

Long Lines at the Polls

Ohio Democratic Party v. Blackwell (*Algenon L. Marbley, S.D. Ohio 2:04-cv-1055*)

At 5:54 p.m. on election day 2004, Ohio's Democratic Party filed a federal action to keep polls open longer in two counties, alleging that an insufficient number of voting machines was resulting in long lines, which were discouraging voters. The court ordered the polling places to offer voters alternative methods of voting.

Subject: Poll hours. *Topics:* Polling hours; voting technology; provisional ballots; absentee ballots.

For the 2004 general election, there were long lines at the polls in the Ohio counties of Franklin, which includes Columbus, and Knox, which is nearby; at 5:54 p.m., the Ohio Democratic Party filed a federal action in the Southern District of Ohio's Columbus courthouse claiming that an insufficient number of voting machines was provided and seeking a temporary restraining order providing alternative voting methods, such as paper ballots, for the rest of the evening to speed up the process.¹ Ohio's secretary of state and the two county boards of elections were named defendants.²

The district's federal judges had developed a tradition of staying late on election day to handle emergency cases, should they arise.³ Judge Algenon L. Marbley held an evidentiary hearing at 6:45 p.m.⁴ In the interest of time, Judge Marbley provisionally granted oral motions to intervene as defendants by the Ohio Republican Party⁵ and the State of Ohio.⁶ The defendants argued that no alternative voting mechanism was feasible.⁷ Both absentee voters and provisional voters used punch cards, and that process, they claimed, would not be faster than the voting machines.⁸ Moreover, anyone in line by the closing time of 7:30 p.m. would be permitted to vote.⁹ Judge Algenon con-

1. Complaint, *Ohio Democratic Party v. Blackwell*, No. 2:04-cv-1055 (S.D. Ohio Nov. 2, 2004), D.E. 1; Temporary-Restraining-Order Motion, *id.* (Nov. 2, 2004), D.E. 2. *See generally* Ari Berman, Give Us the Ballot 220–21 (2015).

2. Complaint, *supra* note 1.

3. Interview with Hon. Algenon L. Marbley, July 11, 2012.

Tim Reagan interviewed Judge Marbley for this report by telephone.

4. Minutes, *Ohio Democratic Party*, No. 2:04-cv-1055 (S.D. Ohio Nov. 2, 2004), D.E. 3; Transcript, *id.* (Nov. 2, 2004, filed Nov. 3, 2004), D.E. 11.

5. Transcript, *supra* note 4, at 4; Intervention Motion, *Ohio Democratic Party*, No. 2:04-cv-1055 (S.D. Ohio Nov. 3, 2004), D.E. 8.

On August 26, 2005, Judge Marbley formally granted intervention to the Ohio Republican Party. Opinion, *Ohio Democratic Party*, No. 2:04-cv-1055 (S.D. Ohio Aug. 26, 2005), D.E. 28 (also denying a motion to intervene by the Alliance for Democracy, which sought to expand the case to a challenge of the legitimacy of President Bush's reelection).

6. Transcript, *supra* note 4, at 4–5.

7. *Id.* at 9–15.

8. *Id.* at 9, 12, 15.

9. Ohio Rev. Code § 35.32(A); *see* Transcript, *supra* note 4, at 10, 26.

cluded the hearing at 7:35 p.m. with a temporary restraining order requiring “the board to provide, whether they be absentee ballots, whether they be provisional ballots, or any other mechanism necessary to provide these people with an adequate opportunity to vote.”¹⁰ Judge Marbley saw protection of the elective franchise as one of the most important rights he could protect as a judge.¹¹

Apparently the boards did what they said they could not do; they supplemented voting machines with paper ballots.¹² At 11:00 p.m., the court of appeals, with one judge dissenting, denied a stay of Judge Marbley’s order.¹³ On August 26, 2005, Judge Marbley granted the plaintiff a voluntary dismissal.¹⁴

10. Transcript, *supra* note 4, at 31–32; see Temporary Restraining Order, *Ohio Democratic Party*, No. 2:04-cv-1055 (S.D. Ohio Nov. 2, 2004), D.E. 4; see also T.C. Brown, *Judge Says Long Lines Can Prevent Voting*, *Cleveland Plain Dealer*, Nov. 4, 2004, at B5; Daniel P. Tokaji, *Early Returns on Election Reform: Discretion, Disenfranchisement, and the Help America Vote Act*, 73 *Geo. Wash. L. Rev.* 1206, 1238–39 (2005).

11. Interview with Hon. Algenon L. Marbley, July 11, 2012.

12. See Lisa A. Abraham, *Ohioans Suffer Through Long Lines, Leave Lawsuits to Others*, *Akron Beacon J.*, Nov. 3, 2004, at A1.

13. Order, *Ohio Democratic Party v. Blackwell*, Nos. 04-4314 and 04-4315 (6th Cir. Nov. 2, 2004), *filed as* Order of USCA, *Ohio Democratic Party*, No. 2:04-cv-1055 (S.D. Ohio Nov. 2, 2004), D.E. 7; see Brown, *supra* note 10; see also Abraham, *supra* note 12 (“In Franklin County, some people in line by 7:30 p.m. were still voting at 11:30 p.m. In Knox County, some were still voting at 9:45.”).

14. Order, *Ohio Democratic Party*, No. 2:04-cv-1055 (S.D. Ohio Aug. 26, 2005), D.E. 29.