

Unsuccessfully Challenging Private Grants to Local Election Authorities

Wisconsin Voters Alliance v. City of Racine
(William C. Griesbach, E.D. Wis. 1:20-cv-1487),
Pennsylvania Voters Alliance v. Centre County
(Matthew W. Brann, M.D. Pa. 4:20-cv-1761),
Texas Voters Alliance v. Dallas County
(Amos L. Mazzant, E.D. Tex. 4:20-cv-775), and
Minnesota Voters Alliance v. City of Minneapolis
(Michael J. Davis, D. Minn. 0:20-cv-2049)

Courts in the Eastern District of Wisconsin, the Middle District of Pennsylvania, the Eastern District of Texas, and the District of Minnesota held that the plaintiffs did not have standing to challenge private grants to election authorities, because the complaints alleged only policy grievances.

Subject: Voting procedures. *Topics:* Voting technology; equal protection; Covid-19; interlocutory appeal; Help America Vote Act (HAVA); National Voter Registration Act; laches.

In Wisconsin, Pennsylvania, Texas, and Minnesota, judges found no standing to challenge private grants to local election authorities for the operation of 2020 elections.

Eastern District of Wisconsin

An organization and seven voters filed a federal complaint in the Eastern District of Wisconsin against five Wisconsin cities on September 24, 2020, alleging that the cities' receiving more than six million dollars in private federal election grants from the Center for Tech and Civic Life (CTCL) violated federal law.¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order.²

Four days later, Judge William C. Griesbach set the case for a telephonic hearing on September 29, posting contact information in the docket sheet.³ At the hearing, Judge Griesbach set the case for oral argument by videoconference on October 13.⁴

1. Complaint, *Wis. Voters Alliance v. City of Racine*, No. 1:20-cv-1487 (E.D. Wis. Sept. 24, 2020), D.E. 1; see Mitchell Schmidt, *Group Sues to Block Private Election Grants to Five Cities*, *Wis. State J.*, Sept. 27, 2020, at A3; Bruce Vielmetti, *Group Says Wisconsin Cities Can't Legally Accept Election Grants*, *Milwaukee J. Sentinel*, Sept. 26, 2020, at A2.

2. Temporary-Restraining-Order Motion, *Wis. Voters Alliance*, No. 1:20-cv-1487 (E.D. Wis. Sept. 24, 2020), D.E. 2.

3. Docket Sheet, *id.* (Sept. 24, 2020).

4. Minutes, *id.* (Sept. 29, 2020), D.E. 4; see Minutes, *id.* (Oct. 13, 2020), D.E. 28; see also Bruce Vielmetti, *Cities Seek to Dismiss Suit Over Private Election Grants*, *Milwaukee J. Sentinel*, Oct. 14, 2020, at A8.

On October 9, the cities moved to dismiss the case for lack of standing.⁵

Judge Griesbach denied the plaintiffs immediate relief on the day following oral argument:⁶

It is important to note that Plaintiffs do not challenge any of the specific expenditures the defendant Cities have made in an effort to ensure safe and efficient elections can take place in the midst of the pandemic that has struck the nation over the last eight months. In other words, Plaintiffs do not claim that the defendant Cities are using funds to encourage only voters in favor of one party. It is the mere acceptance of funds from a private and, in their view, left-leaning organization that Plaintiffs contend is unlawful.

...

... The more densely populated areas face more difficult problems in conducting safe elections in the current environment, the defendant Cities contend, and this fact best explains their need for the . . . grants.

Plaintiffs have presented at most a policy argument for prohibiting municipalities from accepting funds from private parties to help pay the increased costs of conducting safe and efficient elections.⁷

The plaintiffs filed a notice of appeal⁸ and a motion for a preliminary injunction pending appeal⁹ on the next day. Judge Griesbach denied the injunction on October 21.¹⁰ The appeal was dismissed by agreement of the parties on November 6.¹¹

On January 19, 2021, Judge Griesbach dismissed an amended complaint for lack of standing: “Though this is a federal lawsuit seeking relief in a federal court, Plaintiffs have offered only a political argument for prohibiting municipalities from accepting money from private entities to assist in the funding of elections for public offices.”¹²

Middle District of Pennsylvania

An organization and fourteen voters filed a federal complaint against Philadelphia and two Pennsylvania counties on Friday, September 25, 2020, alleging that CTCL “has essentially created a constitutionally impermissible pub-

5. Motion, *Wis. Voters Alliance*, No. 1:20-cv-1487 (E.D. Wis. Oct. 9, 2020), D.E. 23; Brief, *id.* (Oct. 9, 2020), D.E. 24.

