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Judiciary's Cautious Response**

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## ELECTION DAY CHALLENGES TO POLLING HOURS AND THE JUDICIARY'S CAUTIOUS RESPONSE

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### I. INTRODUCTION

As evidenced by recent election cycles, the battle to win office now involves legal, as well as political, maneuvering by campaigns.<sup>1</sup> Parties and candidates prepare for Election Day by organizing teams of lawyers prepared to employ legal strategies to ensure their candidate or ballot measure has the best chance of winning.<sup>2</sup> Doug Chapin, the director of the nonpartisan Election Reform Information Project, summarized the increase in election-related litigation by saying, “[e]lection night is not necessarily the finish line anymore. Both sides are lawyering up.”<sup>3</sup>

One area of Election Day litigation is the battle over court-ordered extensions of poll closing hours.<sup>4</sup> As part of Election Day strategy, candidates and political parties have brought Election Day lawsuits in hopes of receiving a court-ordered extension of polling hours to allow their candidate more time to find the votes

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<sup>1</sup> See, e.g., John Fund, Editorial, *Litigation Day: Control of Congress may be Decided in the Courts, Starting Nov. 8*, WALL ST. J., Oct. 23, 2006.

<sup>2</sup> See David M. Halbfinger, *Kerry Building Legal Network for Vote Fights*, N.Y. TIMES, July 19, 2004, at A1 (highlighting Democratic presidential candidate's preparation for legal battles on Election Day by organizing six “SWAT teams” of lawyers and political operatives as well as creating a field team of 10,000 lawyers across the country prepared to litigate Election Day issues in their respective regions).

<sup>3</sup> Fund, *supra* note 1, at 1.

<sup>4</sup> See, e.g., *Missouri ex rel. Bush-Cheney 2000, Inc. v. Baker*, 34 S.W.3d 410 (Mo. Ct. App. 2000); *Republican Party of Ark. v. Kilgore*, 98 S.W.3d 798 (Ark. 2002).