



Oklahoma House of Representatives Votes to Nullify Oklahoma Supreme Court

The Oklahoma House of Representatives  voted on Wednesday, in a party-line vote, to reverse the decision reached Monday by the Oklahoma Supreme Court that absentee ballots do not have to be notarized, as required by Oklahoma law. The House voted 74-26 to amend Senate Bill 210 (a bill dealing with election procedures) to restore the notarized signature requirement. The Senate, like the House, is overwhelmingly Republican, and is expected to follow suit within the next few days.

Governor Kevin Stitt is also a Republican, and he is expected to sign the legislation, a repudiation of the effort by the state's Supreme Court to substitute its opinion for what the law should be over that of the elected Legislature.

State Election Board Secretary Paul Ziriaux reportedly made recommendations as to how best to deal with the attempted usurpation of legislative power by the Supreme Court. Although the requirement that a ballot be notarized was restored, the bill did make some exceptions for the upcoming June 30 primary election. According to the modifications, if an emergency declaration is in effect within 45 days of the affected election, absentee voters could sign the ballot and mail it back in with a photocopy of their driver's license, in lieu of a notarization by a Notary Public. Under Oklahoma law, notaries are required to notarize absentee ballots, without charge.

Despite this effort to ensure the integrity of the balloting process (and curtail vote fraud), while also recognizing the difficulty of physically appearing before a Notary Public during the pandemic, many Democrats still opposed the bill. "By passing this legislation, we're adding an unnecessary barrier for people to exercise their voting rights."

Republicans countered the Democrat argument that Republicans simply want to curtail voting, arguing that fraudulent voting destroys the integrity of the ballot. They are concerned that absentee ballots, with no accompanying voter identification, is an open invitation to fraudulent voting.

House Minority Leader Emily Virgin, a Democrat who represents Norman, home of the University of Oklahoma, and considered by local political observers as perhaps the most liberal House district in the state, said, "I find it pretty ironic that we found a way to let representatives vote by proxy when we're not at the Capitol, but we're not willing to trust the public to have sort of the same process in place."

"The voter fraud argument is really just a way for Republicans to make it more difficult to vote," Virgin added.

Virgin also accused the Republicans in the House of attempting to reduce the turnout for the June 30 election, because Medicaid expansion will be on the ballot. Oklahoma is a state that has rejected Medicaid expansion under ObamaCare, but an initiative petition forced a statewide vote. Under the



Written by [Steve Byas](#) on May 7, 2020

state's constitution, the governor can set the date of the election in response to such petitions, although he must set it by the time of the next general election. Governor Stitt opposes Medicaid expansion, and it is assumed that he thought it had less chance of passage in June, rather than the higher-vote turnout expected in November, when the presidential election will be on the ballot.

In addition to the argument on whether the provision requiring notarization of absentee ballots is good public policy, is an even larger issue — should the elected legislative body make the law, or should the unelected justices of the Supreme Court be able to alter laws to fit their conception of what the law should be?

The 6-3 decision that the court reached on Monday, dictating that the notarization requirement is not necessary, appears to be a statement that the court should be able to alter laws they do not agree with. Justice John Kane, in dissent, said, "I conclude that our existing statutes do not provide the relief proposed by the Petitioners, so the issues stand presented to the wrong branch of government."

In other words, the three dissenters argued that the notarization requirement was set by statute, and only the Legislature can change the law. Reading the statute, it is hard to imagine how the majority of the Supreme Court could have ruled as they did. The statute leaves little doubt that it was the intent of the Legislature that absentee ballots must be notarized.

"The voter shall fill out completely and sign the affidavit, such signature to be notarized at no charge by a Notary Public," the statute reads.

Despite this clear wording, six members of the Oklahoma Supreme Court said that it was not necessary for an absentee ballot to be notarized! State Question 746, which was passed by Oklahoma voters themselves in 2010, even required that Oklahomans show a valid form of identification when they vote in person. And the Supreme Court later upheld this provision when a challenge was made to the photo ID requirement.

But under the Supreme Court's Monday ruling, they have created a situation in which those voting in-person must show a photo ID, but those voting absentee face no such requirement. This is the type of contradictory ruling one can expect when judges take upon themselves to make law, rather than interpret it. Fortunately, the Oklahoma House of Representatives has decided that enough is enough.

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