

Suits to Extend Deadlines for Ballot-Petition Signatures in Nevada During a Pandemic

Fair Maps Nevada v. Cegavske (Miranda M. Du, 3:20-cv-271) and *Fight for Nevada v. Cegavske* (Richard F. Boulware II, 2:20-cv-837) (D. Nev.)

An organization collecting signatures to put a constitutional amendment on Nevada’s ballot received a court-ordered extension of the due date during a global infectious pandemic, which triggered state-ordered social distancing, on a finding of diligence in collecting signatures before social distancing went into effect. An organization seeking the recall of Nevada’s governor did not receive a deadline extension on a finding that it collected few signatures before social-distancing requirements.

Subject: Ballot measures. *Topics:* Ballot measure; Covid-19; getting on the ballot.

Because of required social distancing in Nevada early in the global Covid-19 infectious pandemic, an organization seeking a proposed amendment to Nevada’s constitution received court-ordered relief from the ballot-petition filing deadline from a Reno district judge, but an organization seeking recall of the governor did not receive relief from a Las Vegas district judge. The organizations’ different levels of success in obtaining ballot-petition signatures while they could were distinguishing facts in the two cases.

Reno

Fair Maps Nevada—which was proposing an amendment to Nevada’s constitution to create an independent redistricting commission for Nevada’s legislature and its representation in Congress—and three voters filed a federal complaint in the District of Nevada’s Reno courthouse on May 6, 2020, seeking modifications to ballot-petition requirements: (1) an extension of the deadline, (2) permission to circulate petitions electronically, and (3) the validity of electronic signatures.¹ With their complaint, the plaintiffs filed a motion for a preliminary injunction² and a motion to expedite briefing.³

On the following day, Judge Miranda M. Du granted the motion to expedite briefing and ordered briefing completed by May 19.⁴ An organization

1. Complaint, *Fair Maps Nev. v. Cegavske*, No. 3:20-cv-271 (D. Nev. May 6, 2020), D.E. 1. See generally Bill Dentzer, *Nevada Redistricting Group Files Amended Petition*, Las Vegas Rev.-J., Jan. 8, 2020, at B3 (reporting on earlier state-court litigation over whether a description of the proposal was vague and misleading).

2. Preliminary-Injunction Motion, *Fair Maps Nev.*, No. 3:20-cv-271 (D. Nev. May 6, 2020), D.E. 2.

3. Briefing Motion, *id.* (May 6, 2020), D.E. 3.

4. Docket Sheet, *id.* (May 6, 2020) [hereinafter *Fair Maps Nev.* Docket Sheet] (minute order, D.E. 6).

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

and a voter moved to intervene as defendants on May 13,⁵ and Judge Du ordered a response to the motion by May 18.⁶

Judge Du granted intervention on May 20⁷ and held a telephonic hearing on the injunction motion on May 21.⁸ The hearing was telephonic because of the Covid-19 pandemic.⁹

On May 29, Judge Du granted the plaintiffs relief with respect to the deadline but not with respect to modifications in signature technology.¹⁰ (1) “[T]he Court finds Plaintiffs have been reasonably diligent in attempting to collect signatures given the circumstances.”¹¹ (2) “Fair Maps will not get its Initiative on the November ballot without an extension of the Deadline and/or a waiver of the In-Person Requirements because it has not collected enough signatures.”¹² (3) “Plaintiffs were prohibited from collecting signatures during [the state’s stay-at-home order because of the pandemic], so it is both unreasonable and unfair not to extend a statutory deadline for a corresponding period of time.”¹³ (4) Constitutional harm outweighs the defendants’ proffered interest of severe inconvenience.¹⁴ (5) But the defendants’ “proffered governmental interest of preventing fraud is more clearly articulated and better supported as to the In-Person Requirements. . . . Even though there are some five months until the election, rolling out and testing a new electronic system for signature collection and verification between now and then will take some time.”¹⁵

The parties sought Judge Du’s approval of a consent decree on June 8.¹⁶ She issued the consent decree on the following day; it extended the deadline from June 24 to August 3.¹⁷

Las Vegas

In Las Vegas, Fight for Nevada, which sought the recall of Nevada’s governor, filed a federal complaint on Monday, May 11, seeking an extension of time to file ballot-petition signatures to put the recall question on the ballot: “an extension of the May 14 deadline by a number of days equal to the duration of the State of Emergency declared on March 12, 2020.”¹⁸ On Tuesday,

5. Intervention Motion, *Fair Maps Nev.*, No. 3:20-cv-271 (D. Nev. May 13, 2020), D.E. 15.

6. *Fair Maps Nev.* Docket Sheet, *supra* note 4 (minute order, D.E. 18).

