

Voter Registration Purges in Colorado

Common Cause of Colorado v. Coffman

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

On Saturday, October 25, 2008, ten days before the 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 90 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 20 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

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 64 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 registra-

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, 42 U.S.C. §§ 1973gg to 1973gg-10 (2012).

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 handles emergency matters for the other judges).

Tim Reagan interviewed Judge Kane and his law clerk Karen Robertson for this report by telephone on August 2 and 3, 2012.

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.

tions were canceled pursuant to the 20-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 20-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 to dismissal of some of the plaintiffs' claims in light of intervening changes in Colorado's election law.¹⁶ On November 3, 2010, Judge Kane ruled that Colorado's 20-day rule did not violate the Voter Registration Act, because voters subject to the rule could still cast provisional ballots.¹⁷ The parties stipulated to the dismissal of an appeal.¹⁸

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, available at 2009 WL 1847353; *Common Cause of Colo.*, 750 F. Supp. 2d at 1267.

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, available at 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).