

Vote Challengers

Spencer v. Blackwell (Susan J. Dlott,
S.D. Ohio 1:04-cv-738) and *Summit County Democratic
Central and Executive Committee v. Blackwell*
(John R. Adams, N.D. Ohio 5:04-cv-2165)

In complaints filed in each of Ohio's two federal districts late in the week before the 2004 general election, plaintiffs challenged an Ohio statute that permitted political parties to appoint poll watchers to challenge persons who may be voting illegitimately.¹

The Southern District complaint was filed on Wednesday, October 27² with motions for a temporary restraining order and a preliminary injunction.³ Defendants were Ohio's secretary of state, Hamilton County election officials, and the chair of the Hamilton County Republican Party.⁴ Judge Susan J. Dlott held a telephone conference with all parties that same day.⁵

As luck would have it, this was Judge Dlott's second emergency election case in two days because she was two cases behind the other Cincinnati judge in the TRO draw.⁶ In the other case, Judge Dlott enjoined pre-election widespread challenges to voter registration based on returned mail.⁷

Judge Dlott began a three-day hearing on the motions at 1:46 p.m. on Thursday.⁸ Present were two plaintiffs' attorneys with two plaintiffs, two defense attorneys with three defendants, one of whom elected to represent himself, and five attorneys representing Hamilton County voters who had moved to intervene as defendants.⁹ Judge Dlott granted the unopposed motion to intervene.¹⁰

1. [Summit Cnty. Democratic Cent. & Exec. Comm. v. Blackwell](#), 388 F.3d 547, 549 (6th Cir. 2004).

2. [Complaint](#), *Spencer v. Blackwell*, No. 1:04-cv-738 (S.D. Ohio Oct. 27, 2004), D.E. 1 [hereinafter *Spencer Complaint*]; [Summit Cnty. Democratic Cent. & Exec. Comm.](#), 388 F.3d at 550.

3. [Motion](#), *Spencer*, No. 1:04-cv-738 (S.D. Ohio Oct. 27, 2004), D.E. 2.

4. [Spencer Complaint](#), *supra* note 2.

5. Transcript at 6, *Spencer*, No. 1:04-cv-738 (S.D. Ohio Oct. 28, 2004, filed Nov. 1, 2004), D.E. 20 [hereinafter *Spencer Nov. 1, 2004, Transcript*] (noting that Judge Dlott was at the courthouse until 12:15 the following morning); [Order](#) at 1, *id.* (Nov. 1, 2004), D.E. 19 [hereinafter *Spencer Injunction*].

For this report, Tim Reagan interviewed Judge Dlott and her law clerk Sarah Fairweather by telephone on July 30, 2012.

6. Transcript at 24, *Miller v. Blackwell*, No. 1:04-cv-735 (S.D. Ohio Oct. 26, 2004), D.E. 18; Interview with Hon. Susan J. Dlott and her law clerk Sarah Fairweather, July 30, 2012; see Kimball Perry, *Judge to Decide Voting Issues*, Cincinnati Post, Oct. 30, 2004, at A4.

7. [Order](#), *Miller v. Blackwell*, No. 1:04-cv-735 (S.D. Ohio Oct. 27, 2004), D.E. 11.

8. *Spencer Nov. 1, 2004, Transcript*, *supra* note 5; see *id.* at 18 (noting that the hearing was conducted in a borrowed courtroom).

9. *Spencer Nov. 1, 2004, Transcript*, *supra* note 5, at 1–5, 18; see [Motion](#), *Spencer*, No. 1:04-cv-738 (S.D. Ohio Oct. 27, 2004), D.E. 4 (motion by three voters).

10. *Spencer Nov. 1, 2004, Transcript*, *supra* note 5, at 5.

