

Voter-Registration Purges in Colorado

Common Cause of Colorado v. Coffman

(John L. Kane, D. Colo. 1:08-cv-2321)

A federal complaint alleged that Colorado was engaging in improper systematic purging of voter-registration rolls within ninety days of a general election in violation of the National Voter Registration Act. Among the issues in the case was Colorado's practice of canceling new registrations if registration notices came back undeliverable within twenty days of their being mailed. After an evidentiary hearing, the parties stipulated a temporary restraining order. The state's secretary of state adopted an aggressive interpretation of his attorney's stipulation, but the district judge further restrained the secretary's actions. The litigation proceeded at a normal pace after the election, and the district judge eventually ruled that Colorado's twenty-day rule did not violate the National Voter Registration Act because voters affected by it could cast provisional ballots.

Subject: Nullifying registrations. *Topics:* Registration challenges; registration procedures; National Voter Registration Act; enforcing orders; case assignment.

On Saturday, October 25, 2008, ten days before a general election, three organizations filed a federal action against Colorado's secretary of state to halt and reverse cancelations of voter registrations.¹ One key allegation was that Colorado had systematically purged registration rolls within ninety days of a general election in violation of the National Voter Registration Act.² The plaintiffs also challenged Colorado's registration procedures in which new registrations were canceled if registration notices came back undeliverable within twenty days of their being mailed.³ With the complaint, the plaintiffs filed a motion for a temporary restraining order.⁴

The court assigned the case to Chief Judge Wiley Y. Daniel, but Senior Judge John L. Kane took responsibility for the emergency matter instead, because of his greater availability.⁵

1. Complaint, *Common Cause of Colo. v. Coffman*, No. 1:08-cv-2321 (D. Colo. Oct. 25, 2008), D.E. 1; *Common Cause of Colo. v. Buescher*, 750 F. Supp. 2d 1259, 1266 (D. Colo. 2010); see Amended Complaint, *Common Cause of Colo.*, No. 1:08-cv-2321 (D. Colo. Apr. 16, 2009), D.E. 46; see also Myung Oak Kim, *Latest Developments in Colorado Voting Issues*, Rocky Mountain News, Oct. 29, 2008, at 5.

2. Complaint, *supra* note 1; see Pub. L. No. 103-31, 107 Stat. 77 (1993), as amended, 52 U.S.C. §§ 20501–20511. See generally Robert Timothy Reagan, *Motor Voter: The National Voter Registration Act* (Federal Judicial Center 2014).

3. Complaint, *supra* note 1.

4. Temporary-Restraining-Order Motion, *Common Cause of Colo.*, No. 1:08-cv-2321 (D. Colo. Oct. 25, 2008), D.E. 2.

5. Reassignment Letter, *id.* (Oct. 30, 2008), D.E. 17; Interview with Hon. John L. Kane and his law clerk Karen Robertson, Aug. 2 and 3, 2012 (noting that as a senior judge with more time flexibility, Judge Kane often handled emergency matters for the other judges).

Tim Reagan interviewed Judge Kane and his law clerk Karen Robertson for this report by

Judge Kane met with the parties in court on Monday afternoon, required briefing on immediate injunctive relief by 4:00 p.m. that day, and set an injunction hearing for Wednesday afternoon.⁶

The case was politically charged, and one of Judge Kane's primary objectives was to cut through political posturing and understand the key elements of the case.⁷ Testimony was required to understand how state policies were being implemented in Colorado's sixty-four counties.⁸ After evidence and arguments at the hearing, Judge Kane stepped away from the bench, and the parties worked out a stipulated preliminary injunction.⁹ The stipulation stated that voters whose registrations were canceled pursuant to the twenty-day rule could cast provisional ballots.¹⁰ The day's proceedings came to a close at 9:06 p.m.¹¹

The parties disagreed on how the stipulated injunction applied to registration cancellations not resulting from the twenty-day rule.¹² The secretary's interpretation of the agreement negotiated by his attorney conflicted with the understanding of the agreement by the negotiating attorneys.¹³ On Friday, the court met with the parties by telephone and ordered the state to immediately cease canceling registrations.¹⁴

In June 2009, Judge Kane ruled that Colorado had improperly refused to count three provisional ballots.¹⁵ In January 2010, the parties stipulated dismissal of some of the plaintiffs' claims in light of intervening changes in Col-

telephone.

