

SUPREME COURT OF NEBRASKA

Chaney v. Evnen

307 Neb. 512 (2020) · No. No. S-20-660 · Decided October 16, 2020

SUMMARY

The Nebraska Supreme Court affirmed dismissal of Brian Chaney’s lawsuit seeking to prevent an initiative concerning delayed deposit services from appearing on the November 2020 ballot. The court held that alleged signature withdrawals were untimely, that petition circulators were not required to read the initiative’s object statement verbatim, and that fraud was not pleaded with sufficient particularity. The court also concluded that the appeal was not moot because meaningful relief could still be available.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Fruedenberg, J.
JURISDICTION	Nebraska
DECIDED	October 16, 2020
DOCKET	No. S-20-660
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order dismissing a complaint for failure to state a claim and denying a motion for temporary injunction; the district court also declined to allow amendment.
STANDARD OF REVIEW	The dismissal of a complaint is reviewed de novo, accepting well-pleaded allegations as true and drawing reasonable inferences for the nonmoving party. Denial of leave to amend is reviewed for abuse of discretion, with de novo review of the underlying legal conclusion that amendment would be futile. Statutory interpretation is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Brian Chaney v. Robert B. Evnen, in his official capacity as Nebraska Secretary of State, Albert Davis III, Thomas A. Wagoner, Jr., Fr. Damian Zuerlein

TOPICS

ballot access election law statutory interpretation motions to dismiss mootness

PRACTICE AREAS

Election law Civil procedure Appellate procedure Statutory interpretation Remedies

QUESTIONS PRESENTED

1. Whether the appeal was moot because the ballot had been certified and printed.
2. Whether Chaney stated a claim based on alleged untimely withdrawal or invalidity of petition signatures.
3. Whether Nebraska law required petition circulators to read the initiative's object statement verbatim to each signer.
4. Whether Chaney pleaded fraud with the particularity required by Nebraska pleading rules.
5. Whether the district court abused its discretion by dismissing without allowing Chaney to amend his complaint.

HOLDINGS

1. The appeal was not moot because the prayer for general equitable relief could support meaningful relief, including legal removal of the initiative from the ballot, even if physical removal of printed ballots was no longer possible.
2. A petition signatory seeking to withdraw a signature must comply with Neb. Rev. Stat. § 32-632; allegations that signatories later wished to withdraw their signatures, without timely affidavits presented to the specified officials, do not state a claim.
3. Neb. Rev. Stat. § 32-628(3) does not require a petition circulator to read the petition's object statement verbatim to each signer; a circulator may state the object in a nonmisleading summary.
4. Chaney failed to state a fraud claim because he did not plead the circumstances of fraud with particularity and alleged only that circulators failed to read the object statement verbatim.
5. The district court did not abuse its discretion by declining to allow amendment because Chaney neither requested leave in the district court nor showed how amendment could cure the defects in his complaint.

KEY QUOTATIONS

“In the end, however, we side with the Secretary and the sponsors and conclude that a verbatim reading of the object statement is not required.” (523-524)

“We find those principles applicable here and conclude that requiring petition circulators to read the object statement of the petition to each signatory verbatim would be a narrow and strict interpretation of § 32-628(3) that could unduly restrict the power of initiative.” (525)

“Pleading facts with particularity means the who, what, when, where, and how: the first paragraph of any newspaper story.” (526)

FACTUAL BACKGROUND

The sponsors of an initiative petition submitted signatures to the Nebraska Secretary of State, who certified on July 31, 2020, that statutory requirements for placing the measure on the November 3 ballot had been met. Chaney alleged that 188 signatories later wished to withdraw their signatures and that petition circulators had failed to read the petition's object statement and had committed fraud. The affidavits supporting the alleged withdrawals were signed after certification, and the complaint did not allege that they were presented to the officials specified by the withdrawal statute.

PROCEDURAL HISTORY

Chaney sued to prevent certification and placement of a ballot initiative concerning delayed deposit service interest-rate caps on the November 3, 2020, general election ballot. The Lancaster County District Court dismissed the complaint, denied Chaney's motion for a temporary injunction, and declined to allow amendment. The Nebraska Supreme Court held that the appeal was not moot, rejected Chaney's signature-withdrawal, statutory-compliance, and fraud theories, and affirmed.

DISPOSITION

affirmed

CASES CITED

- Thomas v. Peterson, 307 Neb. 89 (2020)
- Chafin v. Wisconsin Province of Society of Jesus, 301 Neb. 94, 917 N.W.2d 821 (2018)
- Kelly v. Saint Francis Med. Ctr., 295 Neb. 650, 889 N.W.2d 613 (2017)
- J.S. v. Grand Island Public Schools, 297 Neb. 347, 899 N.W.2d 893 (2017)
- Nesbitt v. Frakes, 300 Neb. 1, 911 N.W.2d 598 (2018)
- State ex rel. Peterson v. Ebke, 303 Neb. 637, 930 N.W.2d 551 (2019)
- Daugherty v. Ashton Feed and Grain Co., Inc., 208 Neb. 159, 303 N.W.2d 64 (1981)
- Sullivan v. General United Life Ins. Co., 209 Neb. 872, 312 N.W.2d 277 (1981)
- Stewart v. Advanced Gaming Tech., 272 Neb. 471, 723 N.W.2d 65 (2006)
- State ex rel. Wieland v. Beermann, 246 Neb. 808, 523 N.W.2d 518 (1994)
- Schaeffer v. Frakes, 306 Neb. 904, 947 N.W.2d 714 (2020)
- Holloway v. State, 293 Neb. 12, 875 N.W.2d 435 (2016)
- Christensen v. Gale, 301 Neb. 19, 917 N.W.2d 145 (2018)
- Hargesheimer v. Gale, 294 Neb. 123, 881 N.W.2d 589 (2016)
- U.S. ex rel. Shara Ambrosecchia v. Paddock Labs., 855 F.3d 949 (8th Cir. 2017)
- Fletcher-Harlee v. Pote Concrete Contractors, 482 F.3d 247 (3d Cir. 2007)
- Sinay v. Lamson & Sessions Co., 948 F.2d 1037 (6th Cir. 1991)
- Coates v. Illinois State Bd. of Ed., 559 F.2d 445 (7th Cir. 1977)

