

No Relief from a State Supreme Court’s Ruling on Counting Absentee Ballots Missing Information on Their Outer Envelopes

Zicarelli v. Allegheny County Board of Elections
(J. Nicholas Ranjan, W.D. Pa. 2:20-cv-1831)

A candidate in a close election complained that a state supreme court’s allowing a county to count absentee ballots without handwritten names and addresses on the ballots’ outer envelopes when other counties might not do that violated equal protection. The district judge ruled that the action was barred by the *Rooker-Feldman* doctrine, which states that among federal courts only the Supreme Court has appellate jurisdiction over state-court rulings.

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

A candidate for Pennsylvania’s senate filed a federal complaint in the Western District of Pennsylvania on November 25, 2020, the day before Thanksgiving Day, against Pennsylvania and Allegheny County election officials seeking to enjoin the counting of mailed ballots apparently permitted by a November 23 decision by Pennsylvania’s supreme court:¹

These appeals present the question of whether the Election Code requires a county board of elections to disqualify mail-in or absentee ballots submitted by qualified electors who signed the declaration on their ballot’s outer envelope but did not handwrite their name, their address, and/or a date, where no fraud or irregularity has been alleged. Pursuant to our long-standing jurisprudence, central to the disposition of these appeals is whether the information is made mandatory by the Election Code or whether the inclusion of the information is directory, i.e., a directive from the Legislature that should be followed but the failure to provide the information does not result in invalidation of the ballot.

...

... [W]e conclude that the Election Code does not require boards of elections to disqualify mail-in or absentee ballots submitted by qualified electors who signed the declaration on their ballot’s outer envelope but did not handwrite their name, their address, and/or date, where no fraud or irregularity has been alleged.²

With her complaint, the plaintiff filed a motion for a temporary restraining order and a preliminary injunction.³

Judge J. Nicholas Ranjan heard the motion telephonically on the day that it was filed.⁴ He denied the candidate immediate relief.⁵ In response to the

1. Complaint, *Zicarelli v. Allegheny Cty. Bd. of Elections*, No. 2:20-cv-1831 (W.D. Pa. Nov. 25, 2020), D.E. 1.

2. *In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 General Election*, 241 A.3d 1058, 1061–62 (Pa. 2020).

3. Motion, *Zicarelli*, No. 2:20-cv-1831 (W.D. Pa. Nov. 25, 2020), D.E. 2.

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argument that Allegheny County should not count ballots that Westmoreland County would not count, Judge Ranjan opined that a better remedy would be to require Westmoreland County to count ballots that Allegheny County would.⁶ But Westmoreland County election officials were not parties in the case.

Counsel for the Pennsylvania Democratic Party, an intervenor in the case, asked if the hearing transcript could be available before the following week's meeting of Westmoreland's board of elections, and the court reporter promised the transcript by Friday.⁷

The candidate filed an amended complaint on December 1.⁸ Nine days later, Judge Ranjan ordered her to file a status report stating her intentions for proceeding with the case.⁹ After considering status reports by all parties,¹⁰ Judge Ranjan ordered cross-motions for summary judgment with briefing completed by January 8, 2021.¹¹

On January 12, Judge Ranjan granted the defendants summary judgment.¹² Among the reasons for Judge Ranjan's ruling was the *Rooker-Feldman* doctrine that among federal courts only the Supreme Court has appellate jurisdiction over state-court rulings.¹³

The state senate was unwilling to seat the plaintiff's victorious challenger until Judge Ranjan ruled.¹⁴

4. Transcript, *id.* (Nov. 25, 2020, filed Nov. 26, 2020), D.E. 15; Minutes, *id.* (Nov. 25, 2020), D.E. 8.

5. Transcript, *supra* note 4, at 28; Minutes, *supra* note 4; Docket Sheet, *Zicarelli*, No. 2:20-cv-1831 (W.D. Pa. Nov. 25, 2020) (order, D.E. 11).

6. Transcript, *supra* note 4, at 29.

7. *Id.* at 32; *see id.* at 31 (recording an order by Judge Ranjan that an order for the transcript be split by the parties and intervenors as a record of the decision for possible appeal); *see also id.* at 5 (granting intervention); Docket Sheet, *supra* note 5 (order granting intervention, D.E. 10).

8. Amended Complaint, *Zicarelli*, No. 2:20-cv-1831 (W.D. Pa. Dec. 1, 2020), D.E. 29.

9. Docket Sheet, *supra* note 5 (D.E. 38).

10. Status Reports, *Zicarelli*, No. 2:20-cv-1831 (W.D. Pa. Dec. 11 and 12, 2020), D.E. 39 to 42.

11. Scheduling Order, *id.* (Dec. 14, 2020), D.E. 43; *see id.* at 1 (noting that a ruling in the plaintiff's favor would result in her winning the election).

12. Opinion, *id.* (Jan. 12, 2021), D.E. 72, 2021 WL 101683.

13. *Id.* at 11–14; *see* D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

14. *See* Sarah Anne Hughes, *Democrat Will Be Sworn In to Senate*, Phila. Inquirer, Jan. 13, 2021, at B1; *see also* Scott Calvert, *State Lawmakers Block Democrat from Seat*, Wall St. J., Jan. 6, 2021, at A4 (“Republican leaders of the Pennsylvania Senate refused to seat a Democrat whose win was certified by state election officials, prompting Democratic senators to walk out on the first day of the legislative session.”).