



Hon. Algenon L. Marbley

U.S. District Judge, Southern District of Ohio

Ohio citizens joked that the 2012 presidential race was really to be the next president of Ohio—Ohio residents could not leave home without bumping into a presidential candidate from August through Election Day as Ohio was considered ground zero in the race. And at the geographic and political center of Ohio during the months and hours before the presidential election, sitting in Columbus, Ohio, was Southern District Court Judge Algenon Marbley. Judge Marbley's rulings—including one just as voting started—played an important role in determining just how voting would be conducted in Ohio. Judge Marbley's powerful rulings discuss the primacy of voting as the lattice on which all other Constitutional rights grow and flourish. The judge has been at the heart of important civil rights issues such as voting rights and housing discrimination during his 15 years on the federal bench.

Voting Rights

Judge Marbley's rulings and his assistance in shaping a consent decree on voting in Ohio reflect his devotion to fairness and the essential role of voting in preserving all rights. In a series of rulings, Judge Marbley defined and clarified how the counting of provisional ballots—ballots cast in the right polling place but wrong precinct—and Ohio's voter identification laws should work.

Judge Marbley's pivotal role in the 2012 election started years earlier with a 2006 challenge to Ohio's then newly enacted voter identification laws by a coalition for the homeless. That case alleged that impoverished voters were likely to be disenfranchised because they lacked the statutorily specified forms of ID to vote (*Northeast Ohio Coalition for the Homeless v. Blackwell* (later substituted as *Husted*), S.D. Ohio No. 2:06-cv-00896). The coalition also alleged that requiring voters to purchase such forms of ID amounted to



an unconstitutional poll tax. While the Sixth Circuit later reversed Judge Marbley's grant of a TRO in *Husted*, the parties later in 2006 and 2010 reached consent decrees that Judge Marbley approved. The decrees provided that the provisional ballots of those Election-Day voters who lacked statutorily enumerated forms of ID—but were instead able to provide the last four digits of their social-security numbers—would be counted. The decrees also established



Diane Citrino is a founding shareholder and litigator at Thacker Martinsek LPA, a majority women-owned firm with offices in Ohio and Florida. Citrino is the former chair of the Civil Rights Section of the FBA and currently chairs the Ohio Advisory Committee to the U.S. Civil Rights Commission.

uniform statewide standards under which provisional ballots would be counted.

Judge Marbley's rulings in litigation over the 2010 consent decree in *Northeast Ohio Coalition v. Husted* fared better generally on appeal. In *Husted*, Judge Marbley denied the Ohio secretary of state's 2012 request to vacate the consent decree entered into by his predecessor, which the Sixth Circuit affirmed. Judge Marbley further held that the secretary could not follow through with his plans to discard votes

when poll-worker error caused provisional ballots to be cast in the right polling place, but wrong precinct. Judge Marbley reasoned that "like poll taxes ... any rational basis for rejecting wrong-precinct ballots of registered voters due to poll-worker error is equally unreasonable." The Sixth Circuit affirmed in an October 2012 decision.

Fair Housing

Since assuming the bench 15 years ago, Judge Marbley has presided over a number of important fair housing cases. The most significant was *Kennedy v. City of Zanesville*, S.D. Ohio No. 2:03-cv-1047. The Zanesville water case alleged that homes in the African-American section of a small Ohio city nicknamed

Coal Run were excluded from the city of Zanesville's water delivery system—for decades—due to intentional racial discrimination by elected officials. Testimony during the six-week jury trial included detailed descriptions of how African-American residents had to gather rainwater to bathe and carry water from distant wells for drinking. Dozens of motions were ruled on by the judge during the course of the litigation. The jury ultimately returned a \$10.8 million dollar verdict for a group of plaintiffs that included individuals, the Ohio Civil Rights Commission, and the Fair Housing Advocates Association.

Reed Colfax, lead attorney for the Coal Run plaintiffs, stated, "In the Zanesville case, 67 plaintiffs walked into Judge Marbley's courtroom with a shared history of decades of discrimination at the hands of virtually every government official they had encountered. Long before they were awarded nearly \$11 million, their relief was palpable when they realized that the judge would treat them fairly. At a time when you see and hear judges pushing cases to particular results based on their ideologies, a trip into Judge Marbley's courtroom can restore one's faith in the justice system. He gives everyone, whether plaintiffs, defendants, or witnesses, an equal opportunity to tell their stories and stands out of the way as the jury considers the evidence and renders a verdict."

