

Talking Voting Machines for Blind Absentee Voters

Gray v. St. Louis City Board of Election Commissioners
(Audrey G. Fleissig, E.D. Mo. 4:16-cv-1548)

Near the beginning of absentee voting, two blind voters filed a federal complaint seeking accommodation for blind voters by talking voting machines in light of a recent state court decision tightening absentee voting procedures. On the day that the complaint was filed, the defendant election board answered, and the judge granted the plaintiffs immediate relief. The parties stipulated to a dismissal of the action before election day.

Subject: Absentee and early voting. *Topics:* Voting technology; absentee ballots; early voting.

Two blind voters filed a federal complaint in the Eastern District of Missouri on September 30, 2016, seeking accommodation by talking voting machines during the period of absentee voting for the November 8 general election.¹ Absentee voting began on September 27, and voting procedures had been tightened as a result of a September 13 state court decision finding irregularities among absentee votes in an August 2 primary election.² With their complaint, the voters filed a motion for a temporary restraining order, a preliminary injunction, and permanent injunctive relief.³ The defendant St. Louis City Board of Election Commissioners answered the complaint on the day that it was filed.⁴

Judge Audrey G. Fleissig heard the case on the day that it was filed.⁵ It was clear that the board was happy to continue providing blind voters with talking voting machines, but the board was concerned about violating the state court's interpretation of state law.⁶ Judge Fleissig's staff contacted the state court of appeals to see if it had ruled yet on a motion by the board for clarification, and the state court had not yet ruled on the board's motion.⁷

1. Complaint, *Gray v. St. Louis City Bd. of Election Comm'rs*, No. 4:16-cv-1548 (E.D. Mo. Sept. 30, 2016), D.E. 1.

2. Temporary Restraining Order Opinion at 2–3, *id.* (Sept. 30, 2016), D.E. 9; Franks v. Hubbard, 498 S.W.3d 862 (Mo. Ct. App. 2016); see Stephen Deere & Doug Moore, *Absentee Problems Revealed in St. Louis Election Will Affect Others Come November*, St. Louis Post-Dispatch, Sept. 26, 2016, at A1; Doug Moore, *Eliminating Touch Screen Voting Discriminates Against the Blind, Advocacy Group Says*, St. Louis Post-Dispatch, Sept. 29, 2016, at A3.

3. Motion, *Gray*, No. 4:16-cv-1548 (E.D. Mo. Sept. 30, 2016), D.E. 2.

4. Answer, *id.* (Sept. 30, 2016), D.E. 6.

5. Minutes, *id.* (Sept. 30, 2016), D.E. 10.

Tim Reagan interviewed Judge Fleissig for this report by telephone on September 7, 2017.

6. Interview with Hon. Audrey G. Fleissig, Sept. 7, 2017.

7. *Id.*

At the hearing, Judge Fleissig issued a temporary restraining order, and set the case for another hearing on October 13.⁸ Judge Fleissig ordered the board to “make touch-screen voting machines with audio and all other accessible voting technology available for persons with disabilities during the absentee voting period for the November 8, 2016 election.”⁹

Later on September 30, Missouri’s court of appeals modified its opinion to add a footnote stating that “nothing in this opinion should be construed to prevent election authorities from complying with federal law.”¹⁰

The parties stipulated to a dismissal of the action on October 13.¹¹ Legislation signed by the governor on July 7 will provide statutory authorization for the use of voting machines for absentee voting beginning in 2018.¹²

8. Temporary Restraining Order Opinion, *supra* note 2; Minutes, *supra* note 5; see Pre-Hearing Order, *Gray*, No. 4:16-cv-1548 (E.D. Mo. Oct. 11, 2016), D.E. 13.

9. Temporary Restraining Order Opinion, *supra* note 2, at 6; see Stephen Deere & Doug Moore, *Federal Judge Orders St. Louis Election Board to Allow Disabled to Vote on Electronic Machines*, St. Louis Post-Dispatch, Oct. 1, 2016, at A4.

10. *Franks v. Hubbard*, 498 S.W.3d 862, 873 n.12 (Mo. Ct. App. 2016); Docket Sheet, *Franks v. Hubbard*, No. ED 104797 (Mo. Ct. App. Sept. 6, 2016) (noting a corrected opinion filed on September 30, 2016); see Deere & Moore, *supra* note 9.

11. Stipulated Dismissal, *Gray*, No. 4:16-cv-1548 (E.D. Mo. Oct. 13, 2016), D.E. 14.

12. Mo. H.B. 1480, www.house.mo.gov/BillContent.aspx?bill=HB1480&year=2016&code=R&style=new; see Deere & Moore, *supra* note 2; Plaintiffs’ Brief at 13–14, *Gray*, No. 4:16-cv-1548 (E.D. Mo. Sept. 30, 2016), D.E. 3.