

## 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)

A voter bedridden and homebound because of diabetes and panic attacks filed a federal action against the 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 ballot. The district judge enjoined the board to make reasonable accommodations to the plaintiff's disabilities and awarded the plaintiff \$16,139.50 in attorney fees and costs.

*Subject:* Absentee and early voting. *Topics:* Absentee ballots; attorney fees; case assignment.

On Saturday, November 15, 2008, a voter filed a federal action in the Southern District of Ohio against Franklin County's board of elections, claiming that the board had improperly required her to visit it by the previous day to protect the validity of her absentee vote for the November 4 general election.<sup>1</sup> According to the complaint, the voter was bedridden and homebound because of diabetes and panic attacks.<sup>2</sup> With her complaint, the plaintiff filed a motion for a temporary restraining order<sup>3</sup> and a motion to consolidate her action with election cases pending before Judge Algenon L. Marbley.<sup>4</sup>

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."<sup>5</sup>

Judge Smith held a hearing on Monday,<sup>6</sup> after which he issued a temporary restraining order.<sup>7</sup> He determined that the board had to 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.<sup>8</sup> He decided that under

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1. Complaint, *Ray v. Franklin Cty. 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, *id.* (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, 2008 WL 4966761.

Judge Smith died on April 15, 2020. Federal Judicial Center Biographical Directory of Article III Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

6. Minutes, *Ray*, No. 2:08-cv-1086 (S.D. Ohio Nov. 17, 2008), D.E. 10.

7. Opinion, *id.* (Nov. 17, 2008), D.E. 11, 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.

these circumstances the plaintiff was also entitled to a preliminary injunction and a permanent injunction with the same terms.<sup>9</sup>

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

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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.