G. Michel Payton, the director of the Ohio Civil Rights Commission and a witness at the *Kennedy v. City of Zanesville* trial, recalled how a severed pig's head was thrown in the driveway of one of the parties who filed an administrative complaint with the commission. This act of intimidation was designed to deter the Coal Run residents from asserting their fair housing rights in Payton's opinion—but it failed to stop housing justice from ultimately prevailing. As the *New York Times* reported in a 2004 article on the case, "In January, a strange thing happened when people along Coal Run Road turned on their taps. Drinking water came out. Not the sulfur-tinged, bug-infested stuff that collected in their cisterns or swirled in their wells. Cool, clean, straight-from-the-pumping station city water."

Payton calls Judge Marbley one of his heroes, saying, "Judge Algenon Marbley gave up a very successful private practice to toil in public service for the greater good of our state and nation because he cares about equal justice. He is the epitome of an outstanding jurist who serves the long tradition established by the late Justice Thurgood Marshall, the Honorable Judge Nathaniel Jones, and others. Many of us, both young and old, look up to Judge Marbley as a role model for our highest professional and personal aspirations. I am proud that our state has a judge like him who is the embodiment of our hope for the future." Reed Colfax agrees, stating, "Any lawyer who walks into Judge Marbley's courtroom walks out a more capable advocate. Judge Marbley is always teaching and after six weeks in his courtroom, I now owe some part of any subsequent success I have to his willingness to explain, in the clearest terms, how to do it right."

Early Influences

Judge Marbley grew up in the small North Carolina towns of Rocky Mount and Nashville—towns of about 5,000 people, most of whom were farmers. He lived there when the orders to desegregate schools and places of public accommodation came down, and remembers how the public pool was closed rather than integrated. Judge Marbley never played Little League due to segregation. He recalls that he and his parents had to go around to the back of restaurants to get takeout, and sat in segregated movie theaters. Judge Marbley remembers his parents discussing how difficult it was for African-American sharecroppers to vote because the sharecroppers were intimidated. These memories profoundly affected him. Even as a child, keeping people from voting struck him as "fundamentally unfair."

By the fourth grade Judge Marbley narrowed his career options to being a professional baseball or basketball player—or a lawyer. He chose the law. But law school plans almost were derailed by a college incident. While at the University of North Carolina as an undergraduate, Judge Marbley was the chairman of the Black Student Movement when David Duke, grand wizard of the Ku Klux Klan, was invited by a student speakers' bureau to speak on campus. Judge Marbley recalls that about 200 students came to the auditorium where Duke was supposed to speak and shouted him down because they believed Duke posed a direct threat to black students and others. UNC Chancellor Ferebee Taylor

"Judge Marbley made it very clear throughout the landmark voting litigation [in *Northeast Ohio Coalition v. Husted*] that as a federal judge, he was going to protect the right of franchise. And he kept his word. Because of Judge Marbley, the legitimate votes of thousands of Ohioans were counted that otherwise could not have been due to various concerted efforts to suppress those votes."

—Subodh Chandra

called the action a “transgression of one of the highest and noblest traditions of this university—freedom of expression.” A complaint was filed against Judge Marbley claiming that he was the instigator of the shout-down. The incident made statewide news, and Judge Marbley’s grandmother woke him early the next morning with a phone call where she didn’t bother to say hello but chided her grandson, “I thought you were up there to get an education.” Judge Marbley was summoned to the Undergraduate Court for allegedly inciting a campus disturbance, but was fully exonerated.

Judge Marbley went to law school at Northwestern University and received his J.D. in 1979. He worked as an associate at the Chicago law firm of Montgomery and Holland, followed by five years as assistant general counsel at the Office of the Regional Attorney of the U.S. Department of Health and Human Services. Judge Marbley then spent a combined 17 years as an associate and then partner at the law firm of Vorys, Sater, Seymour, and Pease in Columbus, Ohio, where he practiced in all types of civil litigation.

On the Bench

Judge Marbley was appointed to the district court bench by President Clinton in 1997. He recalls that during the Senate confirmation hearings he and the other district court judges questioned that day didn’t rate much in the way of questioning compared to the extensive back and forth grilling of now Justice Sonia Sotomayor, who was being considered to fill a Second Circuit vacancy. This made the senatorial questioning of the district court nominees seem quite tame in comparison. Judge Marbley made a close friend in Judge James Gwin of the Northern District of Ohio, who was confirmed and received his appointment at the same time as Judge Marbley. The two judges also attended judicial training together in Texas after they were sworn in. Judge Gwin describes Judge Marbley as having the “ideal personality” for the job—“very smart, friendly to the litigants, kind to practitioners while always being able to make the hard decisions.” Judge Marbley’s passion for his job is evident to all who know him.

