

## Challenging Disqualified Votes in a Close Election

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

Before the certification of election results in a close election for Congress, the trailing candidate filed a federal complaint challenging the disqualification of some votes. The district judge determined that the plaintiff had not justified federal-court interference with election administration.

*Subject:* Voting irregularities. *Topics:* Enjoining certification; election errors; provisional ballots; intervention; recusal; case assignment.

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.<sup>1</sup> With his complaint, the candidate filed an application for a temporary restraining order and a motion for a preliminary injunction.<sup>2</sup> The leading candidate filed a motion to intervene on the following day, November 25,<sup>3</sup> and the court ultimately granted this motion.<sup>4</sup>

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.<sup>5</sup> On November 27, Judge Jorgenson denied the candidate relief.<sup>6</sup> Considering 133 votes in seven categories of possibly improper exclusion, she 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."<sup>7</sup> On February 20, 2015, she approved the parties' stipulated dismissal without prejudice.<sup>8</sup>

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

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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, 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.