6. Opinion, *id.* (Oct. 14, 2020), D.E. 27 [hereinafter Oct. 14, 2020, *Wis. Voters Alliance* Opinion], 2020 WL 6129510; see Mitchell Schmidt, *Judge Declines to Block Private Grants to Cities*, *Wis. State J.*, Oct. 15, 2020, at A5; Bruce Vielmetti, *Judge Oks Cities’ Use of Election Grant Money*, *Milwaukee J. Sentinel*, Oct. 15, 2020, at A3.

7. Oct. 14, 2020, *Wis. Voters Alliance* Opinion, *supra* note 6, at 2.

8. Notice of Appeal, *Wis. Voters Alliance*, No. 1:20-cv-1487 (E.D. Wis. Oct. 15, 2020), D.E. 30.

9. Preliminary-Injunction Motion, *id.* (Oct. 15, 2020), D.E. 31.

10. Opinion, *id.* (Oct. 21, 2020), D.E. 37, 2020 WL 6591209.

11. Order, *Wis. Voters Alliance v. City of Racine*, No. 20-3002 (7th Cir. Nov. 6, 2020), D.E. 11, 2020 WL 9254456.

12. Opinion at 6, *Wis. Voters Alliance*, No. 1:20-cv-1487 (E.D. Wis. Jan. 15, 2021, filed Jan. 19, 2021), D.E. 49, 2021 WL 179166; see Amended Complaint, *id.* (Oct. 30, 2020), D.E. 39; see also Nuha Dolby, *Where Wisconsin Lawsuits on Behalf of Trump Stand*, *Milwaukee J. Sentinel*, Dec. 9, 2020, at A4.

lic-private partnership with Pennsylvania's urban counties and cities to run its federal elections on November 3, 2020. . . . In total, CTCL is providing over \$14,000,000 of private federal election grants to . . . three local governments."¹³ The plaintiffs filed a motion for a temporary restraining order on Monday.¹⁴

On Tuesday, Judge Matthew W. Brann set the case for a telephonic status conference on Thursday.¹⁵

The Court's preference is that counsel do not participate in telephonic conference calls by cellular phone or other mobile device; however, in light of current circumstances necessitated by the COVID-19 virus pandemic afflicting our nation, which compel counsel to work outside of their offices, I will permit such telephonic conference calls to be made by cellular phone if that is the only means of telephonic communication for counsel.¹⁶

During the next week, Judge Brann set the case for a courtroom hearing on October 16.¹⁷ An October 12 amended complaint added the secretary of the commonwealth as a defendant.¹⁸ Three days later, the plaintiffs filed a motion for a temporary restraining order against her.¹⁹

Judge Brann concluded on October 21 that the plaintiffs did not have standing to pursue their complaint, which alleged only speculative and generalized grievances.²⁰ An appeal was summarily dismissed on November 20 "for lack of standing, as there is no injury-in-fact,"²¹ and the Supreme Court denied certiorari on January 11, 2021.²²

Eastern District of Texas

An organization and four voters filed a federal complaint against four Texas counties on October 9, 2020, alleging, "The plaintiffs are injured by CTCL's private federal election grants because they are targeted to counties and cities with progressive voter patterns."²³ With their complaint the plaintiffs filed a motion for a temporary restraining order.²⁴

13. Complaint at 1, *Pa. Voters Alliance v. Centre County*, No. 4:20-cv-1761 (M.D. Pa. Sept. 25, 2020), D.E. 1; *Pa. Voters Alliance v. Centre County*, 496 F. Supp. 3d 861, 864-65 (M.D. Pa. 2020).

14. Temporary-Restraining-Order Motion, *Pa. Voters Alliance*, No. 4:20-cv-1761 (M.D. Pa. Sept. 28, 2020), D.E. 4.

15. Order, *id.* (Sept. 29, 2020, filed Oct. 1, 2020), D.E. 12.

16. *Id.* at 2.

17. Order, *id.* (Oct. 7, 2020), D.E. 32; see Transcript, *id.* (Oct. 16, 2020, filed Oct. 22, 2020); see also John Beauge, *Judge Hears Arguments on Grant Funds*, Pittsburgh Post-Gazette, Oct. 18, 2020, at C3.

18. Amended Complaint, *Pa. Voters Alliance*, No. 4:20-cv-1761 (M.D. Pa. Oct. 12, 2020), D.E. 38.

19. Temporary-Restraining-Order Motion, *id.* (Oct. 15, 2020), D.E. 51.

20. *Pa. Voters Alliance v. Centre County*, 496 F. Supp. 3d 861 (M.D. Pa. 2020); see Chris Brennan, *Another Election Lawsuit in Pa. Bites the Dust*, Phila. Inquirer, Oct. 23, 2020, at B2.