The hearing continued on Friday and Sunday.¹¹ On Friday, the secretary issued a press release reversing his previous position and taking a position at odds with the attorney general, whose office was representing him.¹² The secretary and the attorney general were expected to face each other in the 2006 Republican gubernatorial primary;¹³ the secretary would defeat the attorney general in that primary.¹⁴ During the hearing on Friday, October 30, 2004, Judge Dlott received a copy of the press release, and an additional attorney joined the proceeding.¹⁵ The attorney general refused to represent the secretary's position as being in conflict with Ohio law.¹⁶ The attorney general later filed an answer on behalf of Ohio as an intervener.¹⁷

On Sunday, Judge Dlott enjoined "all Defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state of Ohio on Election Day."¹⁸ On Monday, the intervenors filed a notice of appeal¹⁹ and sought from both the district court²⁰ and the court of appeals²¹ an emergency stay of the injunction. Judge Dlott denied the stay motion.²²

The Northern District complaint against Ohio and Summit County election officials was filed late in the afternoon on Thursday, October 28,²³ also with a motion for a temporary restraining order.²⁴ On Friday, individual voter challengers moved to intervene on behalf of all challengers statewide, except for challengers

11. Transcripts, *Spencer*, No. 1:04-cv-738 (S.D. Ohio Oct. 29 and 31, 2004, filed Nov. 1, 2004), D.E. 26 & 29; [Spencer Injunction](#), *supra* note 5, at 1 (noting that the Sunday proceeding concluded late in the evening); see Bill Sloat & Jesse Tinsley, *Judge to Decide If GOP Can Challenge Voters*, Cleveland Plain Dealer, Nov. 1, 2004, at B1.

12. See Barry M. Horstman, *Cincinnati: Ground Zero*, Cincinnati Post, Oct. 30, 2004, at A1; Mark Niquette & Darrel Rowland, *Challenge Dispute Shifts to Poll Sites*, Columbus Dispatch, Oct. 30, 2004, at 1A; Ted Wendling, *New Ohio Election Uproar*, Cleveland Plain Dealer, Oct. 30, 2004, at A1.

13. See Niquette & Rowland, *supra* note 12; Wendling, *supra* note 12.

14. See *Blackwell Wins Primary for Ohio Governor*, Cincinnati Enquirer, May 3, 2006, at A1.

15. Interview with Hon. Susan J. Dlott and her law clerk Sarah Fairweather, July 30, 2012; see Wendling, *supra* note 12.

16. See Horstman, *supra* note 12; Niquette & Rowland, *supra* note 12; Wendling, *supra* note 12.

17. *Ohio Answer*, *Spencer v. Blackwell*, No. 1:04-cv-738 (S.D. Ohio Nov. 1, 2004), D.E. 28.

18. [Spencer Injunction](#), *supra* note 5, at 18; [Summit Cnty. Democratic Cent. & Exec. Comm. v. Blackwell](#), 388 F.3d 547, 550 (6th Cir. 2004) (quoting district court order).

19. [Notice of Appeal](#), *Spencer*, No. 1:04-cv-738 (S.D. Ohio Oct. 27, 2004), D.E. 23.

20. [Motion](#), *id.* (Nov. 1, 2004), D.E. 21.

21. Docket Sheet, [Spencer v. Blackwell](#), No. 04-4312 (6th Cir. Nov. 1, 2004); [Summit Cnty. Democratic Cent. & Exec. Comm.](#), 388 F.3d at 550.

22. [Order](#), *Spencer*, No. 1:04-cv-738 (S.D. Ohio Nov. 1, 2004), D.E. 25.

23. Complaint at 4, [Summit Cnty. Democratic Cent. & Exec. Comm. v. Blackwell](#), No. 5:04-cv-2165 (N.D. Ohio Oct. 28, 2004), D.E. 1 [hereinafter *Summit Cnty. Democratic Cent. & Exec. Comm. Complaint*]; [Summit Cnty. Democratic Cent. & Exec. Comm.](#), 388 F.3d at 549; Order, [Summit Cnty. Democratic Cent. & Exec. Comm.](#), No. 5:04-cv-2165 (N.D. Ohio Oct. 31, 2004), D.E. 20 [hereinafter *Summit Cnty. Democratic Cent. & Exec. Comm. Injunction*], available at 2004 WL 5550698.