Judge Daniel died on May 10, 2019. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

6. Minutes, *Common Cause of Colo.*, No. 1:08-cv-2321 (D. Colo. Oct. 27, 2008), D.E. 6.

7. Interview with Hon. John L. Kane and his law clerk Karen Robertson, Aug. 2 and 3, 2012.

8. *Id.*

9. Minutes, *Common Cause of Colo.*, No. 1:08-cv-2321 (D. Colo. Oct. 29, 2008), D.E. 15 [hereinafter Oct. 29, 2008, Minutes]; Interview with Hon. John L. Kane and his law clerk Karen Robertson, Aug. 2 and 3, 2012.

10. Order, *Common Cause of Colo.*, No. 1:08-cv-2321 (D. Colo. Oct. 29, 2008), D.E. 14; *Common Cause of Colo. v. Buescher*, 750 F. Supp. 2d 1259, 1266–67 (D. Colo. 2010); see Felisa Cardona, *A Win for Purged Voters Groups*, Denver Post, Oct. 30, 2008, at A1; Todd Hartman, *Deal Ensures 20,000 Taken off Rolls Can Vote*, Rocky Mountain News, Oct. 30, 2008, at 7.

11. Oct. 29, 2008, Minutes, *supra* note 9.

12. See Todd Hartman, *Voter Purge Continues*, Rocky Mountain News, Oct. 31, 2008, at 6.

13. Interview with Hon. John L. Kane and his law clerk Karen Robertson, Aug. 2 and 3, 2012 (noting that state officials are sometimes accustomed to pushing limits with state judges who do not have life appointments).

14. Minutes, *Common Cause of Colo.*, No. 1:08-cv-2321 (D. Colo. Oct. 31, 2008), D.E. 18; Interview with Hon. John L. Kane and his law clerk Karen Robertson, Aug. 2 and 3, 2012 (noting that the court reminded the parties of the power of detention for contempt); see Todd Hartman, *Judge Halts Purging of Voters*, Rocky Mountain News, Nov. 1, 2008, at 18; John Ingold, *Halt Is Ordered to Voter Purge*, Denver Post, Nov. 2, 2008, at B1.

15. Order, *Common Cause of Colo.*, No. 1:08-cv-2321 (D. Colo. June 26, 2009), D.E. 84, 2009 WL 1847353; *Common Cause of Colo.*, 750 F. Supp. 2d at 1267.

orado's election law.¹⁶ On November 3, 2010, Judge Kane ruled that Colorado's twenty-day rule did not violate the Voter Registration Act, because voters subject to the rule could still cast provisional ballots.¹⁷ The parties stipulated dismissal of an appeal.¹⁸

16. Order, *Common Cause of Colo.*, No. 1:08-cv-2321 (D. Colo. Jan. 22, 2010), D.E. 140; *Common Cause of Colo.*, 750 F. Supp. 2d at 1262 n.1.

17. *Common Cause of Colo.*, 750 F. Supp. 2d 1259; see Order, *Common Cause of Colo.*, No. 1:08-cv-2321 (D. Colo. Oct. 18, 2010), D.E. 186, 2010 WL 4156486 (denying interim relief in advance of the 2010 general election); see Daniel P. Tokaji, *HAVA in Court: A Summary and Analysis of Litigation*, 12 Election L.J. 203, 211 (2013).

18. Stipulation, *Common Cause of Colo. v. Buescher*, No. 10-1546 (Jan. 24, 2011).