Widespread Voter Registration Challenges

Miller v. Blackwell
(Susan J. Dlott, S.D. Ohio 1:04-cv-735)

One week before the 2004 general election, the Ohio Democratic Party and two voters filed a class action in the U.S. District Court for the Southern District of Ohio's Cincinnati courthouse against Ohio's secretary of state and the election officials of six counties—three in the Southern District and three in the Northern District—challenging extensive challenges by the Republican Party to voter eligibility based on returned mail.[1] With the complaint, the plaintiffs filed a motion for a temporary restraining order.[2]

On the following day, two persons who signed challenges moved to intervene.[3] At 12:31 p.m. on that second day, Judge Susan J. Dlott held a proceeding in chambers with counsel for the plaintiffs present and counsel for the defendants appearing by telephone.[4] The defendants confirmed that they had received a total of over 22,000 challenges—from 43 to over 17,000 per county—and that they had challenge hearings scheduled from that day to the following Saturday, depending upon county.[5] After a recess of a bit over two hours, Judge Dlott reconvened the parties at 3:45 and announced that she would grant the temporary restraining order against acting on the challenges and hold an evidentiary hearing Friday morning on whether to follow up with a preliminary injunction.[6] A written order followed later that day.[7] The court of appeals declined to stay the order.[8]

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1. Complaint, Miller v. Blackwell, No. 1:04-cv-735 (S.D. Ohio Oct. 26, 2004), D.E. 1 (Franklin, Lawrence, and Scioto are in the Southern District; Cuyahoga, Medina, and Trumbull are in the Northern District); *see* Scott Hiaasen, *Ohio GOP Challenges 35,000 on Voter Rolls*, Cleveland Plain Dealer, Oct. 23, 2004, at A1; Mark Niquette, *GOP Challenges Voters*, Columbus Dispatch, Oct. 23, 2004, at 1A. *See generally* Ari Berman, Give Us the Ballot 218–20 (2015).

2. Temporary Restraining Order Motion, *Miller*, No. 1:04-cv-735 (S.D. Ohio Oct. 26, 2004), D.E. 2.

3. Challengers Motion to Intervene, *id.* (Oct. 27, 2004), D.E. 5; Transcript at 4, *id.* (Oct. 27, 2004, filed Oct. 29, 2004), D.E. 18.

4. Transcript, *supra* note 3, at 1–2; *see* Ann Gerhart, *Up to the Challenge*, Wash. Post, Oct. 29, 2004, at C1.

5. Transcript, *supra* note 3, at 6–9.

6. *Id.* at 41–63; *see* Jo Becker, *Judge Rebuffs GOP Effort to Contest Voters in Ohio*, Wash. Post, Oct. 28, 2004, at A1; James Dao, *G.O.P. Bid to Contest Registrations Is Blocked*, N.Y. Times, Oct. 28, 2004, at A25; Kevin Eigelbach, *Voter Hearings Halted by Ruling*, Cincinnati Post, Oct. 28, 2004, at A1.

7. Miller v. Blackwell, 348 F. Supp. 2d 916 (S.D. Ohio 2004); Temporary Restraining Order, *Miller*, No. 1:04-cv-735 (S.D. Ohio Oct. 27, 2004), D.E. 11; *see* Mark Niquette, *Voter Challenges Halted*, Columbus Dispatch, Oct. 28, 2004, at 1A; Bill Sloat, *Judge Blocks Voter Eligibility Hearings*, Cleveland Plain Dealer, Oct. 28, 2004, at A1.

8. Miller v. Blackwell, 388 F.3d 546 (6th Cir. 2004); *see* Jo Becker, *Ruling on Ohio Voter Challenges Is Upheld*, Wash. Post, Oct. 30, 2004, at A9; Andrew Welsh-Huggins, *Restart of Voter Hearings Rejected*, Cincinnati Post, Oct. 29, 2004, at A11.

Judge Dlott certified the individual plaintiffs as representatives of a class of "all persons who have registered to vote in the State of Ohio whose eligibility to vote was challenged by the Ohio Republican Party's voter challenges submitted on October 22, 2004 and whose eligibility their County Board of Elections intended to challenge before the General Election to be held on November 2, 2004."[9] Judge Dlott determined that the method of challenge combined with the methods of resolution of so many voter registration challenges so close to the election created "grave due process concerns" with respect to the fundamental right to vote.[10] Judge Dlott also granted the challengers' motion to intervene.[11] On the following day, she granted the State of Ohio's motion to intervene.[12]

On Friday, Judge Dlott allowed the plaintiffs to amend their complaint to include all of Ohio's 88 counties, and she extended the temporary restraining order to all of the counties.[13] There was evidence that one county ignored the temporary restraining order after receiving actual, but not official, notice of it, but the evidence was insufficient to justify contempt.[14]

Judge Dlott conducted the preliminary injunction hearing on Friday[15] and Monday.[16] The temporary restraining order remained in effect through the election.[17] On April 28, 2005, Judge Dlott granted the plaintiffs' motion to dismiss the action on the grounds that their concerns were moot now that the election was over.[18] Ohio's appeal settled after briefing.[19]

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9. *Miller*, 348 F. Supp. 2d at 918 n.1.

10. *Miller*, 348 F. Supp. 2d 916.

11. *Id.*

12. Order, *Miller*, No. 1:04-cv-735 (S.D. Ohio Oct. 28, 2004), D.E. 17.

13. Order, *id.* (Oct. 29, 2004), D.E. 24; *see* Amended Complaint, *id.* (Oct. 29, 2004), D.E. 25; *see* Bill Sloat, *Judge Orders Halt to County Hearings Challenging Voters*, Cleveland Plain Dealer, Oct. 30, 2004, at A1.

14. Order, *Miller*, No. 1:04-cv-735 (S.D. Ohio Nov. 1, 2004), D.E. 33.

15. Transcript, *id.* (Oct. 29, 2004, filed Jan. 14, 2005), D.E. 47.

16. Transcript, *id.* (Nov. 1, 2004, filed Dec. 20, 2004), D.E. 45.

17. Order, *id.* (Apr. 28, 2005), D.E. 51.

18. *Id.*

19. Docket Sheet, Miller v. Blackwell, No. 05-3773 (6th Cir. June 23, 2005).