

--- S.Ct. ----, 2010 WL 3818310 (U.S.)

(Cite as: **2010 WL 3818310 (U.S.)**)

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Supreme Court of the United States  
Herb LUX, et al.

v.

Nancy RODRIGUES, in her official capacity as a  
member of the Virginia Board of Elections, et al.

**No. 10A298.**

Sept. 30, 2010.

**Background:** Independent candidate for House of Representatives brought action against member of Virginia State Board of Elections and others, alleging that state statute regulating ballot access, which required petition signatures for an independent candidate for Congress to be witnessed by a resident of the relevant congressional district, violated his rights to freedom of expression and association. Candidate moved for preliminary injunction and defendants moved for summary judgment. The United States District Court for the Eastern District of Virginia, [Henry E. Hudson, J.](#), --- F.Supp.2d ----, [2010 WL 3385181](#), granted summary judgment to defendants. Candidate applied for injunctive relief. The United States Court of Appeals for the Fourth Circuit denied the application. Candidate applied for an injunction pending appeal.

**Holding:** The Supreme Court, Chief Justice Roberts, sitting as single justice, held that candidate did not demonstrate that the legal rights at issue were indisputably clear.

Application denied.

West Headnotes

### [1] Federal Courts 170B ↪446

170B Federal Courts

170BVII Supreme Court

170BVII(A) In General

170Bk446 k. Stay; Single Justice Orders.

### Most Cited Cases

To obtain injunctive relief from a single justice of the Supreme Court, sitting as Circuit Justice, an applicant must demonstrate that the legal rights at issue are indisputably clear. (Per Chief Justice Roberts, as Circuit Justice.)

### [2] Federal Courts 170B ↪446

170B Federal Courts

170BVII Supreme Court

170BVII(A) In General

170Bk446 k. Stay; Single Justice Orders.

### Most Cited Cases

The issuance of an injunction by a single justice of the Supreme Court, sitting as Circuit Justice, does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts, and therefore demands a significantly higher justification than that required for a stay. (Per Chief Justice Roberts, as Circuit Justice.)

### [3] Elections 144 ↪154(3)

144 Elections

144VI Nominations and Primary Elections

144k148 Objections and Contests

144k154 Trial and Determination by  
Courts

144k154(3) k. Injunction. **Most Cited  
Cases**

### Federal Courts 170B ↪446

170B Federal Courts

170BVII Supreme Court

170BVII(A) In General

170Bk446 k. Stay; Single Justice Orders.

### Most Cited Cases

Independent candidate for House of Representatives did not demonstrate that the legal rights at issue were indisputably clear, as would be required to obtain an injunction pending appeal, on application to a single justice of the Supreme Court, sitting as

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Circuit Justice, for injunctive relief to require Virginia State Board of Elections to count petition signatures that candidate collected in an effort to place his name on general election ballot, which relief was sought after Board had refused to count petition signatures witnessed by candidate, which refusal had been based on state statute requiring petition signatures for independent candidates for Congress to be witnessed by a resident of the relevant congressional district, and candidate's lack of residence in the district he was seeking to represent; while Fourth Circuit precedent that the district court had relied on, in granting summary judgment against candidate in candidate's constitutional challenge to state statute regulating ballot access, may have been undermined by two intervening Supreme Court decisions, the candidate himself conceded that the courts of appeals appeared to be reaching divergent results with respect to the validity of state residency requirements for petition circulators. (Per Chief Justice Roberts, as Circuit Justice.) West's [V.C.A. § 24.2-506](#).

Chief Justice **ROBERTS**, Circuit Justice.

\*1 Herb Lux has filed with me as Circuit Justice for the Fourth Circuit an application for an injunction pending appeal. Lux seeks an injunction requiring the Virginia State Board of Elections to count signatures that he collected in an effort to place himself on the congressional ballot. The application is denied.

Lux is an independent candidate for the U. S. House of Representatives in Virginia's Seventh Congressional District. Under Virginia law, an independent candidate for Congress must obtain 1,000 signatures from voters registered in the relevant congressional district in order to appear on the ballot. [Va. Code Ann. § 24.2-506](#) (Lexis 2010 Cum. Supp.). That same provision requires, among other things, that each signature be witnessed by a resident of that district. *Ibid.*

Although Lux is a candidate for the Seventh District, he is a resident of Virginia's First District. As

a result, he cannot serve as a witness for signatures from Seventh District residents. Despite that fact, Lux witnessed 1,063 of the 1,224 signatures collected on his behalf. The State Board of Elections refused to count those signatures. Lux unsuccessfully sought an injunction requiring the Board to do so from the District Court for the Eastern District of Virginia and from the Court of Appeals for the Fourth Circuit.

[1][2] To obtain injunctive relief from a Circuit Justice, an applicant must demonstrate that “the legal rights at issue are ‘indisputably clear.’ ” [Turner Broadcasting System, Inc. v. FCC](#), 507 U.S. 1301, 1303, 113 S.Ct. 1806, 123 L.Ed.2d 642 (1993) (Rehnquist, C. J., in chambers) (quoting [Communist Party of Ind. v. Whitcomb](#), 409 U.S. 1235, 93 S.Ct. 16, 34 L.Ed.2d 64 (1972) (Rehnquist, J., in chambers)). A Circuit Justice's issuance of an injunction “does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts,” and therefore “demands a significantly higher justification” than that required for a stay. [Ohio Citizens for Responsible Energy, Inc. v. NRC](#), 479 U.S. 1312, 1313, 107 S.Ct. 682, 93 L.Ed.2d 692 (1986) (SCALIA, J., in chambers).

[3] Lux does not meet this standard. He may very well be correct that the Fourth Circuit precedent relied on by the District Court- [Libertarian Party of Va. v. Davis](#), 766 F.2d 865 (1985)-has been undermined by our more recent decisions addressing the validity of petition circulation restrictions. See [Meyer v. Grant](#), 486 U.S. 414, 422, 428, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988) (invalidating a law criminalizing circulator compensation and describing petition circulation as “core political speech”); [Buckley v. American Constitutional Law Foundation, Inc.](#), 525 U.S. 182, 186-187, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999) (holding unconstitutional a requirement that initiative petition circulators be registered voters). At the same time, we were careful in [American Constitutional Law Foundation](#) to differentiate between registration requirements, which

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were before the Court, and residency requirements, which were not. *Id.*, at 197, 119 S.Ct. 636. Lux himself notes that the courts of appeals appear to be reaching divergent results in this area, at least with respect to the validity of state residency requirements. Application 13-14. Accordingly, even if the reasoning in *Meyer* and *American Constitutional Law Foundation* does support Lux's claim, it cannot be said that his right to relief is "indisputably clear."

The application for an injunction is denied.

**\*2** *It is so ordered.*

U.S.,2010.

Lux v. Rodrigues

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