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United States District Court, E.D. Pennsylvania.

Bruce S. MARKS, et al.
v.
William STINSON, et al.

No. Civ. A. No. 93–6157. | Feb. 7, 1994.

Attorneys and Law Firms

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Opinion

MEMORANDUM OPINION

NEWCOMER, District Judge.

***1** Presently before the court is William Stinson's Motion to Dismiss. For the following reasons, said motion will be denied.

I. *Background.*

Plaintiffs claim that a racially discriminatory strategy was conducted by the defendants by actively misrepresenting and abusing the use and vote by minority Latino, Afro–American, elderly and other absentee ballot voters and otherwise stuffing the ballot box. In essence, plaintiffs contend that defendants carried out an illegal plan to win the election. Plaintiffs' First Amended Complaint seeks injunctive and declaratory relief, compensatory and punitive damages, costs, and fees arising out of defendants' violation of the U.S. Constitution, 42 U.S.C. § 1983, the Voting Rights Act, the state Constitution, and the state Election Code in electing, certifying and swearing-in William Stinson.

II. *Discussion.*

Mr. Stinson seeks dismissal under several different theories: abstention; lack of standing; and if the court considers the claims, each count nonetheless should fail. Plaintiffs have stated causes of action and alleged facts sufficient to withstand a motion to dismiss and plaintiffs have standing to bring the alleged claims. The most persuasive theory supporting dismissal is that this court should abstain in light of the pending state action and the pending proceeding in the state senate.

Defendants claims that this court is without jurisdiction pursuant to the *Rooker–Feldman* doctrine. Under this doctrine, federal district courts lack subject matter jurisdiction to review final adjudications of a state's highest court or to evaluate constitutional claims that are inextricably intertwined with the state court's decision in a judicial proceeding. *Guarino v. Larsen,* 1993 WL 490847 at 7 (3d Cir.) (citing *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 483 n. 16 (1983) and *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 414 (1923)) (other citations omitted). The instant action is not a review of a final adjudication of a state's highest court, and the instant claims involve parties and issues not present in the state action.

Rooker–Feldman does not apply to the Latino Plaintiffs, who are not parties to any state court action. In *Valenti v. Mitchell,* 962 F.2d 288 (3d Cir.1992), plaintiffs challenged Pennsylvania's 1992 Congressional reapportionment plan. The Third Circuit held that "*Rooker–Feldman* does not bar individual constitutional claims by persons not parties to earlier state court litigation." *Id.* at 298. The Third Circuit explained the nature of the *Rooker–Feldman* doctrine, as follows:

> the *Rooker–Feldman* doctrine has a close affinity to the principles embodied in the legal concepts of claim and issue preclusion. (citations omitted) The basic premise of preclusion is that non-parties to a prior action are not bound. A non-party is not precluded from relitigating matters decided in a prior action simply because it passed by an opportunity to intervene. *See Chase National Bank v. City of Norwalk,* 291 U.S. 431, 54 S.Ct. 475, 78 L.Ed. 894 (1934); *Cf. Society Hill Civic Ass'n v. Harris,* 632 F.2d 1045, 1050 n. 4, 1053 n. 7 (3d Cir.1980).

***2** *Id.* at 297. *See also Black v. Papadakos,* 953 F.2d 68 (3d Cir.1992) ("Had Judge Blake not instituted his action ... in the Pennsylvania Supreme Court but instead

had he filed his action directly in the United States District Court, the *Rooker–Feldman* doctrine could not have precluded federal jurisdiction").

