

Opportunity to Cure Missing and Mismatched Absentee-Ballot Signatures in California

Fugazi v. Padilla

(Kimberly J. Mueller, E.D. Cal. 2:20-cv-970)

A candidate and several voters challenged the certification of a primary election, alleging that absentee voters were not given sufficient opportunities to cure missing or mismatched signatures. Absentee voting was important in the election because of a global infectious pandemic. The district judge denied the plaintiffs immediate relief because although a mailing to voters who had signature problems was confusing, and the election office was closed to visitors, clarifications were available by telephone.

Subject: Absentee and early voting. *Topics:* Signature matching; absentee ballots; Covid-19; enjoining certification; intervention; primary election; class action.

A federal class-action complaint filed in the Eastern District of California on May 12, 2020, by fourteen plaintiffs against California’s secretary of state and San Joaquin County’s registrar of voters alleged that absentee voters in a March 3 primary election whose signatures either were absent or did not appear to match signatures on record were not given sufficient opportunities to cure the defect.¹ On May 13, the plaintiffs filed an application for a temporary restraining order.²

Two days later, the legislature candidate who had edged out the first plaintiff for a spot on the general-election ballot sought to be included in the case as a defendant.³ Judge Kimberly J. Mueller set the case for a hearing by video-conference on May 19.⁴

Judge Mueller granted intervention on May 19 because the candidate’s “ability to protect her interests would be impaired if at this point she were not joined to this action.”⁵ The case raised a concrete possibility that the first plaintiff could displace the prospective intervener as a candidate in the general election if disputed ballots were counted.⁶

Judge Mueller denied the plaintiffs immediate relief on May 22.⁷ Being able to vote by mail in the election was very important because of the global Covid-19 infectious pandemic.⁸ The registrar’s notice to absentee voters with missing or mismatched signatures was confusing as to the deadline for a cure: it specified the deadline as two days before certification of the election without

1. Complaint, *Fugazi v. Padilla*, No. 2:20-cv-970 (E.D. Cal. May 12, 2020), D.E. 1.

2. Temporary-Restraining-Order Application, *id.* (May 13, 2020), D.E. 4.

3. Intervention Application, *id.* (May 15, 2020), D.E. 7.

4. Docket Sheet, *id.* (May 12, 2020) (D.E. 14, 15, 21).

5. Opinion at 3, *id.* (May 19, 2020), D.E. 22, 2020 WL 2539286.

6. *Id.* at 4.

7. Opinion, *id.* (May 22, 2020), D.E. 27, 2020 WL 2615742.

8. *Id.* at 15.

specifying the certification day.⁹ But although the office was closed because of the pandemic, the office was responding to clarification inquiries by telephone.¹⁰

Judge Mueller dismissed an amended complaint as moot on October 29.¹¹

9. *Id.*

10. *Id.* at 15–16.

11. Opinion, *id.* (Oct. 29, 2020), D.E. 61, 2020 WL 6342959; *see* Amended Complaint, *id.* (June 30, 2020), D.E. 41.