

Post-Election Verification of a Disabled Voter's Absentee Ballot

Ray v. Franklin County Board of Elections
(George C. Smith, S.D. Ohio 2:08-cv-1086)

On Saturday, November 15, 2008, a voter filed a federal action in the Southern District of Ohio against the Franklin County Board of Elections, claiming that the board had improperly required her to visit the board by the previous day to protect the validity of her absentee vote for the November 4 general election.¹ According to the complaint, the voter was bedridden and homebound because of diabetes and panic attacks.² With her complaint, the plaintiff filed a motion for a temporary restraining order³ and a motion to consolidate her action with election cases pending before Judge Algernon L. Marbley.⁴

The court assigned the case to Judge George C. Smith, who denied the consolidation motion: "The cases consolidated before Judge Marbley involve the counting of provisional ballots and do not raise any issues regarding the incomplete absentee ballots."⁵

Judge Smith held a hearing on Monday,⁶ after which he issued a temporary restraining order.⁷ Judge Smith determined that the board must make reasonable accommodations to permit disabled absentee voters to cure ballot deficiencies, such as visiting the voter at home or permitting a family member to bring the defective ballot to the voter for cure; Judge Smith set a deadline of November 21 for completion of accommodations.⁸ Judge Smith decided that under these circumstances the plaintiff was also entitled to a preliminary injunction and a permanent injunction with the same terms.⁹

On June 2, 2009, Judge Smith awarded the plaintiff \$16,139.50 in attorney fees and costs.¹⁰

1. [Complaint](#), *Ray v. Franklin Cnty. Bd. of Elections*, No. 2:08-cv-1086 (S.D. Ohio Nov. 15, 2008), D.E. 1.

2. *Id.* at 1–2.

3. [Temporary Restraining Order Motion](#), *Ray*, No. 2:08-cv-1086 (S.D. Ohio Nov. 15, 2008), D.E. 7.

4. [Consolidation Motion](#), *id.* (Nov. 15, 2008), D.E. 2.

5. [Order](#), *id.* (Nov. 15, 2008), D.E. 4, [available at 2008 WL 4966761](#).

6. [Minutes](#), *id.* (Nov. 17, 2008), D.E. 10.

7. [Opinion](#), *id.* (Nov. 17, 2008), D.E. 11, [available at 2008 WL 4966759](#).

8. *Id.* at 12; *see* Mark Niquette & Jodi Andes, *Ballot Fight Staying in Federal Court*, Columbus Dispatch, Nov. 18, 2009, at 3B.

9. [Injunction](#), *Ray*, No. 2:08-cv-1086 (S.D. Ohio Nov. 17, 2008), D.E. 12; [Opinion](#), *supra* note 7, at 1 n.1.

10. [Order](#), *Ray*, No. 2:08-cv-1086 (S.D. Ohio June 2, 2009), D.E. 20.