

No Relief from Different Counties Using Different Methods to Cure Absentee-Ballot Errors

Barnette v. Lawrence
(*Timothy J. Savage, E.D. Pa. 2:20-cv-5477*)

An election-day complaint challenged unequal procedures in two counties for curing absentee-ballot errors. Following a hearing, the plaintiffs withdrew their motion for a temporary restraining order, and the judge denied the motion.

Subject: Absentee and early voting. *Topics:* Absentee ballots; equal protection; intervention; matters for state courts; class action.

On the day of the November 3, 2020, general election, a congressional candidate and a voter filed a class-action federal complaint in the Eastern District of Pennsylvania on behalf of voters in Montgomery County and Berks County against Montgomery County election officials alleging different election procedures in the two counties.¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order.²

After conferring with counsel that day, Judge Timothy J. Savage set the case for an evidentiary hearing on the following morning.³ At the beginning of the hearing, Judge Savage granted motions to intervene as defendants by the Democratic National Committee and the Pennsylvania Democratic Party.⁴

On the case's third day, the plaintiffs moved to withdraw their temporary-restraining-order motion in light of commonwealth-court proceedings scheduled for the following day.⁵ "[U]pon consideration of the Motion for Temporary Restraining Order, the plaintiffs having moved to withdraw the motion, and after a hearing," Judge Savage denied the plaintiffs a temporary restraining order.⁶

The plaintiffs dismissed their case voluntarily on November 11.⁷

1. Complaint, *Barnette v. Lawrence*, No. 2:20-cv-5477 (E.D. Pa. Nov. 3, 2020), D.E. 1; see Jeremy Roebuck, Chris Palmer & Julie Shaw, *Pa. Legal Challenges Remain Sparse*, *Phila. Inquirer*, Nov. 4, 2020, at A9 ("On Tuesday, GOP lawyers filed suit in state and federal courts contesting efforts by some Pennsylvania counties to allow voters an opportunity to correct mistakes in their mail ballots, such as missing signatures.").

2. Temporary-Restraining-Order Motion, *Barnette*, No. 2:20-cv-5477 (E.D. Pa. Nov. 3, 2020), D.E. 10.

3. Order, *id.* (Nov. 3, 2020), D.E. 13.

4. Transcript at 4–5, *id.* (Nov. 4, 2020, filed Nov. 16, 2020), D.E. 43; Orders, *id.* (Nov. 6, 2020), D.E. 38, 39; Intervention Motions, *id.* (Nov. 3 and 4, 2020), D.E. 24, 28.

5. Withdrawal Motion, *id.* (Nov. 5, 2020), D.E. 35.

6. Order, *id.* (Nov. 6, 2020), D.E. 37 (citation omitted).

7. Notice, *id.* (Nov. 11, 2020), D.E. 42.