

## Substituting Minor Party Presidential Candidates

*Barr v. Galvin*

*(Nathaniel M. Gorton, D. Mass. 1:08-cv-11340)*

A minor party filed a federal complaint seeking an order allowing it to substitute its nominees for President and Vice President for the names used to gather ballot application signatures before the party's nominating convention. The judge ruled in favor of the party because it was not clear whether statutory provisions on substitution of candidates applied to minor parties' presidential candidates. After the election, the court of appeals determined that the statutory vagueness should be resolved by state court interpretation.

*Subject:* Getting on the ballot. *Topics:* Getting on the ballot; matters for state courts.

The Libertarian Party filed a federal complaint in the District of Massachusetts on August 6, 2008, seeking an order allowing it to substitute its nominees for President and Vice President for the names used to gather ballot application signatures before the party's May 22–26 nominating convention.<sup>1</sup> On August 15, the party filed a motion for a preliminary injunction.<sup>2</sup>

Judge Nathaniel M. Gorton heard the motion on September 12.<sup>3</sup> On September 22, Judge Gorton granted the party a preliminary injunction, because it was not clear whether Massachusetts's statutory provisions on substitution of candidates applied to minor parties' presidential candidates.<sup>4</sup> In September 2009, Judge Gorton awarded the party summary judgment on the same grounds.<sup>5</sup>

On November 16, 2010, the court of appeals determined that the statutory vagueness should be resolved by state court interpretation, so the court remanded the case for dismissal without prejudice.<sup>6</sup>

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1. Complaint, *Barr v. Galvin*, No. 1:08-cv-11340 (D. Mass. Aug. 6, 2008), D.E. 1; *Barr v. Galvin*, 626 F.3d 99, 103 (1st Cir. 2010); *Barr v. Galvin*, 584 F. Supp. 2d 316, 319 (D. Mass. 2008); *Barr v. Galvin*, 659 F. Supp. 2d 225, 227 (D. Mass. 2009).

2. Preliminary Injunction Motion, *Barr*, No. 1:08-cv-11340 (D. Mass. Aug. 15, 2008), D.E. 6; *Barr*, 584 F. Supp. 2d at 319.

3. Transcript, *Barr*, No. 1:08-cv-11340 (D. Mass. Sept. 12, 2008, filed Oct. 23, 2008), D.E. 25; *Barr*, 584 F. Supp. 2d at 319.

4. Preliminary Injunction, *Barr*, No. 1:08-cv-11340 (D. Mass. Sept. 22, 2008), D.E. 22; *Barr*, 584 F. Supp. 2d at 320–21; *Barr v. Galvin*, 626 F.3d at 103–04; *Barr*, 659 F. Supp. 2d at 226–27.

5. *Barr*, 659 F. Supp. 2d 225, *rev'd*, 626 F.3d 99.

6. *Barr*, 626 F.3d 99 *cert. denied*, 565 U.S. 929 (2011).