

Federal judge temporarily blocks Postal Service from sending election mailer to more voters in Colorado

By **Elise Viebeck**

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A federal judge late Saturday temporarily blocked the U.S. Postal Service from sending a notice about the November elections to more people in Colorado, finding that the mailer “provides patently false information” about the state’s voting system that could sow confusion among voters.

The ruling arrived hours after the state filed a lawsuit in response to the national mailer, which urges “postal customers” around the country to “request your mail-in ballot (often called ‘absentee’ ballot) at least 15 days before Election Day.”

Voters in Colorado, eight other states and the District of Columbia do not need to request mail ballots for November because their states are already sending them out. Those jurisdictions either conduct universal mail elections or are holding them this year because of the coronavirus pandemic.

Attorneys for the Postal Service wrote in a court filing that the flier was intended to help voters seek out information about the rules in their state. The mailer also encourages voters to “contact your election board to confirm” local rules and deadlines, to “add postage to the return envelope if needed” and to “mail your ballot at least 7 days before Election Day,” according to a photocopy included in Colorado’s lawsuit.

But the mailer spurred a rush by state officials around the country to clarify their rules. In Maryland, Elections Administrator Linda H. Lamone said Friday that she asked the Postal Service to stop delivering it in her state “because it’s only going to cause mass confusion.”

Criticism of the mailer comes as the Postal Service has been engulfed in a political storm in the lead-up to the November election. After [delays in mail service](#) were reported across the country this summer, Democratic officials [accused](#) Postmaster General Louis DeJoy, a former logistics executive and top donor to President Trump, of undermining delivery because of Trump’s hostility to voting by mail.

DeJoy has strenuously denied that, saying the agency is committed to helping people cast their ballots by mail.

In a flurry of tweets Friday night, Colorado Secretary of State Jena Griswold highlighted inconsistencies between the Postal Service’s guidance and Colorado election law. Calling the situation “beyond suspect,” she accused the Postal Service of rejecting feedback on the mailer from secretaries of state and argued it would suppress votes and undermine public confidence in the election if sent to all Colorado voters.

Judge William J. Martinez of the U.S. District Court for the District of Colorado granted the state’s request for a

temporary restraining order against the mailer, which Colorado said would be “delivered throughout Colorado early [this] week absent court intervention.” The lawsuit stated that some voters in “limited areas of Colorado” may have already received the notice or were poised to receive it over the weekend.

In his order, Martinez wrote that the mailer “provides false or misleading information about the manner of Colorado’s elections” and “likely interferes with Colorado citizens’ fundamental right to vote.”

“The Court finds that Colorado will suffer irreparable harm if the Notice is delivered to Colorado households and that no adequate remedy exists to undo or mitigate Colorado’s injury,” he wrote, adding that the temporary restraining order would be in place at least until 11:59 p.m. on Sept. 22.

In a court filing, lawyers for the Postal Service responded that more than 200,000 postcards “had already been partially processed for delivery” when Colorado’s lawsuit was filed, making it “extraordinarily difficult and perhaps impossible” to comply with the restraining order for those notices. The Postal Service “ceased its processing” of other postcards bound for Colorado upon learning of the lawsuit, the filing stated.

Defending its effort, the Postal Service argued the mailers had a “valid public purpose: to encourage advance planning by those voters who intend to vote by mail . . . in the hopes of increasing the likelihood that their mail-in ballots would be timely received and counted.”

The Postal Service filing also argued that even if the postcards did confuse voters, Colorado’s claims against the federal government were not valid.

“Even if the Court views the postcard as having the potential to confuse voters, the postcards do not make false representations about Colorado law,” the agency said in its filing. “They do not even describe state law. Rather, they alert voters that state rules vary, refer them to local election officials, and provide links that make it easier for voters to locate their state’s rules.”

Martha Johnson, a Postal Service spokeswoman, said the mailer “was intended to be general all-purpose guidance on the use of the mail, and not guidance on state rules.”

“The Postal Service has requested that the court reconsider its ruling as we believe the court acted prematurely because it did not hold a hearing, or even give the Postal Service an opportunity to respond to the state’s allegations. We believe that presentation of the complete facts will demonstrate that the court’s decision is legally unfounded,” Johnson said in a written statement to The Washington Post.

[House Oversight Committee will investigate DeJoy following claims he pressured employees to make campaign donations]

In vote-by-mail states, election officials hastened to reassure voters that they do not need to request ballots for November. Washington, Oregon, Hawaii and Utah already run universal mail elections, in addition to Colorado. California, Nevada, New Jersey, Vermont and the District of Columbia are joining those states in proactively sending ballots to voters this fall.

“You may soon receive a mailer from USPS encouraging you to request your mail-in ballot,” the official account of the Washington Secretary of State’s Office tweeted Friday, along with photos of the mailer. “WA voters DO NOT need to request an absentee ballot. Ballots are automatically mailed to all active registered voters at least 18 days prior to Election Day.”

The message was repeated Monday by the official Twitter account for Utah elections. In Nevada, Secretary of State Barbara Cegavske issued a statement calling the mailer's recommendations "not accurate for Nevada voters" — including its suggestion that voters "add postage to the return envelope if needed" because postage will be prepaid for ballot return envelopes in the state.

"The Secretary of State's office was not made aware of the USPS postcard prior to it being mailed, nor was the office asked to provide input regarding the recommendations listed on the postcard. For accurate information about the 2020 general election, voters are encourage to seek out trusted sources, such as the Secretary of State's office or county election offices," Cegavske stated.

[The November election season has officially started, as North Carolina begins sending out mail ballots]

While the postcards were moving through the mail stream, elections officials from across the country discussed them during a Friday conference call in which some learned about them for the first time, Lamone said during a meeting of Maryland's Board of Elections on Friday afternoon.

"My colleagues around the country are infuriated, as we all should be," she said, according to a video recording of the board meeting.

The state Board of Elections issued a statement Monday urging voters to ignore the postcards and visit its website for "accurate election information for Maryland."

Maryland elections officials said that ballot requests should be mailed by Oct. 15 in order for them to be received in time to be processed and that mail-in ballots will come with return envelopes that have prepaid postage.

Nick Jacobs, a spokesperson for the D.C. Board of Elections, said the board plans to send its own mailer next week providing specific information for voters in the District.

Andrea Gaines, director of community relations and compliance support at the Virginia Department of Elections, said in a statement that there was "nothing on the mailers which contradicts Virginia's election laws."

Erin Cox, Michael Brice-Saddler and Patricia Sullivan contributed to this report.

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