

Keeping Polls Open Late Because They Opened Late

*Ohio Democratic Party v. Cuyahoga County Board
of Elections (Dan Aaron Polster, N.D. Ohio 1:06-cv-2692)*

Because a county was using new voting equipment, several polls opened late, so one of the political parties filed a federal action to delay poll closings as well. The judge assigned to the case could not be reached, so the motion for a temporary restraining order was heard by the day's duty judge. The duty judge determined that the problems were localized, so he ordered late closing for sixteen precincts.

Subject: Poll hours. *Topics:* Polling hours; voting technology; case assignment; intervention; news media.

On the day of the 2006 gubernatorial election, Ohio's Democratic Party filed a federal action in the Northern District of Ohio to keep the polls in Cuyahoga County, the county that includes Cleveland, open until 9:00 p.m., an extra hour and a half, because many polling places opened late, sometimes approximately one hour after 6:30 a.m.¹ The party filed with its complaint a motion for a temporary restraining order and a preliminary injunction.² The county opposed the motion.³ Ohio's secretary of state moved to intervene⁴ in opposition to the motion.⁵

The court randomly assigned the case to Judge Lesley Wells,⁶ but she could not be reached.⁷ Judge Dan Aaron Polster was the duty judge that day, so he heard the motion in chambers.⁸ Members of the news media asked to attend the hearing, but Judge Polster denied the request because it was after hours.⁹ By the time he issued his order that day, he realized his error and apologized to the media downstairs when he delivered a copy of his order to them.¹⁰

1. Complaint, *Ohio Democratic Party v. Cuyahoga Cty. Bd. of Elections*, No. 1:06-cv-2692 (N.D. Ohio Nov. 7, 2006), D.E. 1; see Barbara Carmen & Dean Narciso, *Voting Hours Extended After Legal Flap*, Columbus Dispatch, Nov. 8, 2006, at 1A.

2. Motion, *Ohio Democratic Party*, No. 1:06-cv-2692 (N.D. Ohio Nov. 7, 2006), D.E. 2.

3. County Opposition, *id.* (Nov. 7, 2006), D.E. 3.

4. Intervention Motion, *id.* (Nov. 7, 2006), D.E. 5.

5. Secretary of State Opposition, *id.* (Nov. 7, 2006), D.E. 6.

Judge Wells retired on October 2, 2015. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

6. Docket Sheet, *Ohio Democratic Party*, No. 1:06-cv-2692 (N.D. Ohio Nov. 7, 2006).

7. Interview with Hon. Dan Aaron Polster, July 23, 2012.

Tim Reagan interviewed Judge Polster for this report by telephone.

8. *Id.*

9. *Id.*

10. *Id.*

The voting equipment was new, and that resulted in difficulties getting the polls operational on time that morning.¹¹ Presentations by the parties indicated that the problems were localized to the east side of town, where voters often had to wait in line more than an hour.¹²

Judge Polster granted the plaintiffs immediate relief.¹³ “[T]he Court informed the parties that having the votes cast according to voters’ constitutional rights is a more compelling need than an immediate determination of the election winners.”¹⁴ At 7:25 p.m., Judge Polster ordered sixteen polling places—all on the east side of Cleveland and in east-side suburbs—to stay open until 9:00 p.m.¹⁵ Judge Polster was pleased to hear the announcement of the late closings on the radio that evening.¹⁶

The secretary appealed the order that same day and moved to stay it.¹⁷ Judge Polster had not granted the secretary’s motion to intervene, because the judge was not sure that the secretary had standing, but the judge permitted the secretary’s attorney to attend the hearing; deciding when the polls should close was a higher priority than deciding the secretary’s intervention.¹⁸

The court of appeals ordered segregated as provisional all ballots cast by voters who arrived after the usual closing time.¹⁹

The secretary ordered all counties to not report results until 9:00 p.m.²⁰ The late voting contributed to a later-than-usual reporting of election results by the news media.²¹

On January 16, 2007, Judge Wells approved a voluntary dismissal.²²

11. *Id.*

12. *Id.*

13. Temporary Restraining Order, *Ohio Democratic Party v. Cuyahoga Cty. Bd. of Elections*, No. 1:06-cv-2692 (N.D. Ohio Nov. 7, 2006), D.E. 8; see Carmen & Narciso, *supra* note 1; Edward B. Foley, *The Future of Bush v. Gore?*, 68 *Ohio St. L.J.* 925, 994 (2007).

14. Temporary Restraining Order, *supra* note 13, at 1–2.

15. *Id.* at 2–3 (filed at 7:25 p.m.); see Amy Goldstein & Alan Cooperman, *Courts Weigh In After Voting Difficulties Emerge at the Polls*, *Wash. Post*, Nov. 8, 2006, at A35; Joan Mazzolini, *Election Day Generally Goes Smoothly*, *Cleveland Plain Dealer*, Nov. 8, 2006, at S2; William Neuman, *Ohio Democrats Win Races for Senate and Governor*, *N.Y. Times*, Nov. 8, 2006, at P10.

16. Interview with Hon. Dan Aaron Polster, July 23, 2012.

17. Docket Sheet, *Ohio Democratic Party v. Cuyahoga Cty. Bd. of Elections*, No. 06-4452 (6th Cir. Nov. 7, 2006) [hereinafter 6th Cir. Docket Sheet].

18. Interview with Hon. Dan Aaron Polster, July 23, 2012.

19. 6th Cir. Docket Sheet, *supra* note 17; see Foley, *supra* note 13, at 994.

20. See Carmen & Narciso, *supra* note 1.

21. See Molly Willow, *TV Election Coverage Grows Up, Grows Dull*, *Columbus Dispatch*, Nov. 8, 2006, at 1B.

22. Order, *Ohio Democratic Party v. Cuyahoga Cty. Bd. of Elections*, No. 1:06-cv-2692 (N.D. Ohio Jan. 16, 2007), D.E. 13.