

Relaxing Rules on Absentee and Early Voting for Senior Citizens in Puerto Rico During an Infectious Pandemic

Ocasio v. Comisión Estatal de Elecciones
(*Pedro A. Delgado-Hernández, D.P.R. 3:20-cv-1432*)

During the global Covid-19 infectious pandemic, two senior voters sought a court order relaxing absentee and early-voting eligibility for senior voters generally. The district judge granted them first a preliminary injunction and then a permanent injunction.

Subject: Absentee and early voting. *Topics:* Early voting; Covid-19; attorney fees.

An August 20, 2020, federal complaint filed in the District of Puerto Rico sought expansion of absentee and early voting for senior citizens over sixty years old in light of social distancing made necessary by the global Covid-19 infectious pandemic.¹ The plaintiffs—two voters over sixty years old—filed with their complaint a motion for a temporary restraining order and a preliminary injunction.²

On the following day, Judge Pedro A. Delgado-Hernández denied the voters a temporary restraining order, but he ordered the defendants—the Comisión Estatal de Elecciones and its president—to respond to the preliminary-injunction motion within ten days.³ Receiving no response when due, Judge Delgado-Hernández ordered on September 1 that the defendants show cause why the court should not grant the plaintiffs relief.⁴ The defendants moved on Friday, September 4, for an extension of time until September 11 to respond to the motion, noting that the defendants’ attorney had not received the case—as a result of representation granted by Puerto Rico’s justice department—until September 2.⁵ Judge Delgado-Hernández granted the extension.⁶

The plaintiffs moved on September 4 for reconsideration of the extension: “without reconsideration, Plaintiffs—and all other eligible senior citizens—will have less than three days to register for *voto adelantado* (‘early voting’) by

1. Complaint, *Ocasio v. Comisión Estatal de Elecciones*, No. 3:20-cv-1432 (D.P.R. Aug. 20, 2020), D.E. 1; *Ocasio v. Comisión Estatal de Elecciones*, 486 F. Supp. 3d 478, 481 (D.P.R. 2020).

2. Motion, *Ocasio*, No. 3:20-cv-1432 (D.P.R. Aug. 20, 2020), D.E. 2; *Ocasio*, 486 F. Supp. 3d at 481.

3. Order, *Ocasio*, No. 3:20-cv-1432 (D.P.R. Aug. 21, 2020), D.E. 5; *Ocasio*, 486 F. Supp. 3d at 481.

4. Docket Sheet, *Ocasio*, No. 3:20-cv-1432 (D.P.R. Aug. 20, 2020) (D.E. 20); *Ocasio*, 486 F. Supp. 3d at 481.

5. Extension Motion, *Ocasio*, No. 3:20-cv-1432 (D.P.R. Sept. 4, 2020), D.E. 24; *Ocasio*, 486 F. Supp. 3d at 481.

6. Docket Sheet, *supra* note 4 (D.E. 25); *Ocasio*, 486 F. Supp. 3d at 481.

the deadline on September 14, 2020.”⁷ Judge Delgado-Hernández ordered a response to this motion by noon on Tuesday, September 8.⁸

On September 8, Judge Delgado-Hernández set the case for a September 9 status conference and ordered that the September 11 response to the injunction motion also include an answer to the complaint.⁹ Following discussion at the September 9 telephone conference, Judge Delgado-Hernández set the case for another conference on the afternoon of September 11.¹⁰ The parties agreed that an evidentiary hearing was not necessary.¹¹

Judge Delgado-Hernández issued a docket-sheet order on September 11, granting the plaintiffs relief and “extend[ing] until September 24, 2020, the deadline for [senior] voters to apply for early voting. This measure shall be accompanied by an increase in media orientation during this intervening period. A written Opinion and Order will follow in 3 days.”¹² He concluded, “Senior citizens should not be forced to choose between risking their health and perhaps their lives by exposing themselves to COVID-19 or disenfranchisement.”¹³

On September 17, he ordered the parties to inform him by noon on the following day whether the defendants’ media campaign complied with his order and to show cause why he should not convert the preliminary injunction to a permanent injunction.¹⁴ He issued a permanent injunction on September 23.¹⁵

A motion for attorney fees remains pending.¹⁶

7. Reconsideration Motion, *Ocasio*, No. 3:20-cv-1432 (D.P.R. Sept. 4, 2020), D.E. 26; *Ocasio*, 486 F. Supp. 3d at 481.

8. Docket Sheet, *supra* note 4 (D.E. 27); *Ocasio*, 486 F. Supp. 3d at 481.

9. Docket Sheet, *supra* note 4 (D.E. 29); *Ocasio*, 486 F. Supp. 3d at 481.

10. Minutes, *Ocasio*, No. 3:20-cv-1432 (D.P.R. Sept. 9, 2020), D.E. 33; *Ocasio*, 486 F. Supp. 3d at 481.

11. *Ocasio*, 486 F. Supp. 3d at 482.

12. Docket Sheet, *supra* note 4 (D.E. 38); *see* Minutes, *Ocasio*, No. 3:20-cv-1432 (D.P.R. Sept. 14, 2020), D.E. 41.

13. *Ocasio*, 486 F. Supp. 3d at 484.

14. Order, *Ocasio*, No. 3:20-cv-1432 (D.P.R. Sept. 17, 2020), D.E. 44; *see* Compliance Notice, *id.* (Sept. 18, 2020), D.E. 45.

15. Order, *id.* (Sept. 23, 2020), D.E. 49.

16. Reply Brief, *id.* (Dec. 2, 2020), D.E. 56; *see* Motion, *id.* (Nov. 2, 2020), D.E. 51.