

Prohibited Use of “Reelection” for a Previous Office Holder Who Is Not the Incumbent

Make Liberty Win v. Cegavske
(Robert C. Jones, D. Nev. 3:20-cv-592)

Election statutes forbade campaign materials from referring to the election of a previous office holder who was not the incumbent as reelection. The district judge agreed that application of the statutes to a specific campaign was unconstitutional but did not agree that the statutes were facially unconstitutional.

Subject: Campaign activities. *Topics:* Campaign materials; door-to-door canvassing; Covid-19.

A political action committee filed a federal complaint in the District of Nevada on October 19, 2020, objecting to a determination by Nevada’s secretary of state that the committee could not advocate for the “reelection” of a former legislator who was not an incumbent.¹ With its complaint, the committee filed a motion for a preliminary injunction and a motion to expedite briefing, waiving oral argument.²

Nevada’s revised statutes on elections included chapter 294A on campaign practices. Among the provisions on required and prohibited practices were section 294A.330 on use of the term “reelect” and section 294A.340 on creating an implication that a candidate was an incumbent, both of which forbade referring to the election of someone who was not the incumbent but who previously held the office as reelection.³

Judge Robert C. Jones agreed on October 21 that an opposition brief would be due seven days after service of the complaint and a reply would be due three days after service of the opposition.⁴ On October 23, Judge Jones set the case for an October 29 videoconference hearing, posting on the public docket sheet telephone access for the public and a reminder that recording of the proceeding would not be permitted.⁵ The hearing was held at a time of widespread social distancing made necessary by the global Covid-19 infectious pandemic.

At the hearing, Judge Jones informed the parties how he would rule, and he ordered submission of a proposed order.⁶ On November 2, the day before the election, Judge Jones issued a preliminary injunction providing relief to

1. Complaint, *Make Liberty Win v. Cegavske*, No. 3:20-cv-592 (D. Nev. Oct. 19, 2020), D.E. 1; *see Make Liberty Win v. Cegavske*, 499 F. Supp. 3d 794, 797–99 (D. Nev. 2020).

2. Briefing Motion, *Make Liberty Win*, No. 3:20-cv-592 (D. Nev. Oct. 19, 2020), D.E. 3 (requesting that the opposition be due within seven days and a reply due three days after that); Preliminary-Injunction Motion, *id.* (Oct. 19, 2020), D.E. 2.

3. *Make Liberty Win*, 499 F. Supp. 3d at 798–99.

4. Order, *Make Liberty Win*, No. 3:20-cv-592 (D. Nev. Oct. 21, 2020), D.E. 8.

5. Docket Sheet, *id.* (Oct. 19, 2020) (minute order, D.E. 10).

6. *Id.* (minutes, D.E. 18); *see Proposed Order, id.* (Oct. 31, 2020), D.E. 19; *see Make Liberty Win*, 499 F. Supp. 3d at 799.

the plaintiff committee.⁷ An opinion followed four days later, concluding that although application of the statute to the plaintiff’s specific campaign materials was unconstitutional, the statute was not otherwise unconstitutional.⁸

The former legislator won the election.⁹

On November 8, 2021, Judge Jones resolved the case by resolving summary-judgment motions.¹⁰ Applying the statutory restrictions to former incumbents was unconstitutional because “Defendant fails to provide a compelling government interest in preventing people from truthfully using the term ‘reelect’ when they were previously elected to the office even if they are not the current incumbent.”¹¹ But a facial challenge was wanting because “the statute can properly be enforced against a candidate falsely claiming to be an incumbent.”¹²

The defendant secretary agreed in December not to appeal Judge Jones’s decision and to pay the committee \$20,000 in attorney fees.¹³

7. Preliminary Injunction, *Make Liberty Win*, No. 3:20-cv-592 (D. Nev. Nov. 2, 2020), D.E. 20; *Make Liberty Win*, 499 F. Supp. 3d at 799; *Make Liberty Win v. Cegavske*, 570 F. Supp. 3d 936, 939–40 (D. Nev. 2021).

8. *Make Liberty Win*, 499 F. Supp. 3d 794.

9. *Make Liberty Win*, 570 F. Supp. 3d at 940; Current Assembly Legislators, www.leg.state.nv.us/App/Legislator/A/Assembly/Current (Jill Dickman, district 31).

10. *Make Liberty Win*, 570 F. Supp. 3d 936.

11. *Id.* at 943.

12. *Id.* at 945.

13. Stipulated Judgment, *Make Liberty Win v. Cegavske*, No. 3:20-cv-592 (D. Nev. Dec. 21, 2021), D.E. 39; Joint Stipulation, *id.* (Dec. 9, 2021), D.E. 38.