

Ballot Access for a New Party

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

A socialist candidate for Congress filed a pro se federal complaint on August 15, 2012, challenging the state’s criteria for listing new political parties’ candidates on the ballot. The district court denied the candidate relief, and the court of appeals affirmed the denial.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; pro se party; laches; case assignment.

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.¹

Two days later, Judge Stephen J. Murphy III referred the case to Magistrate Judge Laurie J. Michelson for pretrial proceedings.² On August 20, Judge Michelson struck the candidate’s motion for a preliminary injunction for defect of service.³ 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.⁴ On September 12, Judge Michelson recommended 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.⁵

Judge Michelson heard the preliminary-injunction motion on September 19 and recommended its denial on the following day.⁶ Judge Murphy adopted Judge Michelson’s reports and recommendations on October 29.⁷ “Erard has failed to show that he is entitled to this extraordinary remedy. He delayed in filing this action”⁸

The candidate filed an amended complaint on February 25, 2013.⁹ On May 14, 2014, Judge Murphy dismissed the complaint, adopting in part a January 9, 2014, report and recommendation by Judge Michelson.¹⁰ Judge

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.

Judge Michelson became a district judge on March 14, 2014. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

3. Order, *Erard*, No. 2:12-cv-13627 (E.D. Mich. 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 [hereinafter D. Mich. Opinion]; see Report and

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.¹¹ After Judge Michelson issued her report and recommendation, Michigan amended its election law so that petition circulators for new political parties no longer had to be eligible to vote in Michigan.¹²

In an unpublished opinion without oral argument, the court of appeals affirmed dismissal of the action on May 20, 2015.¹³

Recommendation, *id.* (Jan. 9, 2014), D.E. 55, 2014 WL 1922770.

11. E.D. Mich. Opinion, *supra* note 10, at 19–20; *see* Report and Recommendation, *supra* note 10, at 44–48.

12. E.D. Mich. 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), www.michigan.gov/documents/sos/2014PA94_452731_7.pdf, *archived at* web.archive.org/web/20150210093849/http://www.michigan.gov/documents/sos/2014PA94_452731_7.pdf.

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