

Extra Proof of Citizenship for Naturalized Citizens

Boustani v. Blackwell

(Christopher A. Boyko, N.D. Ohio 1:06-cv-2065)

The August 2006 suit challenged a new law that required naturalized citizens whose citizenship is challenged at the polls to present their naturalization certificates before they can vote. On the day before an injunction hearing, the secretary of state conceded that the law was constitutionally questionable, but he said that there was not enough time for the legislature to cure the law before the upcoming election. The judge issued an injunction forbidding naturalized citizens from being required to provide additional documentation or information before voting. The plaintiffs recovered \$80,000 in attorney fees.

Subject: Voter identification. *Topics:* Citizenship; registration challenges; voter identification; attorney fees.

On August 29, 2006, eighteen naturalized citizens and six organizations filed in the Northern District of Ohio a constitutional challenge to a new Ohio law that required naturalized citizens whose citizenship is challenged at the polls to present their naturalization certificates before they can vote.¹

The court assigned the case to Judge Christopher A. Boyko.² On the day before an October 4 hearing, Ohio's secretary of state filed a brief stating that he had concerns about the new law and he would not oppose an injunction.³ The secretary said that there was not time for the legislature to cure a constitutional defect.⁴ The secretary's concession greatly facilitated the court's accommodation of the case's time pressure.⁵

After the hearing, Judge Boyko issued an injunction forbidding naturalized citizens from being required to provide additional documentation or information before voting.⁶ Three weeks later, Judge Boyko issued a longer

1. Complaint, *Boustani v. Blackwell*, No. 1:06-cv-2065 (N.D. Ohio Aug. 29, 2006), D.E. 1; *Boustani v. Blackwell*, 460 F. Supp. 2d 822, 824 (N.D. Ohio 2006); see Ohio Rev. Code § 3505.20(A); see also Michael O'Malley, *Foreign-Born File Election Suit*, Cleveland Plain Dealer, Aug. 30, 2006, at B1; *Suit Seeks to End Naturalized ID Provision*, Cincinnati Post, Aug. 30, 2006, at A2.

2. Docket Sheet, *Boustani*, No. 1:06-cv-2065 (N.D. Ohio Aug. 29, 2006).

Tim Reagan interviewed Judge Boyko for this report by telephone on July 19, 2012.

3. Brief, *Boustani*, No. 1:06-cv-2065 (N.D. Ohio Oct. 3, 2006), D.E. 17; see Mark Niquette, *Voter-ID Case Remains a Mess as Election Nears*, Columbus Dispatch, Nov. 1, 2006, at 1A.

4. Brief, *supra* note 3.

5. Interview with Hon. Christopher A. Boyko, July 19, 2012.

6. *Boustani*, 460 F. Supp. 2d at 824; see Edward B. Foley, *The Future of Bush v. Gore?*, 68 Ohio St. L.J. 925, 993 (2007) ("an injunction that was not appealed by the state"); *Judge Rejects Voter Rule*, N.Y. Times, Oct. 5, 2006, at A23; Joe Milicia, *Judge Kills Citizenship Proof*

opinion clarifying that he applied strict scrutiny to the statute⁷ and determined, “It is shameful to imagine that this statute is an example of how the State of Ohio says ‘thank you’ to those who helped build this country.”⁸

Judge Boyko referred the question of attorney fees to Magistrate Judge Nancy A. Vecchiarelli.⁹ After five docketed proceedings,¹⁰ the parties agreed on March 12, 2007, to a fee award of \$80,000.¹¹

Rule, Cincinnati Post, Oct. 5, 2006, at A3; Mike Tobin, *U.S. Court Blocks Part of Voting Law*, Cleveland Plain Dealer, Oct. 5, 2006, at A1.

7. *Boustani*, 460 F. Supp. 2d at 825–27.

8. *Id.* at 827.

9. Order, *Boustani v. Blackwell*, No. 1:06-cv-2065 (N.D. Ohio Dec. 20, 2006), D.E. 25.

Judge Vecchiarelli retired on July 22, 2016. Judicial Milestones, www.uscourts.gov/judicial-milestones/nancy-vecchiarelli.

10. Minutes, *Boustani*, No. 1:06-cv-2065 (N.D. Ohio Jan. 4 and Feb. 6, 7, 9, and 14, 2007), D.E. 28, 33, 35, 36, 38.

11. Order, *id.* (Mar. 15, 2007), D.E. 41.