

Challenging Disqualified Votes in a Close Election

Ron Barber for Congress v. Bennett
(*Cindy K. Jorgenson, D. Ariz. 4:14-cv-2489*)

Twenty days after the 2014 general election, a candidate for Congress 161 votes behind the election leader filed a federal complaint in the District of Arizona challenging how votes were counted.¹ With his complaint, the candidate filed an application for a temporary restraining order and a motion for a preliminary injunction.² The leading candidate filed a motion to intervene on the following day, November 25,³ and the court ultimately granted this motion.⁴

Because of Judge David C. Bury's recusal, the court assigned the case to Judge Cindy K. Jorgenson, who set the case for hearing on November 26.⁵ On November 27, Judge Jorgenson denied the candidate relief.⁶ Considering 133 votes in seven categories of possibly improper exclusion, Judge Jorgenson concluded that "Plaintiffs point to no case where scattered election-procedure violations regarding a small number of voters was found to raise a constitutional violation warranting a federal court's entry into the details of the administration of an election."⁷ On February 20, 2015, Judge Jorgenson approved the parties' stipulated dismissal without prejudice.⁸

After a recount, the plaintiff's opponent was declared the winner by 167 votes.⁹

1. [Complaint](#), *Rob Barber for Congress v. Bennett*, No. 4:14-cv-2489 (D. Ariz. Nov. 24, 2014), D.E. 1; see Rob O'Dell, *Barber Sues to Count 133 Votes in Dist. 2 Race*, *Ariz. Republic*, Nov. 25, 2014, at A9.

2. [Motion](#), *Rob Barber for Congress*, No. 4:14-cv-2489 (D. Ariz. Nov. 24, 2014), D.E. 2.

3. [Intervention Motion](#), *id.* (Nov. 25, 2014), D.E. 11.

4. [Minutes](#), *id.* (Nov. 26, 2014), D.E. 26; [Transcript](#) at 4, *id.* (Nov. 26, 2014, filed Dec. 2, 2014), D.E. 30.

5. [Amended Order](#), *id.* (Nov. 26, 2014), D.E. 24 (correcting the case caption) [Order](#), *id.* (Nov. 25, 2014), D.E. 14; [Recusal](#), *id.* (Nov. 24, 2014), D.E. 8.

6. [Opinion](#), *id.* (Nov. 27, 2014), D.E. 27, available at [2014 WL 6694451](#); see *Court Rejects Incumbent's Bid on Ballot Count*, *N.Y. Times*, Nov. 28, 2014, at A21.

7. [Opinion](#), *supra* note 6, at 11.

8. [Order](#), *Rob Barber for Congress*, No. 4:14-cv-2489 (D. Ariz. Feb. 20, 2015), D.E. 34.

9. See Rebekah L. Sanders, *McSally Wins Recount in Bitter House Race*, *Ariz. Republic*, Dec. 18, 2014, at A3.