

## Keeping Polls Open Longer Because of Weather

### *Obama for America v. Cuyahoga County Board of Elections* (Solomon Oliver, Jr., N.D. Ohio 1:08-cv-562)

On the evening of a presidential primary election, bad weather was interfering with both ballots and voters getting to the polls. One of the candidates filed a late motion to keep the polls open. Because of technical difficulties, the clerk's office was unable to reach the assigned judge, so the day's duty judge held a telephonic proceeding on the temporary-restraining-order motion. He decided not to provide relief with respect to polling places in the state's other district, but he did order some polls in his district to remain open late. He ordered ballots cast by voters arriving after the regular closing time to be segregated. The news media reported that polls had already closed by the time they got the judge's order and did not reopen.

*Subject:* Poll hours. *Topics:* Polling hours; case assignment; ballot segregation.

Ohio's 2008 presidential primary election was held on March 4, and the weather in Ohio that day was not good.<sup>1</sup> In addition, many locations in the state were experiencing shortages of ballots.<sup>2</sup> Barack Obama filed a federal action in the Northern District of Ohio to keep the polls open until 9:00 p.m., an extra hour and a half, in three counties: Franklin, which includes Columbus; Cuyahoga, which includes Cleveland; and Clermont, a county slightly east of Cincinnati.<sup>3</sup>

The court assigned the case to Judge Patricia A. Gaughan.<sup>4</sup> By the time the plaintiffs filed their action, however, Judge Gaughan had gone home.<sup>5</sup> The clerk's office tried to reach her, but it either had or dialed an incorrect telephone number.<sup>6</sup>

Judge Solomon Oliver, Jr., was on duty that day for miscellaneous matters, and he was still in the courthouse that evening when the case was filed.<sup>7</sup> He held a teleconference proceeding with the parties.<sup>8</sup> The Obama campaign withdrew its claim with respect to Clermont County, and Judge Oliver de-

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1. Temporary Restraining Order, *Obama for Am. v. Cuyahoga Cty. Bd. of Elections*, No. 1:08-cv-562 (N.D. Ohio Mar. 4, 2008), D.E. 5 (filed at 8:07 p.m.); see Complaint at 2–3, *id.* (Mar. 4, 2008), D.E. 1; see also Joe Guillen, *Obama Campaign Outcry Extends Precinct Hours*, *Cleveland Plain Dealer*, Mar. 5, 2008, at A1; Mark Niquette, *Weather, Suit Slow Cuyahoga County Results*, *Columbus Dispatch*, Mar. 5, 2008, at 1A.

2. Temporary Restraining Order, *supra* note 1; see Complaint, *supra* note 1, at 1; see also Niquette, *supra* note 1.

3. Complaint, *supra* note 1.

4. Docket Sheet, *Obama for Am.*, No. 1:08-cv-562 (N.D. Ohio Mar. 4, 2008).

5. Interview with Hon. Solomon Oliver, Jr., July 27, 2012.

Tim Reagan interviewed Judge Oliver for this report by telephone.

6. *Id.*

7. *Id.*

8. Docket Sheet, *supra* note 4.

nied the claim with respect to Franklin County.<sup>9</sup> Both Clermont County and Franklin County are in the other district.<sup>10</sup> Judge Oliver granted the requested relief with respect to some polling places in Cuyahoga County, based on representations made at the teleconference.<sup>11</sup> All votes received by persons arriving after the usual closing time of 7:30 p.m. would be segregated as provisional ballots.<sup>12</sup> It was reported that some polls covered by the order had already closed when they received the order, and some of them did not reopen.<sup>13</sup>

Judge Gaughan formally dismissed the action on March 24 on the plaintiff's representation that no live claim remained.<sup>14</sup>

As a result of the court's experiences with this case, it sharpened its procedures for being available on election days.<sup>15</sup> The clerk's office takes greater care to make sure it has accurate contact information for the judges.<sup>16</sup> The clerk's office stays open late to accept filings, and a court reporter is on duty.<sup>17</sup>

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9. Temporary Restraining Order, *supra* note 1.

10. Interview with Hon. Solomon Oliver, Jr., July 27, 2012.

11. Temporary Restraining Order, *supra* note 1 (listing twenty-one polling places); Interview with Hon. Solomon Oliver, Jr., July 27, 2012; *see* Guillen, *supra* note 1 (reporting that the order applied to twenty precincts); Niquette, *supra* note 1 (reporting that the order applied to "14 of the 576 Cuyahoga County polling locations").

12. Temporary Restraining Order, *supra* note 1.

13. Guillen, *supra* note 1; Niquette, *supra* note 1.

14. Minute Order, *Obama for Am. v. Cuyahoga Cty. Bd. of Elections*, No. 1:08-cv-562 (N.D. Ohio Mar. 4, 2008), D.E. 15.

15. Interview with Hon. Solomon Oliver, Jr., July 27, 2012.

16. *Id.*

17. *Id.*