24. Motion, [Summit Cnty. Democratic Cent. & Exec. Comm.](#), No. 5:04-cv-2165 (N.D. Ohio Oct. 28, 2004), D.E. 3; [Summit Cnty. Democratic Cent. & Exec. Comm.](#), 388 F.3d at 549.

in Hamilton County.²⁵ Judge John R. Adams held a telephone conference that day.²⁶ Following the conference, he ordered the parties to refrain from ex parte communications.²⁷ Judge Adams has a strict policy against communications with chambers that do not include all parties.²⁸

Judge Adams and his law clerks worked on the case all weekend.²⁹ On Sunday, Judge Adams granted the intervention motion³⁰ and ordered that “persons appointed as challengers may not be present at the polling place for the sole purpose of challenging the qualifications of other voters.”³¹ Judge Adams wished he had a better record on which to rule, and if he had it to do over again he might have tried to take additional evidence, but the time before the election was very short when he got the case.³² More recently, Judge Adams’s district has adopted more specific protocols for how to handle election cases; Judge Adams stresses how important it is for the public to have confidence that parties in cases concerning sensitive matters do not have opportunities for judge shopping.³³

After Judge Dlott became aware of Judge Adams’s case, she called him so that they could coordinate their efforts with respect to the timing of their rulings for the benefit of efficient appellate review.³⁴ Judge Adams found the coordination helpful.³⁵

On Monday, as in the Southern District, the intervenors filed a notice of appeal³⁶ and sought from both the district court³⁷ and the court of appeals³⁸ an emergency stay of the injunction. Judge Adams denied the stay motion.³⁹

25. Motion, *Summit Cnty. Democratic Cent. & Exec. Comm.*, No. 5:04-cv-2165 (N.D. Ohio Oct. 29, 2004), D.E. 7; *Summit Cnty. Democratic Cent. & Exec. Comm.* Injunction, *supra* note 23, at 4–5.

26. *Summit Cnty. Democratic Cent. & Exec. Comm.* Injunction, *supra* note 23, at 4; Order, *Summit Cnty. Democratic Cent. & Exec. Comm.*, No. 5:04-cv-2165 (N.D. Ohio Oct. 29, 2004) [hereinafter *Summit Cnty. Democratic Cent. & Exec. Comm.* Admonishment Order]; Docket Sheet, *id.* (Oct. 28, 2004).

Tim Reagan interviewed Judge Adams for this report by telephone on August 6, 2012.

27. *Summit Cnty. Democratic Cent. & Exec. Comm.* Admonishment Order, *supra* note 26.

28. Interview with Hon. John R. Adams, Aug. 6, 2012.

29. *Id.*

30. Marginal Order, *Summit Cnty. Democratic Cent. & Exec. Comm.*, No. 5:04-cv-2165 (N.D. Ohio Oct. 31, 2004), D.E. 18; *Summit Cnty. Democratic Cent. & Exec. Comm.* Injunction, *supra* note 23, at 5.

31. *Summit Cnty. Democratic Cent. & Exec. Comm.* Injunction, *supra* note 23, at 15; *Summit Cnty. Democratic Cent. & Exec. Comm. v. Blackwell*, 388 F.3d 547, 549 (6th Cir. 2004) (quoting district court order).

32. Interview with Hon. John R. Adams, Aug. 6, 2012.

33. *Id.*

34. Interview with Hon. Susan J. Dlott and her law clerk Sarah Fairweather, July 30, 2012

35. Interview with Hon. John R. Adams, Aug. 6, 2012

36. Notice of Appeal, *Summit Cnty. Democratic Cent. & Exec. Comm. v. Blackwell*, No. 5:04-cv-2165 (N.D. Ohio Oct. 27, 2004), D.E. 32.

