

Identification Numbers and Voter Registration

Lucas County Democratic Party v. Blackwell

(James G. Carr, N.D. Ohio 3:04-cv-7646)

Eighteen days before a general election, a suit alleged that a directive by Ohio's secretary of state not to process voter-registration forms that left blank the box for a driver's license or Social Security number violated the Help America Vote Act and the National Voter Registration Act. The court denied immediate relief, because there was not enough time to develop an evidentiary record.

Subject: Registration procedures. *Topics:* Registration procedures; Help America Vote Act (HAVA); National Voter Registration Act; laches.

On October 15, 2004, the Democratic Parties of Ohio and Lucas County, the county that includes Toledo, filed a federal challenge in the Toledo courthouse of the Northern District of Ohio to instructions provided by Ohio's secretary of state to county boards of elections, alleging that they violated the National Voter Registration Act¹ and the Help America Vote Act (HAVA)² with respect to a requirement for provision of a driver's license number or the last four digits of a Social Security number when registering to vote at state offices.³ The plaintiffs filed with their complaint a motion for a preliminary injunction.⁴

The court originally assigned the case to Judge David A. Katz, but Judge Katz and Judge James G. Carr agreed, five days after the action was filed, that it was related to an earlier filed case before Judge Carr concerning application of HAVA to provisional ballots.⁵

1. Pub. L. No. 103-31, 107 Stat. 77 (1993), *as amended*, 52 U.S.C. §§ 20501–20511. *See generally* Robert Timothy Reagan, *Motor Voter: The National Voter Registration Act* (Federal Judicial Center 2014).

2. Pub. L. No. 107-252, 116 Stat. 1666 (2002), *as amended*, 52 U.S.C. §§ 20901–21145. *See generally* Marie Leary & Robert Timothy Reagan, *The Help America Vote Act* (Federal Judicial Center 2012); Symposium, *HAVA @ 10*, 12 *Election L.J.* 111 (2013).

3. Complaint, *Lucas Cty. Democratic Party v. Blackwell*, No. 3:04-cv-7646 (N.D. Ohio Oct. 15, 2004), D.E. 1; *see* Tom Beyerlein, *Ohio Democrats File Federal Lawsuit Against Blackwell*, *Dayton Daily News*, Oct. 16, 2004, at B3; Edward B. Foley, *The Promise and Problems of Provisional Voting*, 73 *Geo. Wash. L. Rev.* 1193, 1197 (2005); Sandy Theis, *Democrats' Suit: Blackwell Trying to Stymie New Voters*, *Cleveland Plain Dealer*, Oct. 16, 2004, at B4.

4. Preliminary-Injunction Motion, *Lucas Cty. Democratic Party*, No. 3:04-cv-7646 (N.D. Ohio Oct. 15, 2004), D.E. 2.

5. Order, *id.* (Oct. 20, 2004), D.E. 4; *see* Sandusky Cty. Democratic Party v. Blackwell, 339 F. Supp. 2d 975 (N.D. Ohio), *aff'd in part and rev'd in part*, 387 F.3d 565 (6th Cir. 2004).

Tim Reagan interviewed Judge Carr for this report by telephone on June 18, 2012. Judge Katz died on July 26, 2016. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

On the next day, relying on the filings alone, Judge Carr issued a sua sponte denial of the motion for a preliminary injunction.⁶

This case involves box 10 on Ohio's voter registration form when a prospective voter registers in person. Box 10 reads "Ohio driver's license No. OR last 4 digits of Social Security No. (required)." . . .

In December, 2003, defendant issued a memorandum to all Ohio County Board of Elections informing them how to process voter registration forms. In his memorandum, defendant informed the Boards that, if a person who registered in person left box 10 blank, the Boards were not to process the registration forms. If, however, box 10 was completed with an answer of "none," the Boards were to process the registrations.⁷

The plaintiffs wanted Ohio to process registrations with a blank box 10.⁸

Judge Carr refused the plaintiffs a preliminary injunction because "there is not enough time between now and the election to develop the evidentiary record necessary to determine if the plaintiffs are likely to succeed on the merits of their claim" and the plaintiffs did not explain why they waited until so long after the secretary issued his instructions and so close to the 2004 election to file the suit.⁹

On December 20, Judge Carr held a case-management conference and accepted the plaintiffs' voluntary dismissal of the case.¹⁰

6. *Lucas Cty. Democratic Party v. Blackwell*, 341 F. Supp. 2d 861 (N.D. Ohio 2004); Interview with Hon. James G. Carr, June 18, 2012.

7. *Lucas Cty. Democratic Party*, 341 F. Supp. 2d at 862–63.

8. *Id.* at 863.

9. *Id.*; see Richard L. Hasen, *The Voting Wars* 122 (2012).

10. Order, *Lucas Cty. Democratic Party*, No. 3:04-cv-7646 (N.D. Ohio Dec. 30, 2004), D.E. 9.