

State Challenges to U.S. Postal Service Leading Up to 2020 Election

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On September 17, a State of Washington federal judge granted Colorado Attorney General Phil Weiser's request in *State of Washington v. Trump* for a nationwide injunction, requiring the U.S. Postal Service (USPS) to stop and reverse operational changes that slowed down mail delivery on the grounds that these changes could potentially interfere with the 2020 election. Attorney General Weiser joined a coalition of 14 states led by Washington Attorney General Bob Ferguson, challenging certain USPS's operational changes, including (1) eliminating or reducing staff overtime; (2) halting outgoing mail processing at state distribution centers; and (3) removing certain mail sorting equipment.

On September 18, the day after the judge's ruling in *State of Washington*, Colorado and the USPS entered into a settlement agreement in *State of Colorado v. DeJoy*, which committed the USPS to make changes affecting Colorado voters.

In *State of Colorado*, Colorado's secretary of state sued the USPS over pre-election mailers that included information that the state alleged could reasonably mislead Colorado voters. The pre-election mailers — meant to inform voters about voting by mail — advised voters to request a "vote-by-mail" ballot at least 15 days before Election Day and return it at least seven days before Election Day. The guidelines in the mailers, however, do not align with Colorado's election policies.

Colorado's secretary of state asserted that since the USPS's pre-election mailers do not align with Colorado's election policies, the pre-election mailers could confuse Colorado voters and cause voters to believe they could not participate in the upcoming election if they did not comply with the guidelines in the mailer. However, the state later asked the court to dismiss its case against the USPS based on the USPS's settlement agreement commitments, which include:

1. The USPS will take reasonable measures not to deliver the pre-election mailers to Colorado residents;
2. The USPS will seek input from the Colorado secretary of state on any changes to the usps.com website that could help avoid voter confusion; and
3. The USPS will collaborate with Colorado as part of its multipart media campaign to help educate voters on voting by mail.

These two actions demonstrate a willingness by state attorneys general to challenge actions by the federal government leading up to the 2020 election if perceived to be inconsistent with state laws. We will likely see more scrutiny by state attorneys general of federal actions affecting the election as we move closer to Election Day.

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