

Public List of Absentee Voters

Meehan v. Philadelphia County Board of Commissioners (William H. Yohn, Jr., E.D. Pa. 2:04-cv-5123)

Relying on a 1994 opinion by the U.S. Court of Appeals for the Third Circuit, Republican committees filed a federal action on election day 2004 complaining that the committees had wrongfully been denied a list of persons who had received absentee ballots so that the committees could initiate challenges to absentee votes. After proceedings late on election day and on the following morning, the district judge signed consent decrees delaying by a few days the counting of absentee ballots. At the end of the week, the plaintiffs voluntarily dismissed their action.

Subject: Absentee and early voting. *Topics:* Absentee ballots; recusal; case assignment.

In 1994, the U.S. Court of Appeals for the Third Circuit affirmed a district court's injunction against certification of an election in which the campaign for the apparently winning candidate had improperly encouraged a large number of voters to vote absentee without valid excuses.¹ On the day of the 2004 general election, the Republican committees of Philadelphia and Pennsylvania and the city committee's chair filed an action against the board of commissioners for Philadelphia County complaining that the board had failed to provide the committee chair with a list of persons who had received absentee ballots so that the committees could initiate challenges to absentee votes.² With their complaint, the plaintiffs filed a motion for a preliminary injunction.³

The case was assigned at first to Judge James McGirr Kelly, but following his recusal it was reassigned that same day to Judge William H. Yohn, Jr.⁴ Beginning at approximately 5:00 p.m. on election day, Judge Yohn heard arguments from both sides in court and signed a consent order requiring the board to provide the plaintiffs with a list of absentee voters, forbidding the board from counting absentee ballots until further order of the court, and scheduling a hearing for the following morning.⁵

1. Marks v. Stinson, 19 F.3d 873 (3d Cir. 1994).

2. Complaint, Meehan v. Phila. Cty. Bd. of Comm'rs, No. 2:04-cv-5123 (E.D. Pa. Nov. 2, 2004), D.E. 1; see Joseph Tanfani, Joseph A. Slobodzian & Mark Fazlollah, *Stacks of Absentee Ballots in Philadelphia Put on Hold*, Phila. Inquirer, Nov. 3, 2004, at A24.

3. Preliminary-Injunction Motion, Meehan, No. 2:04-cv-5123 (E.D. Pa. Nov. 2, 2004), D.E. 2.

4. Order, *id.* (Nov. 2, 2004), D.E. 3; Interview with Hon. William H. Yohn, Jr., Oct. 18, 2012 (noting that both assignments were at random).

Tim Reagan interviewed Judge Yohn for this report by telephone. Judge Kelly died on March 5, 2005. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

5. Order, Meehan, No. 2:04-cv-5123 (E.D. Pa. Nov. 3, 2004), D.E. 4; Docket Sheet, *id.* (Nov. 2, 2004); see Jeff Gammage, *Both Parties' Weapon of Choice: Lawyers*, Phila. Inquirer,

On Wednesday, Judge Yohn heard arguments in court and substituted his earlier order with a new consent order enjoining the counting of ballots until Friday morning.⁶ On Friday, the plaintiffs voluntarily dismissed the case.⁷

Nov. 3, 2004, at B9 (reporting that the hearing lasted forty minutes).

6. Order, *Meehan*, No. 2:04-cv-5123 (E.D. Pa. Nov. 3, 2004), D.E. 5; Docket Sheet, *supra* note 5.

7. Notice, *Meehan*, No. 2:04-cv-5123 (E.D. Pa. Nov. 5, 2004), D.E. 8; *see* Joseph A. Slobodzian, *Phila. Officials to Tally Absentee Ballots*, *Phila. Inquirer*, Nov. 4, 2004, at B11 (reporting that the dispute “lost steam as it became clear that the ballots would not change the outcomes of any races”).