

## Overly Burdensome Voter Registration Rules

*Project Vote v. Blackwell*

(*Kathleen M. O'Malley, N.D. Ohio 1:06-cv-1628*)

On July 6, 2006, six public interest organizations and three individuals filed a federal complaint in the Northern District of Ohio, challenging recently enacted voter registration laws and interpretations of those laws by Ohio's secretary of state.<sup>1</sup> The core allegation was that the new registration rules would "severely impact third-party voter registration efforts in Ohio and hinder low-income, minority, and disabled citizens from registering to vote."<sup>2</sup> One week later, the plaintiffs filed a motion for a preliminary injunction.<sup>3</sup>

The court assigned the case to Judge Kathleen M. O'Malley.<sup>4</sup> Judge O'Malley has learned that for injunction cases involving elections, it is usually very important for boards of elections to participate.<sup>5</sup> They are the experts on how elections are conducted and they can provide important feasibility information about possible remedies.<sup>6</sup> The parties agreed that the boards should be included, and Judge O'Malley gave the boards 30 days to prepare for their participation.<sup>7</sup> On August 2, Judge O'Malley set a case-management conference for August 17.<sup>8</sup> At the conference, Judge O'Malley set a preliminary injunction hearing for September 1.<sup>9</sup>

After the hearing, Judge O'Malley orally issued a preliminary injunction.<sup>10</sup> When time is of the essence, she will sometimes rule from the bench and later provide a detailed written opinion to facilitate possible appellate review.<sup>11</sup> The written opinion came on September 8.<sup>12</sup> In essence, Judge O'Malley found that extra burdens placed on registration workers who were compensated were not sufficiently justified and a requirement that persons registering another person to vote personally submit the registration card to an election office improperly

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1. Complaint, *Project Vote v. Blackwell*, No. 1:06-cv-1628 (N.D. Ohio July 6, 2006), D.E. 1; *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 696–97 (N.D. Ohio 2006).

2. *Project Vote*, 455 F. Supp. 2d at 697.

3. Preliminary Injunction Motion, *Project Vote*, No. 1:06-cv-1628 (N.D. Ohio July 13, 2006), D.E. 3; *Project Vote*, 455 F. Supp. 2d at 697.

4. Docket Sheet, *Project Vote*, No. 1:06-cv-1628 (N.D. Ohio July 6, 2006).

Tim Reagan interviewed Judge O'Malley for this report by telephone on July 19, 2012.

Judge O'Malley was elevated to a seat on the Court of Appeals for the Federal Circuit on December 27, 2010. Federal Judicial Center Biographical Directory of Federal Judges, <http://www.fjc.gov/history/home.nsf/page/judges.html>.

5. Interview with Hon. Kathleen M. O'Malley, July 19, 2012.

6. *Id.*

7. *Id.*

8. Order, *Project Vote*, No. 1:06-cv-1628 (N.D. Ohio Aug. 2, 2006), D.E. 14; see *Project Vote*, 455 F. Supp. 2d at 697.

9. Order, *Project Vote*, No. 1:06-cv-1628 (N.D. Ohio Aug. 17, 2006), D.E. 22; see *Project Vote*, 455 F. Supp. 2d at 697.

10. *Project Vote*, 455 F. Supp. 2d at 697–98.

11. Interview with Hon. Kathleen M. O'Malley, July 19, 2012.

12. *Project Vote*, 455 F. Supp. 2d 694.

chilled voter registration.<sup>13</sup> Ohio had backed away from its defense of the most problematic provisions and elected not to appeal Judge O'Malley's injunction against the others.<sup>14</sup>

On February 11, 2008, after additional briefing, Judge O'Malley converted her preliminary injunction to summary judgment.<sup>15</sup> On March 31, 2009, Judge O'Malley awarded the plaintiffs \$321,485.28 in attorney fees and costs.<sup>16</sup>

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13. *Id.* at 702–07.

14. Interview with Hon. Kathleen M. O'Malley, July 19, 2012.

15. Opinion, [Project Vote v. Blackwell](#), No. 1:06-cv-1628 (N.D. Ohio Feb. 11, 2008), D.E. 59, available at [2008 WL 397585](#) (noting that the parties provided very light additional briefing).

16. Opinion, *id.* (Mar. 31, 2009), D.E. 69, available at [2009 WL 917737](#).