

## Ballot Access for a New Party

*Erard v. Johnson (Stephen J. Murphy III  
and Laurie J. Michelson, E.D. Mich. 2:12-cv-13627)*

On August 15, 2012, Matt Erard, a socialist candidate for Congress, filed a pro se federal complaint in the Eastern District of Michigan challenging the state's criteria for new political parties' listing their candidates on the ballot.<sup>1</sup>

Two days later, Judge Stephen J. Murphy III referred the case to Magistrate Judge Laurie J. Michelson for pretrial proceedings.<sup>2</sup> On August 20, Judge Michelson struck the candidate's motion for a preliminary injunction for defect of service.<sup>3</sup> On September 6, three days before Michigan certified the November 6 ballot, the candidate filed a second motion for a preliminary injunction that also sought a temporary restraining order.<sup>4</sup> On September 12, Judge Michelson recommended the denial of a temporary restraining order because the candidate had not shown service on the defendants and because there was no showing that a preliminary injunction would not provide any relief due.<sup>5</sup>

Judge Michelson heard the preliminary injunction motion on September 19 and recommended its denial on the following day.<sup>6</sup> Judge Murphy adopted Judge Michelson's reports and recommendations on October 29.<sup>7</sup> "Erard has failed to show that he is entitled to this extraordinary remedy. He delayed in filing this action . . . ."<sup>8</sup>

The candidate filed an amended complaint on February 25, 2013.<sup>9</sup> On May 14, 2014, Judge Murphy dismissed the complaint, adopting in part a January 9, 2014, report and recommendation by Judge Michelson.<sup>10</sup> Judge Murphy disagreed with Judge Michelson's conclusion that the plaintiff might be able to prove a First Amendment violation with respect to petition language suggesting that persons signing the party's ballot-access petition promised to join or support the party.<sup>11</sup> After Judge Michelson issued her report and recommendation, Michigan amended

---

1. [Complaint](#), *Erard v. Johnson*, No. 2:12-cv-13627 (E.D. Mich. Aug. 15, 2012), D.E. 1; [Erard v. Johnson](#), 905 F. Supp. 2d 782, 790 (E.D. Mich. 2012).

2. [Order](#), *Erard*, No. 2:12-cv-13627 (E.D. Mich. Aug. 17, 2012), D.E. 6.

3. [Order](#), *id.* (Aug. 20, 2012), D.E. 11; [Erard](#), 905 F. Supp. 2d at 790.

4. Motion, *Erard*, No. 2:12-cv-13627 (E.D. Mich. Sept. 6, 2012), D.E. 12; [Erard](#), 905 F. Supp. 2d at 789–90.

5. [Erard](#), 905 F. Supp. 2d at 790–94.

6. *Id.* at 794–814; [Docket Sheet](#), *Erard*, No. 2:12-cv-13627 (E.D. Mich. Aug. 15, 2012).

7. [Erard](#), 905 F. Supp. 2d at 787–90.

8. *Id.* at 789.

9. [Amended Complaint](#), *Erard*, No. 2:12-cv-13627 (E.D. Mich. Feb. 25, 2013), D.E. 44.

10. [Opinion](#), *id.* (May 14, 2014), D.E. 72; see [Report and Recommendation](#), *id.* (Jan. 9, 2014), D.E. 55, available at [2014 WL 1922770](#).

11. [Opinion](#), *supra* note 10, at 19–20; see [Report and Recommendation](#), *supra* note 10, at 44–48.

its election law so that petition circulators for new political parties no longer had to be eligible to vote in Michigan.<sup>12</sup>

In an unpublished opinion without oral argument, the court of appeals affirmed dismissal of the action on May 20, 2015.<sup>13</sup>

---

12. [Opinion](#), *supra* note 10, at 20–21; *see Report and Recommendation*, *supra* note 10, at 48–52; *see also* Michigan Secretary of State Ruth Johnson, [Enactment of Legislation Regarding Non-Resident Petition Circulators](#) (Apr. 3, 2014).

13. [Opinion](#), *Erard v. Johnson*, No. 14-1873 (6th Cir. May 20, 2015), D.E. 29.