News Media Access to Polls in Ohio

ABC v. Blackwell (Michael H. Watson, S.D. Ohio 1:04-cv-750) and Beacon Journal Publishing Company v. Blackwell (Paul R. Matia, N.D. Ohio 5:04-cv-2178)

On the morning before the 2004 general election, news media sought federal-court orders granting them access to polls in Ohio. Separate lawsuits were filed in the Southern District of Ohio and the Northern District of Ohio. The Southern District action challenged a directive by Ohio's secretary of state that exit polling not be conducted within one hundred feet of a polling place. Late at night on the day the case was filed, the judge granted the media injunctive relief against the directive. In the Northern District, news media sought access to the polls for reporters and photographers. The second district court denied the media relief, but the court of appeals vacated that decision and granted the media injunctive relief a few hours before the polls closed.

Subject: Polling-place activities. *Topics:* Exit polls; news media.

On the day before the 2004 general election, federal complaints were filed in both the Southern District of Ohio and the Northern District of Ohio by news media seeking access to polling places for news reporting.

In the Southern District's Cincinnati courthouse, a complaint and a motion for a temporary restraining order challenged the constitutionality of an oral directive by Ohio's secretary of state that exit polling not be conducted within one hundred feet of a polling place.[1]

The court assigned the case to Judge Michael H. Watson,[2] who had joined the bench in September.[3] His primary chambers were in Columbus, but most of his cases were Cincinnati cases during his first few years on the bench.[4] Judge Watson held an informal status conference at 11:00 a.m. on the day of filing.[5] The motion was heard that evening at 6:40 p.m.[6] Late at night

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1. Temporary-Restraining-Order Motion, ABC, Inc. v. Blackwell, No. 1:04-cv-750 (S.D. Ohio Nov. 1, 2004), D.E. 4; Complaint, *id.* (Nov. 1, 2004), D.E. 1; ABC, Inc. v. Blackwell, 479 F. Supp. 2d 719, 721–26 (S.D. Ohio 2006); Temporary Restraining Order at 1–3, *ABC, Inc.*, No. 1:04-cv-750 (S.D. Ohio Nov. 1, 2004), D.E. 9 [hereinafter *ABC, Inc.* Temporary Restraining Order]; *see Blackwell Sued by News Groups on Exit Polls*, Cincinnati Enquirer, Nov. 2, 2004, at A9; *Media Sue Blackwell Over Exit Poll Limits*, Cincinnati Post, Nov. 2, 2004, at A4; Julie Wallace, *Paper Denied Access at Polls*, Akron Beacon J., Nov. 2, 2004, at B1.

2. Docket Sheet, *ABC, Inc.*, No. 1:04-cv-750 (S.D. Ohio Nov. 1, 2004).

Tim Reagan interviewed Judge Watson for this report by telephone on June 7, 2012.

3. Federal Judicial Center Biographical Directory of Article III Federal Judges [hereinafter FJC Biographical Directory], www.fjc.gov/history/ judges.

4. Interview with Hon. Michael H. Watson, June 7, 2012.

5. Civil Minutes, *ABC, Inc.*, No. 1:04-cv-750 (S.D. Ohio Nov. 1, 2004), D.E. 7.

6. Transcript, *id.* (Nov. 1, 2004, filed Dec. 13, 2004), D.E. 14; Civil Minutes, *id.* (Nov. 1, 2004), D.E. 8; *see* John Caniglia & T.C. Brown, *Judge Upholds Media Ban from Polls*, Cleveland Plain Dealer, Nov. 2, 2004, at A12.

following the hearing, Judge Watson granted the temporary restraining order, and the news media were able to conduct exit polls the next day within one hundred feet of polling places.[7] Judge Watson reaffirmed this ruling by summary judgment on September 26, 2006.[8]

Both sides appealed elements of Judge Watson's opinion, but the appeals were voluntarily dismissed in 2007.[9]

Also on the day before the 2004 general election, the *Beacon Journal* filed a federal complaint at the Northern District of Ohio's Akron courthouse.[10] The *Beacon Journal* is a local newspaper serving readers in Summit County, of which Akron is the seat, and the neighboring counties of Medina, Portage, Stark, and Wayne.[11] According to the complaint, the newspaper learned on the previous Friday, while covering early voting, that Ohio's secretary of state had issued directives that only voters, poll workers, and police officers could enter a polling place on election day.[12] With the complaint, the newspaper filed a motion for a temporary restraining order and a preliminary injunction granting the newspaper's reporters and photographers access to Ohio polling places.[13]

The court assigned the case to Judge Paul R. Matia,[14] who ordered a hearing on the case at 4:00 p.m. on the day that the action was filed.[15] That same day, Judge Matia denied the newspaper immediate relief, finding that the state had "a compelling interest in making sure that voters vote freely and without intimidation" and that, "[t]he media can perform their First Amendment function almost as well from outside the polling places."[16] Also that day, the newspaper filed a notice of appeal.[17]

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7. *ABC, Inc.* Temporary Restraining Order, *supra* note 1; ABC, Inc. v. Blackwell, 479 F. Supp. 2d 719, 725 (S.D. Ohio 2006).

