

Keeping Polls Open Because They Were Moved with Inadequate Notice

Idaho State Democratic Party v. Rich
(B. Lynn Winmill, D. Idaho 1:16-cv-491)

Five polling places in one county were moved to achieve compliance with the Americans with Disabilities Act. On election day, a political party filed a federal complaint seeking two hours of additional voting at the moved polls, alleging that voters had received inadequate notice of the moves. Stepping away from a trial, the district judge held a telephonic hearing at 4:07 p.m. and ruled approximately one hour later that the five polling places should be kept open an additional hour, which the judge determined would be enough time for voters who showed up at the end of voting hours at the wrong locations. Among the judge's findings was a conclusion that the plaintiff party had not cherry-picked polling locations.

Subject: Poll hours. *Topics:* Polling hours; poll locations; provisional ballots; ballot segregation; Help America Vote Act (HAVA).

On the day of the 2008 general election, Idaho's Democratic Party filed a federal complaint in the District of Idaho against Idaho's secretary of state and Ada County's clerk seeking a two-hour extension of voting hours at five polling places in the county, alleging that the polling places were moved without sufficient notice, creating voter confusion.¹ With its complaint, the party filed a motion for a temporary restraining order and emergency injunctive relief.²

Stepping away from a trial, Judge B. Lynn Winmill held a telephonic hearing at 4:07 p.m.³

According to the plaintiff's attorney,

So the gist of the situation is this: [O]ver the summer, Ada County received notice that some of the polling locations were not [compliant with the Americans with Disabilities Act]. Rather than acting immediately on the situation, the County took no action until right before the election, which is happening today, to send out notices that the five polling locations had been moved.⁴

The attorney for the county clerk responded, "We actually went above and beyond"⁵

1. Complaint, *Idaho State Democratic Party v. Rich*, No. 1:16-cv-491 (D. Idaho Nov. 8, 2016), D.E. 1.

2. Motion, *id.* (Nov. 8, 2016), D.E. 2.

3. Transcript at 1, 4, 9, *id.* (Nov. 8, 2016, filed Dec. 19, 2016), D.E. 7; Minutes, *id.* (Nov. 8, 2016), D.E. 5; *see* Transcript, *supra*, at 6, 8 (Judge Winmill's noting the unfortunate difficulty of a judge's ability to interject questions during a telephonic hearing).

4. Transcript, *supra* note 3, at 5.

5. *Id.* at 6.

At the hearing, Judge Winmill discussed with the parties whether ballots cast during the extension of polling hours would be segregated as provisional ballots or immediately treated as valid ballots and commingled with the ballots cast earlier.⁶ The plaintiff was originally content to have voters casting ballots during the extension cast provisional ballots.⁷ The county clerk responded that “Idaho does not have provisional ballots because we’re a same-day registration state.”⁸ So the plaintiff replied, “Now, if that is something that’s unavailable here, we are happy to amend our complaint to allow for the voters that are casting ballots between 8:00 and 10:00 p.m. to have their votes fully counted as they should be.”⁹

Following a recess from 4:54 p.m. to 5:05 p.m., Judge Winmill ordered the five polling locations kept open an additional hour, from 8:00 p.m. to 9:00 p.m., and ordered notices posted at the original locations by 7:00 p.m.¹⁰

I think an additional one hour would be sufficient to capture those individuals who intended on voting after work, get to the . . . polls too late to find out that the polling place has changed and then change the location and travel to the new location.

...

As I indicated, if the request had been to segregate the ballots for those who cast votes after 8:00 and then have an individual hearing on that to determine whether or not their right to vote was, in fact, [compromised], I would have kept the polling place open until 10:00.¹¹

Among Judge Winmill’s findings was that the plaintiff had not cherry-picked polling locations; “they have selected all of the voting locations where [the voting location was changed late in the game].”¹²

Judge Winmill issued a stipulated dismissal of the action on March 31, 2017.¹³

6. *Id.* at 10–11.

7. Complaint, *supra* note 1, at 6–8; Transcript, *supra* note 3, at 10.

8. Transcript, *supra* note 3, at 10.

9. *Id.* at 11.

10. Order, *Idaho State Democratic Party v. Rich*, No. 1:16-cv-491 (D. Idaho Nov. 8, 2016), D.E. 6; Transcript, *supra* note 3, at 11–13; Minutes, *supra* note 3; see Sven Berg, *Judge Rules on Idaho Democrats’ Lawsuit to Extend Voting Hours at 5 Precincts*, Idaho Statesman, Nov. 8, 2016.

11. Transcript, *supra* note 3, at 12.

12. *Id.* at 11.

13. Order, *Idaho State Democratic Party*, No. 1:16-cv-491 (D. Idaho Mar. 31, 2017), D.E. 10; see Stipulation, *id.* (Mar. 30, 2017), D.E. 9.