

## Disqualification as an Independent Candidate for Voting in a Primary Election

*McClure v. Galvin*

(*Richard G. Stearns, D. Mass. 1:04-cv-10826*)

An attorney and would-be candidate for state senate filed a pro se federal complaint alleging that he was improperly denied a place on the ballot as an independent candidate because he had voted in a primary election. Three weeks later, the court denied the plaintiff injunctive relief because of a Supreme Court precedent upholding a party disaffiliation requirement.

*Subject:* Getting on the ballot. *Topics:* Getting on the ballot; pro se party; primary election.

An attorney and would-be candidate for state senate and another voter—his wife—filed a pro se federal complaint in the District of Massachusetts on April 26, 2004, alleging that the candidate was improperly denied a place on the November ballot as an independent candidate because he had voted in the March 2 Democratic primary.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a preliminary injunction.<sup>2</sup>

Two days later, Judge Richard G. Stearns set the matter for hearing on May 11.<sup>3</sup> Six days after the hearing, Judge Stearns denied the plaintiffs injunctive relief.<sup>4</sup> Relief in the action was precluded by the Supreme Court's 1974 upholding of California's party disaffiliation requirement in *Storer v. Brown*.<sup>5</sup> The court of appeals affirmed Judge Stearns's ruling on October 8.<sup>6</sup>

---

1. Complaint, *McClure v. Galvin*, No. 1:04-cv-10826 (D. Mass. Apr. 26, 2004), D.E. 1; *McClure v. Galvin*, 386 F.3d 36, 37, 40 (1st Cir. 2004).

2. Preliminary-Injunction Motion, *McClure*, No. 1:04-cv-10826 (D. Mass. Apr. 26, 2004), D.E. 2.

3. Docket Sheet, *id.* (Apr. 26, 2004).

4. Opinion, *id.* (May 17, 2004), D.E. 9 [hereinafter D. Mass. Opinion], 2004 WL 1092325; *McClure*, 386 F.3d at 38, 40.

5. D. Mass. Opinion, *supra* note 4; *see Storer v. Brown*, 415 U.S. 724, 728 (1974) (finding constitutional the disqualification of independent candidates who had been affiliated with a political party within a year before the party primary election).

6. *McClure*, 386 F.3d 36.