7. Opinion, *Fair Maps Nev.*, No. 3:20-cv-271 (D. Nev. May 20, 2020), D.E. 36, 2020 WL 8188427.

8. *Fair Maps Nev.* Docket Sheet, *supra* note 4 (minute order, D.E. 38).

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

10. Opinion, *Fair Maps Nev.*, No. 3:20-cv-271 (D. Nev. May 29, 2020), D.E. 44, 2020 WL 2798018.

11. *Id.* at 21.

12. *Id.* at 24.

13. *Id.* at 44.

14. *Id.*

15. *Id.* at 29–30.

16. Consent Decree Motion, *id.* (June 8, 2020), D.E. 47.

17. Consent Decree, *id.* (June 9, 2020), D.E. 48.

18. Complaint at 5, *Fight for Nev. v. Cegavske*, No. 2:20-cv-837 (D. Nev. May 11, 2020),

May 12, the plaintiff organization filed a motion for a preliminary injunction or a temporary restraining order.¹⁹ That day, Judge Richard F. Boulware II ordered the defendant secretary of state to respond by 10:00 a.m. on Wednesday.²⁰ On Wednesday, Judge Boulware ordered a reply by 4:00 p.m. that day.²¹ On Thursday, Judge Boulware set the case for oral argument at 4:00 p.m. that day.²²

Judge Boulware observed that conducting the argument on video worked well.²³ Because of Covid-19, video arguments became routine, and they had some advantages.²⁴ Remarks tended to be shorter and interrupted less often.²⁵ They often were easier for court reporters to transcribe.²⁶

Judge Boulware denied the plaintiff immediate relief on May 26.²⁷ He was not convinced that the plaintiff had a federally protected right to file a recall petition, and the deadline was not a severe burden to an organization that had collected only 6.5% of the signatures necessary during the first half of the ninety-day collection period.²⁸

The plaintiff voluntarily dismissed the case on the day of the ruling.²⁹

On reflection, Judge Boulware concluded that Covid-19 cases presented unique circumstances, but not so unique that there were not answers in the law.³⁰

D.E. 1; *Fight for Nev. v. Cegavske*, 460 F. Supp. 3d 1049, 1052 (D. Nev. 2020).

19. Motion, *Fight for Nev.*, No. 2:20-cv-837 (D. Nev. May 12, 2020), D.E. 5; *Fight for Nev.*, 460 F. Supp. 3d at 1052.

20. Docket Sheet, *Fight for Nev.*, No. 2:20-cv-837 (D. Nev. May 11, 2020) [hereinafter *Fight for Nev. Docket Sheet*] (minute order, D.E. 7).

Tim Reagan interviewed Judge Boulware for this report by telephone on August 19, 2020.

21. *Fight for Nev.* Docket Sheet, *supra* note 20 (minute order, D.E. 12).

22. *Id.* (minute order, D.E. 15); *Fight for Nev.*, 460 F. Supp. 3d at 1052.

23. Interview with Hon. Richard F. Boulware II, Aug. 19, 2020.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Fight for Nev.*, 460 F. Supp. 3d 1049; see Colton Lochhead, *Judge Denies Sisolak Recall Group More Time to Gather Signatures*, Las Vegas Rev.-J., May 16, 2020, at B1.

28. *Fight for Nev.*, 460 F. Supp. 3d at 1052, 1054, 1058.

29. Notice, *Fight for Nev. v. Cegavske*, No. 2:20-cv-837 (D. Nev. May 26, 2020), D.E. 18.

30. Interview with Hon. Richard F. Boulware II, Aug. 19, 2020.