



Written by [Jack Kenny](#) on September 4, 2012

Judge Orders Ohio to Restore Early Voting Days

In a ruling that could have a significant impact on the outcome of this year's presidential election, a federal judge on August 31 issued a preliminary injunction against an Ohio law that eliminated the final three days of early in-person voting for most voters, while allowing exceptions for military personnel and Ohio voters living overseas.

Judge Peter C. Economus of the U.S. District Court in Columbus ordered the state to restore early voting for all Ohio voters on the final three days preceding the November 6 election. Economus ruled in favor of the plaintiff's claim in [Obama for America v. Jon Husted et al.](#) that the exception for military personnel and those living overseas created unequal voting opportunities in violation of the equal protection clause of the 14th Amendment to the U.S. Constitution. He cited, along with other precedents, the controversial 5-4 decision of the U.S. Supreme Court in *Bush v. Gore*, which halted a recount of ballots in Florida on the grounds that different standards for judging disputed ballots prevailed in different parts of the state. The ruling effectively ended litigation over the Florida vote count, ceding Florida's electoral votes and the election to Bush.



"The right to vote is protected in more than the initial allocation of the franchise," said a portion of the *Bush v. Gore* ruling quoted by Economus. "Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." Ohio's attorney general said he would file an appeal of the ruling.

"With all due respect to the judge, we disagree with his ruling today," Attorney General Mike DeWine said in a press release. "We have always allowed distinction for military voters, and to say this violates equal protection is wrong." But Donald McTigue, an attorney for the Obama campaign, [insisted](#) when the case was argued in mid-August that the plaintiffs' suit was "never about taking away the right of the military or anyone else to vote during those three days, it's about restoring that right to other Ohioans."

Ohio, one of 32 states that allow early in-person voting, argued that allowing all voters to vote on the last three days would interfere with preparations for Election Day itself, which included making



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displays of precinct maps and preparing lists of lists of voters, with notations of those who had already received absentee ballots. But the election board of Cuyahoga County, the state's most heavily populated, filed a "friend of the court" petition on behalf of the plaintiffs. The judge noted the defense argument for the exception for military personnel, who maybe subject to sudden, unexpected deployment just before an election. But he ruled that consideration was compromised by the secretary of state's directive, which allowed each election board to decide whether or not to make voting available to members of the military on the final weekend.

"Unless a serviceperson is 'suddenly deployed' at exactly the right time — enabling in-person voting on Monday — he or she will likely be unable to vote, depending on the local elections board's 'discretion,'" Economus wrote.

The judge also noted studies offered by the Obama campaign, showing that people who vote in the last three days before election are more likely to have lower income and have a higher percentage of racial minorities than those who vote on Election Day. They also tend to vote in higher percentages for Democrats, the Obama campaign noted, arguing that eliminating those last days put an unfair burden on their election efforts.

The Ohio ruling followed three other setbacks for Republicans in court rulings last week. Federal judges in Washington ruled a photo ID requirement for voting in Texas unconstitutional and blocked a redistricting plan, passed by the Republican-dominated Legislature and signed by Republican Governor Rick Perry, that the court said discriminated against black and Hispanic voters. A federal judge in Florida said he would block implementation of new rules governing voter registration drives there, passed by the Republican controlled Legislature and signed by Governor Rick Scott. The rules are "harsh and impractical," the judge said.

Ohio, with 18 of the 270 electoral votes needed for victory, is a "battleground" state that is especially crucial for the Romney campaign, but the former Massachusetts governor and Michigan native appears to be in an uphill battle in a traditionally Republican state. Obama won Ohio four years ago, the first Democrat to carry the Buckeye State since Lyndon Johnson in 1964. The state's unemployment rate, though far from ideal at 7.2 percent, is a full percentage point below the national average, and at least some Ohio voters credit the auto bailout Obama engineered in 2009 with a comeback for General Motors, keeping people employed in the automotive and auto-related industries.

While most polls show the candidates in a dead heat nationally, a recent Quinnipiac University/*New York Times*/ CBS poll showed Obama with a six-point lead in Ohio for the second month in a row. While both parties covet the state and its electoral votes, the Romney campaign has an added incentive: No Republican has won the White House without winning Ohio, a point not lost on the state's junior U.S. senator and Ohio chairman of the Romney campaign.

"It's possible to win without Ohio," Rob Portman [told](#) the *New York Times*. "But I wouldn't want to risk it."



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