

League Of Women Voters, NAACP File Suits Over Pa. Voting

By **Matthew Santoni**

Law360 (August 7, 2020, 9:01 PM EDT) -- The NAACP and the League of Women Voters filed separate state and federal suits in Pennsylvania on Friday challenging the Keystone State to improve how it will conduct the November election in light of the COVID-19 pandemic.

The NAACP's suit, filed in the Commonwealth Court of Pennsylvania, said that fewer, consolidated polling places, repeat-touch voting machines and limited options for early voting or mail-in voting during the June 2 primary had abridged people's right to vote, particularly in minority communities. The League of Women Voters' federal suit, filed in the Eastern District, said the current setup for checking mail-in and absentee ballots didn't give voters enough notice to correct their ballots if their signatures didn't match their voter registration, leading some votes to be improperly discarded.

The NAACP asked the state appellate court for an injunction directing election officials to establish enough in-person polling places so no one should have to wait more than half an hour or travel more than half a mile from their previous polling place; create "satellite locations" for requesting, distributing and returning mail-in ballots; and require masks and paper ballots at polling stations, among other measures.

"The voting regime ... has in many instances put voters in the impossible position of deciding between exercising their constitutional right to vote or safeguarding their health by avoiding crowded polling places without adequate distancing, spacing, or protections against the virus," the NAACP's brief said. "A substantial number of voters, especially voters of color, were disenfranchised in violation of the Free and Fair Elections Clause and equal protection guarantees of our state constitution."

Polling places around the state were closed and consolidated for the primary in response to the pandemic. An estimated 1.6 million Pennsylvanians requested mail-in ballots to avoid having to vote in person, and some counties turned to drop boxes and mobile collection drives to help gather the sudden surge in mail-in ballots. President Donald Trump's reelection campaign has **also sued the state**, seeking to block or restrict the drop boxes for mail-in votes and claiming they are vulnerable to fraud.

The NAACP said the changes to voting during the pandemic had a disproportionate effect on Black and Latino citizens who had to use public transportation and travel further to cast their ballots or get information from their boards of elections.

At the consolidated polling places, the touch-screen voting machines used in many counties presented

an additional risk of transmitting the COVID-19 virus, the NAACP said, and paper ballots should be used with one or two electronic machines as backups instead.

"Electronic voting machines have glass and plastic components that are touched by every single voter who uses the machine ... Any bare hand contact with a surface may lead to contracting COVID-19 if the previous person was infected (even if asymptomatic) unless the entire touchable surface was appropriately disinfected," the NAACP brief said. "Disinfecting voting machines between every voter is particularly unrealistic at a crowded polling place at a high-turnout election."

The NAACP also said backlogs of applications at county election offices and delays in the U.S. Postal Service reduced voters' ability to apply for, get and return their mail-in ballots in time for the election deadlines.

"The voter's ability to timely cast a ballot depends in multiple respects on the actions of third parties — namely, county boards of elections (which must process applications) and the USPS (which must deliver the application, deliver the blank ballot to the voter, and deliver the completed ballot back to the county elections board)," the brief said. "USPS has acknowledged a slowdown of mail delivery in the Philadelphia area because of the impact of COVID-19 on its operations, the greater volume of mail, and USPS's own labor policies."

With the pandemic also disproportionately sickening Black and Latino voters and threatening a second wave with flu season in the fall, the NAACP said expanding access to the vote was of extreme importance.

"All eyes will be on Pennsylvania in November, and voters have the right to a free and fair election that doesn't endanger their lives," says Ron Fein, legal director of Free Speech For People, one of the firms representing the NAACP in the suit.

Joined by the Urban League of Greater Pittsburgh and a pair of voters, the League of Women Voters focused its suit solely on mail-in ballots and the process for verifying them, which in some counties involves comparing the signature on the ballot to the signature on a voter's registration.

In cases where the signatures are missing or do not match, there is no uniform, statewide method for notifying voters their ballots had been rejected and giving them a chance to correct or verify that they were the ones who cast the votes, the suit said.

Signature comparison is a highly subjective method of verification, with a voter's signature likely to vary from time to time based on as little as the pen and writing surface being used, the suit said. An estimated 26,000 mailed ballots were rejected in the primary, with missing or mismatched signatures the likely reason for some, the League said.

"Even experienced forensic document examiners can find it difficult if not impossible to distinguish natural variations in a person's signature from fraudulent ones," the League's complaint said. "In every election, the untrained election officials responsible for signature verification under Pennsylvania's mail-in ballot verification system reject validly cast ballots because of erroneous judgments on signature matching issues."

The lack of a uniform process for contacting voters and giving them a chance to cure signature-related defects was a violation of the Constitution's right to due process, the right to equal protection and the

fundamental right to vote, the League's lawsuit said. It asked the federal court to declare the existing system of signature verification unlawful and to make the state issue uniform standards.

"Pennsylvania must create a uniform process to let voters fix signature-related issues with their mail-in ballots in order to give people confidence that their vote is being counted," said Paul Smith, vice president of the Campaign Legal Center, which is representing the League. "Unless the courts intervene, tens of thousands of voters are potentially at risk of having their ballots rejected through no fault of their own."

A representative for Secretary of the Commonwealth Kathy Boockvar declined to comment.

The NAACP State Conference of Pennsylvania is represented by Craig Castiglia, Julia Chapman, Tiffany Engsell, Neil Steiner and Sozi Pedro Tulante of Dechert LLP and John Bonifaz, Ben Clements and Ronald Fein of Free Speech For People.

The League of Women Voters of Pennsylvania and the Urban League of Greater Pittsburgh are represented by Jonathan M. Diaz, Ravi Doshi, Mark P. Gaber, Caleb Jackson and Danielle Lang of the Campaign Legal Center and Corey R. Houmand, John P. Lavelle Jr., Susan Baker Manning, Rachel Jaffe Mauceri and Chris Miller of Morgan Lewis & Bockius LLP.

Counsel information for the state and county election officials was not immediately available.

The cases are NAACP v. Boockvar et al., case number 364 MD 2020, in the Commonwealth Court of Pennsylvania, and League of Women Voters et al. v. Boockvar et al., case number 2:20-cv-03850, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Jill Coffey.