Rooker–Feldman does not apply to plaintiffs Marks and the Republican State Committee ("RSC"). *Rooker–Feldman* does not apply to Marks and RSC because these plaintiffs had no opportunity to raise election fraud or any constitutional claims in state court in light of the County Board decision that it lacked jurisdiction to hear or remedy all claims for fraud. Common Pleas Court Judge Bernstein then held that the court lacked jurisdiction to hear such claims because the court could not review beyond the Board's decision. As alleged by the plaintiffs, such a scheme would not allow plaintiffs to have their fraud claims heard in state court, *see Bernstein Opinion,* at 12 and 13, and as with the Latino plaintiffs, such a claim calls into question the constitutionality or efficacy of the procedure by which a voter may challenge his or her vote. In *Centifanti v. Nix,* 865 F.2d 1422, 1433 (3d Cir.1989), the court held that the failure to raise constitutional claims does not bar a district court from hearing those claims when a plaintiff did not have a "realistic opportunity to fully and fairly litigate" such claims in state court. In the instant case, Judge Bernstein ruled that he lacked subject matter jurisdiction to hear fraud or any other claims. Judge Bernstein affirmed the County Board's decision that the Marks challenges were not made by certified poll watchers, and therefore, that said challenges were not under his appellate review.

Rooker–Feldman does not apply to plaintiffs Steck and Lorenzo, the Election Contest petitioners, who had no opportunity to litigate any issues because, as plaintiffs allege, the Court imposed a $50,000 bond in order to proceed on the Contest. Plaintiffs did not proceed with the case and the Contest was dismissed. As alleged, plaintiffs Steck and Lorenzo were not given a "realistic opportunity to fully and fairly litigate" constitutional claims in state court if they were required to post a $50,000 bond to proceed. Finally, federal constitutional claims were not even raised in the Election Contest petition. For these reasons, the court will not abstain under *Rooker–Feldman.*

The court also concludes that abstention under *Younger* would not be appropriate. *Younger v. Harris,* 401 U.S. 37 (1971). *See also Schall v. Joyce,* 885 F.2d 101 (3d Cir.1989). Abstention under *Younger* is appropriate only if (1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise federal claims. *See Schall,* 885 F.2d at 106. Even if these requirements are met, abstention would not be appropriate if the federal plaintiff can establish that (1) the state proceedings are being undertaken in bad faith or for purposes of harassment or (2) some other extraordinary circumstances exist, such as proceedings pursuant to flagrantly unconstitutional statute, such that deference to the state proceeding will present a significant and immediate potential for irreparable harm to the federal interests asserted. *Id.* (quoting *Middlesex County Ethics Committee v. Garden State Bar Association,* 457 U.S. 423, 435 (1982)).

***3** The first two considerations of *Younger* are clearly satisfied. An appeal of an Order dated January 10, 1994 of Common Pleas Court of Philadelphia is presently pending in the state courts and a proceeding is pending before the State Senate, and important state interests are involved. However, the court is not persuaded that the state proceedings afford an adequate opportunity to raise federal claims. Even if this third requirement were met, the court would nonetheless hear plaintiffs' claims because *Younger* abstention is improper when plaintiffs would suffer irreparable harm. *Younger,* 401 U.S. at 46. *See also Gibson v. Berryhill,* 411 U.S. 564, 577 (1973) (*Younger* abstention improper if federal plaintiffs would have no opportunity to timely raise before a competent state tribunal the federal issues involved); *Port Authority Police Benevolent Ass'n v. Port Authority of N.Y. and N.J. Police Dep't,* 973 F.2d 169, 176 (3d Cir.1992). Because of the nature of the claims and the timing involved, plaintiffs would suffer irreparable harm if their claims were not heard in a timely fashion. In addition, there are plaintiffs in this action not parties in the state action, *see Trainor v. Hernandez,* 431 U.S. 434, 461–62 (1977), and plaintiffs have asserted claims under the Voting Rights Act and the Civil Rights Act. *Patsy v. Florida Bd. of Regents,* 457 U.S. 496 (1982).

An appropriate Order follows.

ORDER

AND NOW, this 7th day of February, 1994, upon consideration of William Stinson's Motion to Dismiss, and the response thereto, and after hearing the arguments of counsel, and consistent with the foregoing Memorandum Opinion, it is hereby ORDERED that said motion is DENIED.

AND IT IS SO ORDERED.