

## Accommodating a Disabled Voter

*Mooneyhan v. Husted*

(*Walter H. Rice, S.D. Ohio 3:12-cv-379*)

When a hospitalized voter's absentee ballot did not arrive in time, she asked election officials to deliver it by hand to her, but they refused. Ten days following a federal complaint filed shortly after the polls closed on election day, the district judge ordered that the absentee ballot be counted as a remedy for election officials' failing to accommodate the voter's disability.

*Subject:* Absentee and early voting. *Topics:* Absentee ballots; attorney fees; provisional ballots; laches.

At 7:38 p.m. on the day of the November 6, 2012, general election, soon after the polls had closed in Ohio, a voter filed a federal complaint in the Southern District of Ohio against election officials for Ohio and Darke County seeking relief from the refusal of election officials to accommodate the voter's disability to enable her to vote.<sup>1</sup> With her complaint, the plaintiff filed a motion for a temporary restraining order allowing her to receive and submit an absentee ballot.<sup>2</sup>

The plaintiff was hospitalized in psychiatric care on October 30, and she requested an absentee ballot on October 31.<sup>3</sup> Election day arrived, but an absentee ballot did not, and election officials refused to hand-deliver one.<sup>4</sup> The plaintiff's absentee ballot arrived in the mail on the day after election day.<sup>5</sup> At a conference call held that day, Judge Walter H. Rice ordered the county election official to receive the cast ballot from the plaintiff as a provisional ballot pending further court rulings.<sup>6</sup> On November 16, Judge Rice ordered that the ballot be counted as a remedy for election officials' refusal to reasonably accommodate the plaintiff's disability.<sup>7</sup>

On March 29 and June 11, 2013, Judge Rice awarded the plaintiff a total of \$29,910.50 in attorney fees and costs.<sup>8</sup>

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1. Complaint, *Mooneyhan v. Husted*, No. 3:12-cv-379 (S.D. Ohio Nov. 6, 2012), D.E. 1.

2. Temporary-Restraining-Order Motion, *id.* (Nov. 6, 2012), D.E. 2.

3. Injunction Opinion at 2, *id.* (Nov. 16, 2012), D.E. 12, 2012 WL 5834232.

4. *Id.* at 2–3.

5. *Id.* at 3; Minutes, *id.* (Nov. 9, 2012, filed Nov. 13, 2012), D.E. 8.

6. Minutes, *supra* note 5.

7. Injunction Opinion, *supra* note 3.

8. Fee Order, *Mooneyhan*, No. 3:12-cv-379 (S.D. Ohio June 11, 2013), D.E. 24; Fee Opinion, *id.* (Mar. 29, 2013), D.E. 22, 2013 WL 1326506.