8. *ABC, Inc.*, 479 F. Supp. 2d 719; *see* Jesse Tinsley, *Court Gives Exit Poll Workers Access*, Cleveland Plain Dealer, Sept. 27, 2006, at B2.

9. Docket Sheet, ABC, Inc. v. Blackwell, No. 06-4484 (6th Cir. Nov. 15, 2006) (plaintiffs' appeal); Docket Sheet, ABC, Inc. v. Blackwell, No. 06-4410 (6th Cir. Oct. 26, 2006) (defendant's appeal).

10. Complaint, Beacon Journal Publ'g Co. v. Blackwell, No. 5:04-cv-2178 (N.D. Ohio Nov. 1, 2004), D.E. 1.

11. *See id.* at 3.

12. *Id.* at 3–4; *see Beacon Journal Sues State for Access to Polling Places*, Akron Beacon J., Nov. 1, 2004, at A12; *Paper Denied Access at Polls*, Akron Beacon J., Nov. 2, 2004, at B1 [hereinafter *Paper Denied Access*].

13. Motion, *Beacon Journal*, No. 5:04-cv-2178 (N.D. Ohio Nov. 1, 2004), D.E. 4.

14. Tim Reagan interviewed Judge Matia for this report by telephone on May 1, 2012.

Judge Matia sat in Cleveland; when a disproportionate number of cases were filed in one of the division's three courthouses, cases might be assigned to judges in other courthouses. Interview with Paul R. Matia, May 1, 2012. He retired on May 31, 2005. FJC Biographical Directory, *supra* note 3.

15. Order, *Beacon Journal*, No. 5:04-cv-2178 (N.D. Ohio Nov. 1, 2004), D.E. 5.

16. Opinion at 3, *id.* (Nov. 1, 2004), D.E. 8; *see* Minute Order, *id.* (Nov. 1, 2004), D.E. 7; *see also* John Caniglia & T.C. Brown, *Judge Upholds Media Ban from Polls*, Cleveland Plain Dealer, Nov. 2, 2004, at A12.

17. Notice of Appeal, *Beacon Journal*, No. 5:04-cv-2178 (N.D. Ohio Nov. 1, 2004), D.E.

Four and one-half hours before polls closed on election day, the court of appeals, by a vote of two to one, vacated the district court's order because denying news media access to polling places was not narrowly drawn to serve the state's interests.[18] The court ordered "that Defendants immediately and forthwith permit Plaintiffs to have reasonable access to any polling place for the purpose of news-gathering and reporting so long as Plaintiffs do not interfere with poll workers and voters as voters exercise their right to vote."[19]

On November 22, Ohio answered the complaint.[20] On December 17, the newspaper moved to dismiss its action, because it had obtained from the court of appeals the relief that it sought.[21] The court dismissed the case on January 14, 2005.[22]

On January 31, Ohio sought U.S. Supreme Court review of the court of appeals' decision,[23] but the Court granted Ohio's motion for voluntary dismissal on March 18.[24]

10; *see Paper Denied Access*, *supra* note 12.

18. Beacon Journal Publ'g Co. v. Blackwell, 389 F.3d 683, 685 (6th Cir. 2004); *see Media Given Access to Poll Sites*, Akron Beacon J., Nov. 3, 2004, at B9; *Voting Issues Keep Courts Busy Up to Last Minute*, Cleveland Plain Dealer, Nov. 3, 2004, at S9.

19. *Beacon Journal*, 389 F.3d 683 at 685.

20. Answer, *Beacon Journal*, No. 5:04-cv-2178 (N.D. Ohio Nov. 22, 2004), D.E. 12.

21. Motion to Dismiss, *id.* (Dec. 17, 2004), D.E. 15.

22. Order, *id.* (Jan. 14, 2005), D.E. 20.

23. Docket Sheet, Blackwell v. Beacon Journal Publ'g Co., No. 04-1032 (U.S. Feb. 3, 2005).

24. Blackwell v. Beacon Journal Publ'g Co., 544 U.S. 915 (2005).