

Overly Burdensome Voter-Registration Rules

Project Vote v. Blackwell

(Kathleen M. O'Malley, N.D. Ohio 1:06-cv-1628)

In July 2006, public-interest organizations challenged new voter-registration laws as overly burdensome, and the court enjoined the new laws. The court awarded the plaintiffs \$321,485.28 in attorney fees and costs.

Subject: Registration procedures. *Topics:* Registration procedures; attorney fees.

On July 6, 2006, six public-interest organizations and three individuals filed a federal complaint in the Northern District of Ohio, challenging recently enacted voter-registration laws and interpretations of those laws by Ohio's secretary of state.¹ The core allegation was that the new registration rules would "severely impact third-party voter-registration efforts in Ohio and hinder low-income, minority, and disabled citizens from registering to vote."² One week later, the plaintiffs filed a motion for a preliminary injunction.³

The court assigned the case to Judge Kathleen M. O'Malley.⁴ She learned that for injunction cases involving elections, it was usually very important for boards of elections to participate.⁵ They are the experts on how elections are conducted, and they can provide important feasibility information about possible remedies.⁶ The parties agreed that the boards should be included, and Judge O'Malley gave the boards thirty days to prepare for their participation.⁷ On August 2, she set a case-management conference for August 17.⁸ At the conference, she set a preliminary-injunction hearing for September 1.⁹

After the hearing, Judge O'Malley orally issued a preliminary injunction.¹⁰ When time was of the essence, she would sometimes rule from the bench and later provide a detailed written opinion to facilitate possible ap-

1. Complaint, *Project Vote v. Blackwell*, No. 1:06-cv-1628 (N.D. Ohio July 6, 2006), D.E. 1; *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 696–97 (N.D. Ohio 2006).

2. *Project Vote*, 455 F. Supp. 2d at 697.

3. Preliminary-Injunction Motion, *Project Vote*, No. 1:06-cv-1628 (N.D. Ohio July 13, 2006), D.E. 3; *Project Vote*, 455 F. Supp. 2d at 697.

4. Docket Sheet, *Project Vote*, No. 1:06-cv-1628 (N.D. Ohio July 6, 2006).

Tim Reagan interviewed Judge O'Malley for this report by telephone on July 19, 2012. Judge O'Malley was elevated to a seat on the Court of Appeals for the Federal Circuit on December 27, 2010, and she retired on March 11, 2022. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

5. Interview with Hon. Kathleen M. O'Malley, July 19, 2012.

6. *Id.*

7. *Id.*

8. Order, *Project Vote*, No. 1:06-cv-1628 (N.D. Ohio Aug. 2, 2006), D.E. 14; *see Project Vote*, 455 F. Supp. 2d at 697.

9. Order, *Project Vote*, No. 1:06-cv-1628 (N.D. Ohio Aug. 17, 2006), D.E. 22; *see Project Vote*, 455 F. Supp. 2d at 697.

10. *Project Vote*, 455 F. Supp. 2d at 697–98.

pellate review.¹¹ The written opinion came on September 8.¹² In essence, she found that extra burdens placed on persons who were compensated for registering voters were not sufficiently justified, and a requirement that persons registering another person personally submit the registration card to an election office improperly chilled voter registration.¹³ Ohio had backed away from its defense of the most problematic provisions and elected not to appeal the injunction against the others.¹⁴

On February 11, 2008, after additional briefing, Judge O'Malley converted her preliminary injunction to summary judgment.¹⁵ On March 31, 2009, she awarded the plaintiffs \$321,485.28 in attorney fees and costs.¹⁶

11. Interview with Hon. Kathleen M. O'Malley, July 19, 2012.

12. *Project Vote*, 455 F. Supp. 2d 694; see Daniel P. Tokaji, *Voter Registration and Election Reform*, 17 Wm. & Mary Bill Rts. J. 453, 487–88 (2008).

13. *Project Vote*, 455 F. Supp. 2d at 702–07; see Tokaji, *supra* note 12, at 487–88.

14. Interview with Hon. Kathleen M. O'Malley, July 19, 2012.

15. Opinion, *Project Vote v. Blackwell*, No. 1:06-cv-1628 (N.D. Ohio Feb. 11, 2008), D.E. 59, 2008 WL 397585 (noting that the parties provided very light additional briefing).

16. Opinion, *id.* (Mar. 31, 2009), D.E. 69, 2009 WL 917737.