



**Buffalo Public Interest
Law Journal**

Volume XXVII

2008-2009

ARTICLES

**Election Day Challenges to Polling Hours and the
Judiciary's Cautious Response**

Robert C. O'Brien

Amy Borlund

John Kay

Page 1

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

ROBERT C. O'BRIEN
AMY BORLUND
JOHN KAY†

I. INTRODUCTION

As evidenced by recent election cycles, the battle to win office now involves legal, as well as political, maneuvering by campaigns.¹ 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.² 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.”³

One area of Election Day litigation is the battle over court-ordered extensions of poll closing hours.⁴ 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

† Robert C. O'Brien, Partner-in-Charge, Los Angeles office, Arent Fox LLP, J.D., Boalt Hall School of Law, B.A., University of California, Los Angeles; Amy Borlund, Associate, Arent Fox LLP, J.D., University of California, Los Angeles School of Law, B.S., Pepperdine University; John Kay, J.D. Candidate, Pepperdine University School of Law, B.A., University of Minnesota.

¹ 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.

² 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).

³ Fund, *supra* note 1, at 1.

⁴ 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).