

## Poll Watchers and Substitute Ballots

*Parnell v. Allegheny County Board of Elections*  
(*J. Nicholas Ranjan, W.D. Pa. 2:20-cv-1570*)

A federal complaint alleged that poll watchers were wrongfully excluded from election locations established to accommodate the Covid-19 infectious pandemic and the issuing of corrected ballots to mail-in voters created the possibility of invalid votes. The district judge denied relief on the poll watchers, and the parties consented to relief on the substitute ballots.

*Subject:* Voting irregularities. *Topics:* Early voting; election errors; absentee ballots; intervention; ballot segregation; Covid-19; poll locations; class action.

Two congressional candidates filed a federal class-action complaint in the Western District of Pennsylvania on October 16, 2020, against Allegheny County election officials, alleging that poll watchers were wrongfully excluded from satellite voting locations established because of the Covid-19 infectious pandemic.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order.<sup>2</sup>

Judge J. Nicholas Ranjan set the case for a telephonic status conference on October 20, posting contact information in the docket sheet.<sup>3</sup> He ordered briefing on the motion complete by October 22 and set the case for a possible videoconference hearing on October 27.<sup>4</sup>

The plaintiffs filed an amended complaint adding two poll watchers as plaintiffs<sup>5</sup> and an amended motion for a temporary restraining order<sup>6</sup> on October 22. Judge Ranjan set the case for another telephonic status conference on October 23, again posting contact information.<sup>7</sup> Also on October 22, Judge Ranjan granted motions to intervene by persons and organizations affiliated with the Democratic Party.<sup>8</sup>

At the status conference, Judge Ranjan denied the plaintiffs a temporary restraining order.<sup>9</sup>

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1. Complaint, *Parnell v. Allegheny Cty. Bd. of Elections*, No. 2:20-cv-1570 (W.D. Pa. Oct. 16, 2020), D.E. 1.

2. Temporary-Restraining-Order Motion, *id.* (Oct. 16, 2020), D.E. 2.

3. Docket Sheet, *id.* (Oct. 16, 2020) (Order, Oct. 19, 2020, D.E. 7); *see* Transcript, *id.* (Oct. 20, 2022, filed Oct. 26, 2020), D.E. 54; Minutes, *id.* (Oct. 20, 2020), D.E. 10.

4. Docket Sheet, *supra* note 3 (Order, Oct. 21, 2020, D.E. 17).

5. Amended Complaint, *Parnell*, No. 2:20-cv-1570 (W.D. Pa. Oct. 22, 2020), D.E. 28.

6. Amended Temporary-Restraining-Order Motion, *id.* (Oct. 22, 2020), D.E. 32.

7. Docket Sheet, *supra* note 3 (Order, Oct. 22, 2020); *see* Minutes, *Parnell*, No. 2:20-cv-1570 (W.D. Pa. Oct. 23, 2020), D.E. 44.

8. Docket Sheet, *supra* note 3 (Order, Oct. 22, 2020, D.E. 34); *see* Intervention Motions, *Parnell*, No. 2:20-cv-1570 (W.D. Pa. Oct. 22, 2020), D.E. 22, 25.

9. Transcript at 8, *Parnell*, No. 2:20-cv-1570 (W.D. Pa. Oct. 23, 2020, filed Oct. 26, 2020), D.E. 55 [hereinafter Oct. 23, 2020, Transcript].

Given how late all this has unfolded, frankly, I don't have time to write an opinion on this so what I would like to do is explain the basis for my decision on the record here.

I'll issue just a short order after this hearing referring to the transcript, and the purpose for that would be obviously that the plaintiffs or any party, if they so wish, can have my decision in a written form in an expeditious manner in order to file any type of emergency appeal if the plaintiffs decide to proceed in that manner.

...  
... [T]here is no individual constitutional right to serve as a poll watcher. State law, not the federal constitution, grants individuals the ability to serve as poll watchers and state law gives that right to the parties and candidates the authority to select those individuals.

There is no constitutional right to be a poll watcher at all. There is no right to be a poll watcher in a specific location.

I also find that not allowing poll watchers at satellite offices doesn't really interfere with the exercise of the right to vote. It doesn't limit voters' right to choices and not permitting poll watchers at these locations do not make the actual active casting a vote any harder.<sup>10</sup>

A remaining claim concerned 28,879 voters who received incorrect absentee and mail-in ballots, followed by election officials issuing revised ballots, and "a dilemma on how to treat the ballots cast by electors who used erroneous ballots, if those electors do not utilize the replacement ballots."<sup>11</sup>

Judge Ranjan signed a consent order on October 26 stating that for voters who cast only initial ballots, the ballots would be counted for any offices on the ballots that the voters were eligible to vote for.<sup>12</sup>

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10. *Id.* at 8–11.

11. Amended Complaint, *supra* note 5, at 12–13; *see* Oct. 23, 2020, Transcript, *supra* note 9, at 15.

12. Consent Order, *Parnell*, No. 2:20-cv-1570 (W.D. Pa. Oct. 26, 2020), D.E. 57, 2020 WL 6276845.