

Whether Voting by Mail During a Pandemic Dilutes Legitimate Votes

Paher v. Cegavske (Miranda M. Du, D. Nev. 3:20-cv-243)

A district judge denied an injunction to voters who complained that extensive voting by mail during a global infectious pandemic would dilute legitimate votes, finding the allegation too speculative to afford standing or merit relief.

Subject: Absentee and early voting. *Topics:* Covid-19; absentee ballots; intervention; primary election.

Four voters filed a federal complaint in the District of Nevada on April 21, 2020, alleging that Nevada’s plan to provide mail-in absentee ballots to all active registered voters for a June 9 primary election in light of the global Covid-19 infectious pandemic would dilute legitimate votes.¹ With their complaint, the plaintiffs filed a motion for a preliminary injunction,² a motion to expedite the case,³ and a motion to consolidate consideration of the injunction with resolution of the case.⁴

On April 22, Judge Miranda M. Du agreed to permit the plaintiffs to supplement their motion to expedite the case by 3:00 p.m. that day with an explanation for their waiting until April 21 to bring the case, when the policy they challenged was announced on March 24.⁵ The voters informed Judge Du that they did not learn of the policy until April 15,⁶ and Judge Du agreed to expedite the case.⁷ She set the case for a telephonic hearing at 10:00 a.m. on April 29.⁸

The hearing was telephonic because of the Covid-19 pandemic.⁹ An in-person hearing would have been particularly difficult because of quarantine expectations for the out-of-state attorneys on the case.¹⁰

1. Complaint, *Paher v. Cegavske*, No. 3:20-cv-243 (D. Nev. Apr. 21, 2020), D.E. 1; *Paher v. Cegavske*, 457 F. Supp. 3d 919, 924 (D. Nev. 2020).

2. Preliminary-Injunction Motion, *Paher*, No. 3:20-cv-243 (D. Nev. Apr. 21, 2020), D.E. 2; *Paher*, 457 F. Supp. 3d at 924.

3. Motion to Expedite, *Paher*, No. 3:20-cv-243 (D. Nev. Apr. 21, 2020), D.E. 3; *Paher*, 457 F. Supp. 3d at 924.

4. Consolidation Motion, *Paher*, No. 3:20-cv-243 (D. Nev. Apr. 21, 2020), D.E. 4; *Paher*, 457 F. Supp. 3d at 924.

5. Docket Sheet, *Paher*, No. 3:20-cv-243 (D. Nev. Apr. 21, 2020) (minutes, D.E. 12); *see Paher*, 457 F. Supp. 3d at 924; *see also* James DeHaven, *Nevadans to Mail Ballots for June’s Primary Election*, Reno Gazette-J., Mar. 26, 2020, at A6; Bill Dentzer, *Nevada’s Primary Election in June Will Be Conducted by Mail Only*, Las Vegas Rev.-J., Mar. 25, 2020, at B1.

Tim Reagan interviewed Judge Du for this report by telephone on August 20, 2020.

6. Supplement, *Paher*, No. 3:20-cv-243 (D. Nev. Apr. 22, 2020), D.E. 13.

7. Order, *id.* (Apr. 22, 2020), D.E. 14.

8. *Id.*; *see* Docket Sheet, *supra* note 5 (minutes, D.E. 49).

9. Interview with Hon. Miranda M. Du, Aug. 20, 2020.

10. *Id.*; Docket Sheet, *supra* note 5.

On April 27, Judge Du agreed to consolidate the preliminary-injunction motion with resolution of the case.¹¹ On April 28, she granted an April 27 motion to intervene in opposition to the injunction motion.¹²

Judge Du began the April 29 hearing with awareness of the public-health emergency: “The fact that we have this hearing by phone because the Court is limiting in-person appearances, demonstrates the unusual circumstances of our time. So, I don’t need counsel to explain to me how COVID-19 has affected our communities. I’m well aware of that.”¹³

Judge Du denied the plaintiffs a preliminary injunction on April 30.¹⁴ Because their claims of injury would apply to any voter, their claims were not concrete and particularized, so the plaintiffs did not have standing to bring them.¹⁵ Their claims would also fail on the merits.¹⁶

The Court finds that Defendants’ interests in protecting the health and safety of Nevada’s voters and to safeguard the voting franchise in light of the COVID-19 pandemic far outweigh any burden on Plaintiffs’ right to vote, particularly when that burden is premised on a speculative claim of voter fraud resulting in dilution of votes.¹⁷

On July 31, Judge Du dismissed an amended complaint as moot.¹⁸

11. Docket Sheet, *supra* note 5 (minutes, D.E. 36); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 924 (D. Nev. 2020).

12. Order, *Paher*, No. 3:20-cv-243 (D. Nev. Apr. 28, 2020), D.E. 39, 2020 WL 2042365; Intervention Motion, *id.* (Apr. 27, 2020), D.E. 27; *Paher*, 457 F. Supp. 3d at 924–25.

13. Transcript at 4, *Paher*, No. 3:20-cv-243 (D. Nev. Apr. 29, 2020, filed May 16, 2020), D.E. 70.

14. *Paher*, 457 F. Supp. 3d 919; see Bill Dentzer, *Nevada Judge Rejects Lawsuit Opposing Mail-In Primary*, Las Vegas Rev.-J., May 1, 2020, at B1.

15. *Paher*, 457 F. Supp. 3d 922, 926.

16. *Id.* at 927–35.

17. *Id.* at 922.

18. Opinion, *Paher*, No. 3:20-cv-243 (D. Nev. July 31, 2020), D.E. 92; see Amended Complaint, *id.* (May 13, 2020), D.E. 64.