devoted to the Constitution and its federal system of government. Acknowledging the "seriousness of a federal court intervening in the state electoral process" but agreeing with Perry's attorneys that the court nevertheless had a duty to rule on the constitutionality of the ballot access requirements, Gibney observed: "As this case shows, federalism is often espoused in principle, but abandoned in convenience."

The plaintiffs may choose to appeal Gibney's ruling to the Fourth Circuit Court of Appeals in Richmond. If so, they may succeed in getting some or all of the ballot access requirements struck down. But unless the 10,000-signature requirement is speedily voided — and if Gibney's opinion is any guide, it won't be — they still will be absent from the Republican primary ballot. It therefore looks increasingly certain that on March 6 only two men, Mitt Romney and Ron Paul, will be duking it out at the polls for the Old Dominion's 49 delegates to the Republican National Convention.