21. Order, *Pa. Voters Alliance v. County of Centre*, No. 20-3175 (3d Cir. Nov. 23, 2020), D.E. 28.

22. *Pa. Voters Alliance v. Centre County*, 592 U.S. ___, 141 S. Ct. 1126 (2021).

23. Complaint at 1, *Tex. Voters Alliance v. Dallas County*, No. 4:20-cv-775 (E.D. Tex.

Judge Amos L. Mazzant set the case for a hearing on October 16²⁵ and denied the plaintiffs immediate relief on October 20.²⁶

CTCL—a nonpartisan, nonprofit organization—offers COVID-19 relief election administration grants to counties and cities as supplemental funding to ensure the safety of voters. All counties and cities in the United States are eligible to apply for funds under the grants, regardless of the political affiliation of their officials or the voting tendencies of their electorates . . .

Almost half of the 254 counties in Texas applied for CTCL grants. The overwhelming majority of those counties voted for the Republican presidential candidate in 2016.²⁷

Judge Mazzant determined that the plaintiffs did not have standing to pursue the suit.²⁸ On December 9, he granted the plaintiffs a voluntary dismissal.²⁹

District of Minnesota

“The City of Minneapolis is one of 22 Minnesota municipalities that applied for and was awarded a COVID-19 Response Grant from the Center for Tech and Civic Life to assist with the substantial costs entailed with administering an election during a global pandemic.”³⁰

A September 24, 2020, federal complaint filed in the District of Minnesota alleged that it was unconstitutional for a municipality to accept private funds for its administration of the November 3 general election.³¹ Five days later, the plaintiffs filed a motion for a temporary restraining order.³²

Judge Michael J. Davis set the case for an October 15 videoconference hearing, posting in the docket sheet a telephone number for receiving dial-in instructions.³³

On October 16, Judge Davis ruled that the plaintiffs did not have standing to bring the suit.³⁴

Oct. 9, 2020), D.E. 1; *Tex. Voters Alliance v. Dallas County*, 495 F. Supp. 3d 441, 449 (E.D. Tex. 2020).

24. Temporary-Restraining-Order Motion, *Tex. Voters Alliance*, No. 4:20-cv-775 (E.D. Tex. Oct. 9, 2020), D.E. 2; *Tex. Voters Alliance*, 495 F. Supp. 3d at 449.

25. Order, *Tex. Voters Alliance*, No. 4:20-cv-775 (E.D. Tex. Oct. 13, 2020), D.E. 10; see Transcript, *id.* (Oct. 16, 2020, filed Oct. 19, 2020), D.E. 26; Minutes, *id.* (Oct. 16, 2020), D.E. 22; *Tex. Voters Alliance*, 495 F. Supp. 3d at 449.

26. *Tex. Voters Alliance*, 495 F. Supp. 3d 441.

27. *Id.* at 449.

28. *Id.* at 451–57.

29. Motion, *Tex. Voters Alliance*, No. 4:20-cv-775 (E.D. Tex. Dec. 9, 2020), D.E. 31; see Notice, *id.* (Nov. 17, 2020), D.E. 30.

30. Opinion at 1–2, *Minn. Voters Alliance v. City of Minneapolis*, No. 0:20-cv-2049 (D. Minn. Oct. 16, 2020), D.E. 25 [hereinafter *Minn. Voters Alliance Opinion*], 2020 WL 6119937 (footnote omitted).

31. Complaint, *id.* (Sept. 24, 2020), D.E. 1; see Amended Complaint, *id.* (Nov. 13, 2020), D.E. 29.

32. Temporary-Restraining-Order Motion, *id.* (Sept. 29, 2020), D.E. 7.

33. Docket Sheet, *id.* (Sept. 24, 2020) (D.E. 16); see Notice, *id.* (Oct. 6, 2020), D.E. 15.

34. *Minn. Voters Alliance Opinion*, *supra* note 30; see Liz Navratil, *Judge Rules Mpls. Can Accept Election Grant*, *Minneapolis Star Trib.*, Oct. 18, 2020, at 3B.

Plaintiffs allege no injury to their right to vote caused by the City's actions. For example, nowhere do they allege that they will be unable to cast a ballot, or that they will be forced to choose between voting under unsafe pandemic conditions and not voting at all. The City's actions in applying for and accepting the grant and using the grant money to improve all manners of voting in Minneapolis in the 2020 election affect all Minneapolis voters equally. All individual Plaintiffs are Minneapolis voters. Plaintiffs fail to explain how they will be uniquely affected by Minneapolis's actions.³⁵

The plaintiffs filed a voluntary dismissal on January 4, 2021.³⁶

35. *Minn. Voters Alliance* Opinion, *supra* note 30, at 2.

36. Voluntary Dismissal, *Minn. Voters Alliance*, No. 0:20-cv-2049 (D. Minn. Jan. 4, 2021), D.E. 38.