Judge Marbley feels extremely lucky to work with great colleagues and close friends in his building, including Judge R. Guy Cole Jr., who sits on the Sixth Circuit. He calls Judge Robert Duncan, the first African-American district court judge in Ohio, his mentor. Judge Duncan’s great temperament and strong legal mind helped Judge Marbley because Judge Duncan understood what the job of a judge is, day in and day out.

The most difficult part of the job that keeps Judge Marbley awake at night is criminal sentencing. He remembers a visit to a prison during his judicial training in Texas. The sight of prison doors slamming shut and prisoners being locked down impressed on Judge Marbley the serious responsibility imposed on him in depriving someone of his or her liberty.

Law Clerks

Many judges and their clerks have a special relationship. Judge Marbley’s influence and ongoing involvement with his clerks is extraordinary. He gives most visitors to his chambers a tour of the photos of all of his clerks, recounting



Judge Marbley with his son, Aaron

each clerk’s educational background and current job. Judge Marbley hand-selects his clerks by looking for “someone who can think outside the box who writes well and is passionate for the work.” He likes to engage in “free-wheeling discussions” with his clerks who defend their positions with logic and reason—he doesn’t want a clerk who will “just say yes.”

His clerks fondly remember working lunches with the judge and how he encouraged all to give their opinions. Allison Leotta recalls an excursion with Judge Marbley, her co-clerk, and the judge’s two sons to a 6:00 a.m. showing of the first Star Wars movie. Leotta, now a full time novelist, credits Judge Marbley with encouraging her writing. Judge Marbley has recent crime thrillers written by Leotta—*Law of Attraction* and *Discretion*—on his office table. (She swears the judge portrayed in the books is not based on him.) Allison Ehlert, a clerk in 2008 now in appellate practice in California, calls Judge Marbley one of her “favorite people on the planet.” Judge Marbley considers his clerks an extension of his family according to Ehlert. She praises Judge Marbley as a jurist who really cares about what happens in each case and the larger vision of justice. “He is a creative thinker who always keeps the larger story in mind.” Peter Ellis, a litigation partner at Reed Smith in Chicago, believes Judge Marbley’s thoughtfulness and fairness as a human being inform how he runs his courtroom and each decision he makes on the bench. He credits Judge Marbley’s influence with helping him make difficult decisions in his own life by staying true to himself. Alycia Broz, another Marbley clerk, believes that if she reached out to a Marbley clerk anywhere in the country, they would be there for her. Broz, a partner at Vorys, Sater, Seymour & Pease (Judge Marbley’s former law firm), kept a list of memorable quotes Judge Marbley would use in discussing matters. One of her favorites: “In the war of the elephants, only the grass gets hurt.” The collaborative nature of Judge Marbley’s relationship with his clerks, and the mentoring he provided to each, are apparent.

Outside Interests

Judge Marbley currently serves as the chair of the Board of the Columbus KIPP school. KIPP (Knowledge is Power Program) is a free, open-enrollment charter school program offering college preparation, located in underserved and underprivileged areas. According to Judge Marbley, an “educated citizenry is key to our survival.” He describes himself as not thinking of himself as a “charter school guy”—but KIPP, with its philosophy that demographics don’t dictate destiny—won him over. Abigail Wexner, who serves as vice chair of KIPP, credits Judge Marbley’s passion for making a real difference in children’s lives with the success KIPP has had in Columbus. She recalls Judge Marbley telling her that when he sees young people in trouble with the law in his courtroom he wishes that they could have had a different opportunity. With KIPP’s mission to serve the most needy children, Judge Marbley is helping to create that chance for children.

Judge Marbley has served on numerous other boards, including the Nationwide Children’s Hospital Board. He is a current trustee of The Ohio State University. He also regularly teaches trial advocacy at The Ohio State University College of Law and Harvard University Law School.

With all that he does, Judge Marbley still finds time for his two sons, Algenon and Aaron, and his three granddaughters, ages 8, 5, and 3. His beloved boxer Max, a rescue dog, recently passed away after 10 years of having the run of Judge Marbley’s house and heart.

Judge Marbley, with 15 years on the bench and his passion for the job still at full strength, believes it is too soon to talk about his legacy. But he would be happy if the lawyers and parties before him believed they were treated fairly, and that he worked hard to get it right. ☺