

Restoration of the Elective Franchise for a Voter Whose Sentencing Is Stayed

*Hunter v. Hamilton County Board of Elections (1:16-cv-962)
and Hunter v. Hamilton County Board of Elections
(1:16-cv-996) (Michael R. Barrett, S.D. Ohio)*

A plaintiff convicted in state court of a felony filed a federal complaint on September 27, 2016, seeking an order requiring the county board of elections to accept her voter registration because her sentence had been stayed by the district court in a habeas corpus action, so she was not incarcerated. A district judge granted the plaintiff relief on October 6. A second federal complaint filed pro se on October 11 seeking the plaintiff's certification as a candidate for juvenile court was not successful, because the plaintiff had been disbarred as a result of her conviction.

Subject: Nullifying registrations. *Topics:* Registration challenges; getting on the ballot; case assignment; pro se party; attorney fees.

A federal complaint filed in the Southern District of Ohio on September 27, 2016, alleged that a county board of elections wrongfully rejected the plaintiff's voter registration application because although the plaintiff had been convicted of a crime she was not incarcerated.¹ The plaintiff's sentence was stayed on May 19 by Judge Timothy S. Black while he considered her habeas corpus petition.² With her complaint, the plaintiff filed a motion for a temporary restraining order or a preliminary injunction.³ On the following day, Judge Susan J. Dlott transferred the case from her docket to the docket of Judge Michael R. Barrett.⁴

Judge Barrett held a status conference on September 30 and set the case for a second conference on October 4 following additional briefing.⁵ On October 4, Judge Barrett set the case for hearing on October 6.⁶ In a 17-page opinion issued on the day of the hearing, Judge Barrett concluded that the plaintiff was entitled to register to vote.⁷ "The parties disagree as to whether a convicted

1. Complaint, *Hunter v. Hamilton Cty. Bd. of Elections*, No. 1:16-cv-962 (S.D. Ohio Sept. 27, 2016), D.E. 2 [hereinafter *Voter Registration Complaint*].

2. Order, *Hunter v. Hamilton Cty. Ct. of Common Pleas*, No. 1:16-cv-561 (May 19, 2016), D.E. 4; see *Petition, id.* (May 19, 2016), D.E. 1; see also *Voter Registration Complaint, supra* note 1, at 2; Opinion, *Hunter v. Hamilton Cty.*, No. 1:15-cv-540 (S.D. Ohio Sept. 15, 2016), D.E. 96, 2016 WL 4836810 (opinion by Judge Michael R. Barrett dismissing an August 18, 2015, pro se civil action by the voter registration plaintiff against county officials involved with the prosecution of the plaintiff).

3. Motion, *Hunter*, No. 1:16-cv-962 (S.D. Ohio Sept. 27, 2016), D.E. 3.

4. Order, *id.* (Sept. 28, 2016), D.E. 6.

5. Docket Sheet, *id.* (Sept. 27, 2016) (minutes).

6. *Id.* (minutes); see *Minutes, id.* (Oct. 6, 2016), D.E. 18.

7. Opinion, *id.* (Oct. 6, 2016), D.E. 19.

felon, who is not currently incarcerated, albeit sentenced to a jail term, is competent to be an elector.”⁸ Judge Barrett determined that the board was obliged to adhere to the secretary of state’s interpretation of Ohio law: convicted felons are not disqualified from voting when they are not incarcerated.⁹

In accordance with the Court’s Opinion and Order, the Board met on October 11, 2016. During the course of that meeting, the Board went into executive session to discuss this litigation and, upon returning from executive session, unanimously voted to direct the Board’s staff to take all steps necessary to restore Plaintiff’s registration, rather than to seek a stay or appeal of the Opinion and Order.¹⁰

At the parties’ request, Judge Barrett vacated his order and dismissed the case as settled, approving an attorney fee payment of \$30,000, on January 19, 2017.¹¹

On October 11, the plaintiff filed a second federal complaint seeking certification as a candidate for reelection to the county’s juvenile court.¹² This pro se case was transferred from Judge Dlott’s docket to Judge Barrett as related to the plaintiff’s voter registration case.¹³

At an October 14 status conference, Judge Barrett observed that the complaint sought immediate injunctive relief, but the plaintiff had not filed an injunction motion.¹⁴ In light of the board’s preference that an immediate injunction be litigated by separate motion, Judge Barrett set the case for hearing one week later.¹⁵

In a 15-page opinion issued on the day of the hearing, Judge Barrett denied the plaintiff immediate relief.¹⁶ “On October 21, 2014, as a result of her conviction, the Ohio Supreme Court suspended Plaintiff from the practice of law and consequently, judicial office, for an interim period. . . . Plaintiff’s sentence remains stayed, but her suspension from the practice of law and judicial office remains intact.”¹⁷ Judge Barrett concluded that the plaintiff’s claim that she would be eligible for office upon the beginning of her term, if elected, was pure conjecture.¹⁸

Following the plaintiff’s failure to respond to scheduling orders, Judge Barrett sanctioned the plaintiff on August 21, 2017, \$1,975 to compensate defense

8. *Id.* at 7; *see id.* at 1–2 (reciting state court stays of the plaintiff’s sentence while she pursued ultimately unsuccessful state court appeals).

9. *Id.* at 7–14.

10. Notice of Compliance, *id.* (Oct. 12, 2016), D.E. 23.

11. Agreed Order, *id.* (Jan. 19, 2017), D.E. 24.

12. Complaint, Hunter v. Hamilton Cty. Bd. of Elections, No. 1:16-cv-996 (S.D. Ohio Oct. 11, 2016), D.E. 1.

13. Order, *id.* (Oct. 12, 2016), D.E. 4.

14. Transcript at 2, *id.* (Oct. 14, 2016, filed Oct. 22, 2016), D.E. 16.

15. *Id.* at 6; Docket Sheet, *id.* (Oct. 11, 2016) (minutes); *see* Transcript, *id.* (Oct. 21, 2016, filed Oct. 22, 2016), D.E. 17; Minutes, *id.* (Oct. 21, 2016), D.E. 14.

16. Opinion, *id.* (Oct. 21, 2016), D.E. 15.

17. *Id.* at 1–2.

18. *Id.* at 10.

attorneys for their participation at a May 5 proceeding that the plaintiff skipped.¹⁹

Judge Black denied the 2016 federal court habeas corpus petition on May 29, 2019.²⁰ Appeals are pending.²¹

19. Order, *id.* (Aug. 21, 2017), D.E. 30.

20. Opinion, *Hunter v. Hamilton Cty. Ct. of Common Pleas*, No. 1:16-cv-561 (May 29, 2019), D.E. 58, 2019 WL 2281542.

21. Docket Sheets, *Hunter v. Attorney Gen.*, Nos. 19-3515 and 19-3550 (6th Cir. May 31 and June 11, 2019) (noting that briefing is to be completed by October 4, 2019).