

Unsuccessful Vote-Dilution Challenge to Automatic Mailing of Absentee Ballots in Vermont

Martel v. Condos

(Geoffrey W. Crawford, D. Vt. 5:20-cv-131)

A district judge dismissed a federal complaint alleging that mailing absentee ballots to all registered voters created an unconstitutional risk of vote dilution arising from ballots cast by ineligible voters. The judge found the concern to be a general grievance that did not afford the five plaintiffs standing to pursue the claims.

Subject: Absentee and early voting. *Topics:* Absentee ballots; Covid-19.

Five voters filed a federal complaint in the District of Vermont on September 4, 2020, against Vermont’s secretary of state complaining that an intention to mail absentee ballots to all registered voters in Vermont in light of social distancing made necessary by the global Covid-19 infectious pandemic was unconstitutional; it would “dilute the votes cast by honest citizens” because “many castable ballots will inevitably fall in the hands of persons other than the voter to whom the mail-in ballot was directed.”¹ With their complaint, the voters filed a motion for a preliminary injunction and expedited hearing.²

On September 10, Judge Geoffrey W. Crawford set the case for a videoconference hearing on September 15.³ On September 16, Judge Crawford dismissed the action.⁴

Plaintiffs’ case begins and ends with the issue of standing. . . . Cases in which plaintiffs assert generalized grievances of unlawful governmental action are commonly dismissed on standing grounds. . . .

. . .
. . . If every voter suffers the same incremental dilution of the franchise caused by some third-party’s fraudulent vote, then these voters have experienced a generalized injury.⁵

1. Complaint at 3, 8, *Martel v. Condos*, No. 5:20-cv-131 (D. Vt. Sept. 4, 2020), D.E. 1; *Martel v. Condos*, 487 F. Supp. 3d 247, 248 (D. Vt. 2020).

2. Motion, *Martel*, No. 5:20-cv-131 (D. Vt. Sept. 4, 2020), D.E. 2.

3. Notice, *id.* (Sept. 10, 2020), D.E. 6; *see Martel*, 487 F. Supp. 3d at 248; Minutes, *Martel*, No. 5:20-cv-131 (D. Vt. Sept. 16, 2020), D.E. 15; *see also* Elizabeth Murray, *Vermont Sets Date to Mail Ballots to Voters*, Burlington Free Press, Sept. 16, 2020, at A7.

4. *Martel*, 487 F. Supp. 3d 247.

5. *Id.* at 251, 253 (quotation marks omitted).