Enjoining Ballot Security Initiatives

Democratic National Committee v.
Republican National Committee
(Dickinson R. Debevoise, D.N.J. 2:81-cv-3876)

Five days before the 2004 general election, two Ohio voters filed a motion in the District of New Jersey to reopen and intervene in a 1981 case, alleging that widespread voter registration challenges in Ohio violated consent decrees in the New Jersey case.[1] With their intervention motion, the plaintiffs filed a motion for a preliminary injunction.[2]

Judge Dickinson R. Debevoise was the presiding judge in the New Jersey case.[3] The consent decrees arose from concerns that ballot security initiatives, which are efforts to prevent or remedy voter fraud, were used to suppress minority voting.[4] The consent decrees only cover actions by the national parties, but frequently during election cycles Judge Debevoise is called upon to determine whether the national parties have engaged in activities in cooperation with local parties in violation of the decrees.[5]

Judge Debevoise heard the intervention motion at 2:00 p.m. on October 28, the day it was filed, and he granted the motion as to one of the two voters.[6]

On November 1, Judge Debevoise heard and granted the preliminary injunction motion.[7] Judge Debevoise observed that Judge Susan J. Dlott in the Southern District of Ohio had issued a temporary restraining order on October 27 against administrative proceedings on the Republican Party's widespread registration challenges.[8] Judge Debevoise enjoined the Republican National Committee "from

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1. Motion, Democratic Nat'l Comm. v. Republican Nat'l Comm., No. 2:81-cv-3876 (D.N.J. Oct. 28, 2004), D.E. 1; Intervention Complaint, *id.* (Oct. 28, 2004), D.E. 6; Democratic Nat'l Comm. v. Republican Nat'l Comm., 673 F.3d 192, 198 (3d Cir. 2012); Democratic Nat'l Comm. v. Republican Nat'l Comm., 671 F. Supp. 2d 575, 582 (D.N.J. 2009).

2. Preliminary Injunction Motion, *id.* (Oct. 28, 2004), D.E. 5.

3. Docket Sheet, *id.* (Oct. 28, 2004); *Democratic Nat'l Comm.*, 673 F.3d at 196 n.1.

Tim Reagan interviewed Judge Debevoise for this report by telephone on August 14, 2012.

4. *Democratic Nat'l Comm.*, 673 F.3d at 196–98; *Democratic Nat'l Comm.*, 671 F. Supp. 2d at 578–81.

5. Interview with Hon. Dickinson R. Debevoise, Aug. 14, 2012.

6. Order, *Democratic Nat'l Comm.*, No. 2:81-cv-3876 (D.N.J. Oct. 28, 2004), D.E. 17; Minutes, *id.* (Oct. 28, 2004), D.E. 11; *see* John P. Martin, *Fight in A Battleground Lands in Newark Court*, Newark Star-Ledger, Oct. 29, 2004, at 1.

7. Order, *Democratic Nat'l Comm.*, No. 2:81-cv-3876 (D.N.J. Nov. 1, 2004), D.E. 25 [hereinafter Nov. 1, 2004, Order]; Minutes, *id.* (Nov. 1, 2004), D.E. 24; *Democratic Nat'l Comm.*, 673 F.3d at 198–99; *Democratic Nat'l Comm.*, 671 F. Supp. 2d at 582–83; *see* Lisa A. Abraham, *Federal Judges Issue Stay of 2 Earlier Rulings*, Akron Beacon J., Nov. 2, 2004, at A1; Amy Klein, *GOP Dealt Setback on Ohio Voter Challenges*, N.J. Record, Nov. 2, 2004, at A1; John P. Martin, *Judge Bars GOP Poll Challenges*, Newark Star-Ledger, Nov. 2, 2004, at 9; Greg B. Smith, *GOP Wins Early Legal Skirmish in Ohio*, N.Y. Daily News, Nov. 2, 2004, at 4.

8. Transcript at 2, 73, *Democratic Nat'l Comm.*, No. 2:81-cv-3876 (D.N.J. Nov. 1, 2004, filed Nov. 12, 2004), D.E. 29; *see* Temporary Restraining Order, Miller v. Blackwell, No. 1:04-cv-735 (S.D. Ohio Oct. 27, 2004), D.E. 11.

using or permitting to be used a challenger list originally containing 3500 names prepared by the Republican Party in the State of Ohio for use at the November 2, 2004 election."[9]

The Republican Party immediately appealed.[10] Over the dissent of one judge, a panel of the court of appeals denied the party a stay of Judge Debevoise's order, finding "ample support for the factual findings of the District Court."[11] On the morning of election day, however, the court of appeals ordered en banc rehearing.[12] Because the intervenor was allowed to vote on election day, the court of appeals later dismissed the appeal as moot.[13]

Judge Debevoise approved a stipulated dismissal of his case on February 3, 2005.[14]

On the day before the 2008 general election, the Democratic National Committee moved to reopen the case again.[15] After extensive litigation, on December 1, 2009, Judge Debevoise denied the Republican Party's motion to vacate the consent decrees, but he agreed to modify applicable particulars, including the addition of a presumptive expiration date of eight years hence.[16] The court of appeals affirmed on March 8, 2012.[17]

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9. Nov. 1, 2004, Order, *supra* note 7.

10. Docket Sheet, Democratic Nat'l Comm. v. Republican Nat'l Comm., No. 04-4186 (3d Cir. Nov. 1, 2004); *Democratic Nat'l Comm.*, 673 F.3d at 199; *Democratic Nat'l Comm.*, 671 F. Supp. 2d at 582.

11. Opinion, *Democratic Nat'l Comm.*, No. 04-4186 (3d Cir. Nov. 1, 2004), *filed as* Opinion, *Democratic Nat'l Comm.*, No. 2:81-cv-3876 (D.N.J. Nov. 9, 2004), D.E. 32; *Democratic Nat'l Comm.*, 673 F.3d at 199; *Democratic Nat'l Comm.*, 671 F. Supp. 2d at 583; *see* Martin, *supra* note 6.

12. Order, *Democratic Nat'l Comm.*, No. 04-4186 (3d Cir. Nov. 2, 2004), *filed as* Order, *Democratic Nat'l Comm.*, No. 2:81-cv-3876 (D.N.J. Nov. 9, 2004), D.E. 34; *Democratic Nat'l Comm.*, 673 F.3d at 199; *Democratic Nat'l Comm.*, 671 F. Supp. 2d at 583.

13. Order, *Democratic Nat'l Comm.*, No. 04-4186 (3d Cir. Dec. 20, 2004), *filed as* Order, *Democratic Nat'l Comm.*, No. 2:81-cv-3876 (D.N.J. Dec. 20, 2004), D.E. 36; *Democratic Nat'l Comm.*, 673 F.3d at 199; *Democratic Nat'l Comm.*, 671 F. Supp. 2d at 583.

14. Dismissal, *Democratic Nat'l Comm.*, No. 2:81-cv-3876 (D.N.J. Feb. 3, 2005), D.E. 37.

15. Letter, *id.* (Nov. 3, 2008), D.E. 38; *Democratic Nat'l Comm.*, 673 F.3d at 199; *Democratic Nat'l Comm.*, 671 F. Supp. 2d at 581.

16. *Democratic Nat'l Comm.*, 671 F. Supp. 2d 575.

17. Democratic Nat'l Comm. v. Republican Nat'l Comm., 673 F.3d 192 (3d Cir. 2012), *cert. pending*, Docket Sheet, No. 12-3753 (U.S. Sept. 25, 2012) (noting that a response is due on Dec. 5, 2012).