37. Motion, *id.* (Nov. 1, 2004), D.E. 25.

38. Docket Sheet, *Summit Cnty. Democratic Cent. & Exec. Comm. v. Blackwell*, No. 04-4311 (6th Cir. Nov. 1, 2004); *Summit Cnty. Democratic Cent. & Exec. Comm. v. Blackwell*, 388 F.3d 547, 549–50 (6th Cir. 2004).

On Monday, the court of appeals stayed the district court injunctions.⁴⁰ Judge James L. Ryan determined that the plaintiffs did not have standing to bring their cases.⁴¹ Judge John M. Rogers was willing to assume standing; he held that the public interest in fraud-free elections pursuant to established rules weighed against the injunctions.⁴² Judge R. Guy Cole, Jr., dissented, concluding that “the citizens of Ohio have the right to vote without the threat of suppression, intimidation, or chaos sown by partisan political operatives.”⁴³

Appeals filed by the State of Ohio after the election⁴⁴ were dismissed on March 28, 2005, as moot.⁴⁵

On December 22, Judge Adams granted the plaintiffs in his case a voluntary dismissal.⁴⁶

On April 28, Judge Dlott denied⁴⁷ the plaintiffs a preliminary injunction based on a second amended complaint.⁴⁸ On May 25, 2006, Judge Dlott granted⁴⁹ a stipulated dismissal⁵⁰ in light of a 2006 reform of Ohio’s election law, which, among other things, included a voter-identification provision.⁵¹

39. Order, *Summit Cnty. Democratic Cent. & Exec. Comm.*, No. 5:04-cv-2165 (N.D. Ohio Nov. 1, 2004), D.E. 26.

40. *Summit Cnty. Democratic Cent. & Exec. Comm.*, 388 F.3d 547.

41. *Id.* at 551–52 (concurring).

42. *Id.* at 551 (opinion for the court).

43. *Id.* at 552–55 (dissenting).

44. See Notice of Appeal, *Summit Cnty. Democratic Cent. & Exec. Comm.*, No. 5:04-cv-2165 (N.D. Ohio Nov. 30, 2004), D.E. 32; Notice of Appeal, *Spencer v. Blackwell*, No. 1:04-cv-738 (S.D. Ohio Nov. 30, 2004), D.E. 35.

45. Docket Sheet, *Spencer v. Blackwell*, No. 05-3006 (6th Cir. Jan. 5, 2005); Docket Sheet, *Summit Cnty. Democratic Cent. & Exec. Comm. v. Blackwell*, No. 05-3005 (6th Cir. Jan. 5, 2005).

46. Order, *Summit Cnty. Democratic Cent. & Exec. Comm.*, No. 5:04-cv-2165 (N.D. Ohio Dec. 22, 2005), D.E. 48.

47. Order, *Spencer*, No. 1:04-cv-738 (S.D. Ohio Apr. 28, 2005), D.E. 64.

48. *Second Amended Complaint*, *id.* (Apr. 14, 2005), D.E. 53.

49. Order, *id.* (May 25, 2006), D.E. 75.

50. *Stipulation*, *id.* (May 23, 2006), D.E. 74.

51. House Bill 3; see Laura A. Bischoff, *Taft Signs Election Reform Measure*, Dayton Daily News, Feb. 1, 2006, at B1; Reginald Fields, *Voter ID Bill Gets Taft’s Signature*, Cleveland Plain Dealer, Feb. 1, 2006, at B3; Carrie Spencer Ghose, *Taft Signs Voting Changes Into Law*, Cincinnati Post, Feb. 1, 2006, at A8; Jim Siegel, *Coming This Fall: Voters Must Show ID at Polls*, Columbus Dispatch, Feb. 1, 2006, at 1A.