

Prohibited Use of “Re-Election” for a Previous Office Holder Who Is Not the Incumbent

Make Liberty Win v. Cegavske
(Robert C. Jones, D. Nev. 3:20-cv-592)

Election statutes forbade campaign materials from referring to the election of a previous office holder who was not the incumbent as re-election. The district judge agreed that application of the statutes to a specific campaign was unconstitutional but did not agree that the statutes were facially unconstitutional.

Subject: Campaign activities. *Topics:* Campaign materials; door-to-door canvassing; COVID-19.

A political action committee filed a federal complaint in the District of Nevada on October 19, 2020, objecting to a determination by Nevada’s secretary of state that the committee could not advocate for the “re-election” of a former legislator who was not an incumbent.¹ With its complaint, the committee filed a motion for a preliminary injunction and a motion to expedite briefing, waiving oral argument.²

Nevada’s revised statutes on elections included chapter 294A on campaign practices. Among the required and prohibited practices were section 294.330 on use of the term “re-elect” and section 294.340 on creating an implication that a candidate was an incumbent, both of which forbade referring to the election of someone who was not the incumbent but who previously held the office as re-election.

Judge Robert C. Jones agreed on October 21 that an opposition brief would be due seven days after service of the complaint and a reply would be due three days after service of the opposition.³ On October 23, Judge Jones set the case for an October 29 videoconference hearing, posting on the public docket sheet telephone access for the public and a reminder that recording of the proceeding would not be permitted.⁴ The hearing was held at a time of widespread social distancing made necessary by the global COVID-19 infectious pandemic.

At the hearing, Judge Jones informed the parties how he would rule, and he ordered submission of a proposed order.⁵ On November 2, the day before the election, Judge Jones issued a preliminary injunction providing relief to the plaintiff committee.⁶ An opinion followed four days later, concluding that although application of the statute to the plaintiff’s specific campaign

1. Complaint, *Make Liberty Win*, No. 3:20-cv-592 (D. Nev. Oct. 19, 2020), D.E. 1.

2. Briefing Motion, *id.* (Oct. 19, 2020), D.E. 3 (requesting that the opposition be due within seven days and a reply due three days after that); Preliminary Injunction Motion, *id.* (Oct. 19, 2020), D.E. 2.

3. Order, *id.* (Oct. 21, 2020), D.E. 8.

4. Docket Sheet, *id.* (Oct. 19, 2020) (minute order, D.E. 10).

5. *Id.* (minutes, D.E. 18); *see* Proposed Order, *id.* (Oct. 31, 2020), D.E. 19.

6. Preliminary Injunction, *id.* (Nov. 2, 2020), D.E. 20.

materials was unconstitutional, the statute was not otherwise unconstitutional.⁷

7. Opinion, *id.* (Nov. 6, 2020), D.E. 21, 2020 WL 6545869.