

Minimum County Requirements for Ballot Petitions

Committee to Regulate and Control Marijuana v. Heller
(James C. Mahan, D. Nev. 2:04-cv-1035)

Supporters of an initiative to regulate marijuana filed a federal complaint claiming that Nevada had improperly disqualified signatures on their ballot petition. Three days later, the district judge enjoined the state from taking any action that would prevent the court from providing the plaintiffs with further injunctive relief. One month after that, the judge invalidated a state provision requiring a minimum number of signatures from a supermajority of counties for a ballot measure, because the provision favored voters in small counties. Because the judge left in place a provision that resulted in the disqualification of signatures by voters who may not have registered before signing the ballot petition, the initiative failed to qualify for the election. The court of appeals affirmed the district judge's decisions.

Subject: Ballot measures. *Topics:* Ballot measure; getting on the ballot; equal protection; registration procedures.

Supporters of an initiative to regulate marijuana in Nevada filed a federal complaint on July 27, 2004, claiming that Nevada had improperly disqualified signatures on their ballot petition.¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.² On the following day, Judge James C. Mahan set the matter for a hearing on August 13.³

On July 30, Judge Mahan issued a temporary restraining order: “defendants are restrained from nullifying, processing, and/or verifying the petitions and petition signatures submitted in support of the Regulation of Marijuana Initiative.”⁴ In addition, Judge Mahan ordered “that defendants shall not take any action that would in any manner affect the ability of the court to grant plaintiffs’ request for preliminary injunction” and ordered the plaintiffs to post a nominal \$100 bond.⁵

On August 20, Judge Mahan declared unconstitutional two provisions of Nevada’s initiative law.⁶ First, he declared it unconstitutional for Nevada to

1. Complaint, *Comm. to Regulate & Control Marijuana v. Heller*, No. 2:04-cv-1035 (D. Nev. July 27, 2004), D.E. 1; *ACLU v. Lomax*, 471 F.3d 1010, 1014 (9th Cir. 2006); see Carri Geer Thevenot, *ACLU Sues, Tries to Save Initiative*, Las Vegas Rev.-J., July 28, 2004, at 1B.

2. Motion, *Comm. to Regulate & Control Marijuana*, No. 2:04-cv-1035 (D. Nev. July 27, 2004), D.E. 4–5; *ACLU*, 471 F.3d at 1014.

3. Order, *Comm. to Regulate & Control Marijuana*, No. 2:04-cv-1035 (D. Nev. July 28, 2004), D.E. 6; *ACLU*, 471 F.3d at 1014.

4. Temporary Restraining Order, *Comm. to Regulate & Control Marijuana*, No. 2:04-cv-1035 (D. Nev. Aug. 2, 2004), D.E. 8.

5. *Id.*

6. Injunction, *id.* (Aug. 20, 2004), D.E. 21; *ACLU*, 471 F.3d at 1015; see Carri Geer

require a minimum number of petition signatures from each of at least 75% of Nevada's counties.⁷ Second, he declared unconstitutional "the requirement that each document in a petition submitted in support of an Initiative must contain an affidavit of Document Signer that is executed by a person who signed the petition as a supporter of the Initiative."⁸ Judge Mahan denied the plaintiffs' request to nullify a rule disqualifying petition signatures by voters who may have registered after signing the petition.⁹ As a result of this last holding, the initiative failed to qualify for the 2004 general-election ballot.¹⁰

On immediate appeal by the plaintiffs, the court of appeals affirmed on September 8, by a vote of two to one, Judge Mahan's ruling against the plaintiffs.¹¹ Nine days later, Nevada filed its notice of appeal, challenging Judge Mahan's 75% holding.¹² The court of appeals affirmed that holding on December 8, 2006.¹³

Both the district court's and the court of appeals' holdings were dictated by the court of appeals' previously declaring unconstitutional Idaho's requirement that ballot initiatives be promoted by 6% of the voters in at least half of the counties: "this geographic distribution requirement favors residents of sparsely populated areas over residents of more densely populated areas in their respective efforts to participate in the process of qualifying initiatives for the ballot."¹⁴ The Idaho case, in turn, applied a 1969 holding by the Supreme Court in *Moore v. Ogilvie* declaring unconstitutional as a violation of equal protection an Illinois requirement that presidential nominating petitions include a minimum number of signatures from at least fifty of Illinois's 102 counties, noting that "93.4% of the State's registered voters reside in the 49 most populous counties, and only 6.6% are resident in the remaining 53 counties."¹⁵

On August 1, 2007, Judge Mahan awarded the plaintiffs \$107,511.99 in attorney fees and costs.¹⁶

Thevenot, *Rules on Initiative Process Unconstitutional*, Las Vegas Rev.-J., Aug. 14, 2004, at 1A.

7. Injunction, *supra* note 6; *ACLU*, 471 F.3d at 1015.

8. *Id.*

9. *Id.*

10. Dissenting Opinion at 1–2, *Comm. to Regulate & Control Marijuana v. Lomax*, No. 04-16626 (9th Cir. Sept. 8, 2004), *filed as Judgment, Comm. to Regulate & Control Marijuana*, No. 2:04-cv-1035 (D. Nev. Oct. 25, 2004), D.E. 34; *see ACLU*, 471 F.3d at 1013; *see also* Ed Vogel, *Petitions Fall Short in Support*, Las Vegas Rev.-J., Sept. 2, 2004, at 1B.

11. Opinion, *Comm. to Regulate & Control Marijuana*, No. 04-16626 (9th Cir. Sept. 8, 2004), *filed as Judgment, supra* note 10; *see ACLU*, 471 F.3d at 1015; *see also* Ed Vogel, *Ruling Sounds Petitions' Death Knell*, Las Vegas Rev.-J., Sept. 9, 2004, at 1A.

12. Notice of Appeal, *Comm. to Regulate & Control Marijuana*, No. 2:04-cv-1035 (D. Nev. Sept. 17, 2004), D.E. 30; *ACLU*, 471 F.3d at 1015.

13. *ACLU*, 471 F.3d 1010.

14. *Idaho Coal. United for Bears v. Cenarrussa*, 342 F.3d 1073, 1074 (9th Cir. 2003).

15. 394 U.S. 814, 816 (1969).

16. Order, *Comm. to Regulate & Control Marijuana*, No. 2:04-cv-1035 (D. Nev. Aug. 2, 2007), D.E. 70.