

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1499

MS. LINDA MIGLIORI; FRANCIS J. FOX; RICHARD E. RICHARDS; KENNETH
RINGER; SERGIO RIVAS,
Appellants

v.

ZACHARY COHEN,
Intervenor – Plaintiff

v.

LEHIGH COUNTY BOARD OF ELECTIONS

DAVID RITTER,
Intervenor - Defendant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
No. 5-22-cv-00397
District Judge: Honorable Joseph F. Leeson

Argued: May 18, 2022

Before: McKEE, GREENAWAY JR., and MATEY, *Circuit Judges*.

JUDGMENT

This judgment is issued at the direction of the Court pursuant to Fed. R. App. P. 36(a)(2).

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was argued on May 18, 2022.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered on March 16, 2022, is reversed insofar as it found Appellants lack the capacity to bring suit under 52 U.S.C. § 10101 as there exists a private right of action under 42 U.S.C. § 1983. *See Gonzaga Univ. v. Doe*, 536 U.S. 273, 284–85 (2002).

In addition, inasmuch as there is no dispute that ballots that have the wrong date were counted in the election, it is further ORDERED and ADJUDGED that, the dating provisions contained in 25 Pa. Cons. Stat. §§ 3146.6(a) and 3150.16(a) are immaterial under § 10101(a)(2)(B). Accordingly, there is no basis on this record to refuse to count undated ballots that have been set aside in the November 2, 2021, election for Judge of the Common Pleas of Lehigh County.

This matter is hereby remanded to the District Court and that court is hereby directed to forthwith enter an order that the undated ballots be counted.

A formal opinion will follow. The mandate will issue immediately upon filing of the opinion. The time for filing a petition for rehearing will be five (5) days from the date that the Court's opinion is entered on the docket.

ATTEST:

s/ Patricia S. Dodszeit
Clerk

Dated: May 20, 2022

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