



Oklahoma Supreme Court Rules Absentee Ballots Need No Notarization

In a decision that would appear to ignore the plain reading of Oklahoma law, the Oklahoma Supreme Court ruled Monday that absentee ballots will not require notarized affidavits for the June 30 primary elections. Included in the June 30 election is the Republican primary for the fifth district of the U.S. House of Representatives (Oklahoma City and surrounding area), which will determine which Republican will take on Democrat Kendra Horne. Horne was first elected in 2018 in a district Republicans have held since 1977.



The order, signed by Chief Justice Noma Gurich, will bar the Oklahoma State Election Board from issuing ballot forms or any other election materials instructing voters that their accompanying affidavit must be notarized by a Notary Public. The 6-3 decision, largely along partisan lines, was a victory for the plaintiff, the League of Women Voters (LWV). The LWV contended that the notary requirement should be suspended because some voters might not want to leave their house during the coronavirus pandemic to visit a Notary Public. They argued that the requirement presented a “substantial obstacle” for voters choosing to cast an absentee ballot.

Peggy Winston, a cancer survivor, joined the LWV in the lawsuit to save lives, she said. “This is a victory for every Oklahoma voter who wants to exercise the right to vote but not risk their lives to do so.”

Election Board Secretary Paul Zirix saw the decision differently: “Although I respect the decision of the court and will follow the ruling to the utmost of my ability, this decision effectively leaves Oklahomans without a means to verify that the person who signs an absentee ballot affidavit is the same person to whom the ballot was issued.”

In fact, the ballots have already been printed. While the ballots will not have to be reprinted, the Election Board will have to modify the enclosed instructions to voters.

While six of the nine justices nixed the legally required notarization provision of the statute relating to absentee voting, three disagreed. Justices James Winchester, Dustin Rowe, and M. John Kane, IV dissented. Speaking for the three, Justice Kane issued a terse two-sentence dissent: “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. I dissent.”

In other words, the three dissenters argued that the notarization requirement was set by statute, and only the Legislature can change the law.

And what does the statute say? According to 26-14-207 of the statutes of the state of Oklahoma, materials that accompany an absentee ballot shall include an “envelope bearing an affidavit stating that the voter is qualified to vote and that the voter has personally marked the ballots.” It is also required



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that a “notice that it is illegal for a Notary Public in this state to charge a fee to notarize an official absentee ballot affidavit” be included in the instructions.

Finally, if there were still any doubt that affidavits accompanying absentee ballots must be notarized by a Notary Public, the statute plainly requires such: “The voter shall fill out completely and sign the affidavit, *such signature to be notarized at no charge by a Notary Public.*” (Emphasis added.)

The Oklahoma Supreme Court’s majority decision took the position that since some other affidavits of a legal nature do not require notarization, then the requirement for a Notary Public to notarize an absentee ballot affidavit is not necessary, either. But individuals who wish to vote in person, either via in-person absentee or on election day itself in the precinct must, under Oklahoma law, show proof of identity with a government-issued photo ID.

The purpose of requiring a photo ID is quite clear. The Oklahoma Legislature is desirous of preventing voter fraud. Carrying knowledge of that intent over to absentee voting, without a Notary Public physically seeing the person casting the ballot, along with their government-issue photo ID, this desire to prevent voter fraud is defeated.

What the Supreme Court of Oklahoma has done is substitute its judgment for that of the duly elected Legislature of the state as to what Oklahoma law should be. Their ruling discriminates against those who choose to vote in person, for while they will be required to show photographic proof of identity, those opting to send in an absentee ballot will *not* have to do so.

The consequences are obvious. Those intent on committing vote fraud have been handed a perfect vehicle by which to do so. One reason that elections settle political disputes peacefully is that the losing side can be assured that the election was conducted fairly, without fraud. If that assurance is removed by such schemes as that approved by the Oklahoma Supreme Court, then it does great damage to the social fabric.

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