

DIRECTIVE 2008-116 Issued Pursuant to Court Order

November 18, 2008

To: ALL COUNTY BOARDS OF ELECTIONS
MEMBERS, DIRECTORS AND DEPUTY DIRECTORS

Re: Directive Issued Pursuant to Court Order – Reasonable Accommodation for Disabled
Absentee Voters who are Homebound

On November 17, 2008, the United States District Court for the Southern District of Ohio issued an order in the case *Ray v. the Franklin County Board of Elections, et al.*, Case No. C2:08-0896. The court's order, as further described below, requires all 88 county boards of elections to provide an opportunity for homebound, disabled voters to correct errors on their absentee ballot envelopes at the request of those voters.

Background

Directive 2008-109, Notifying Voters of Absentee Ballot ID Envelope Errors, was issued on November 3, 2008. It directed all boards "to notify absentee voters of the presence of any deficiency regarding their absent voter's ballot ID envelope that hinders the ballot contained within from being counted, when the voter is otherwise eligible to vote. Once notified, these absentee voters must be given the opportunity to correct any omission or error regarding their absent voter's ballot ID envelope through the tenth day after the election."

On Saturday, November 15, 2008, after the expiration of the ten-day period following the election held November 4, 2008, the plaintiff, a Franklin county elector, filed an action in the federal court stating that she was bed-ridden and unable to travel to the Franklin County Board of Elections to correct an error she had made on her absentee ballot ID envelope. She claimed that federal law required that the Franklin County Board of Elections provide her an opportunity to, in her home, cure the defect in her absentee ballot. She also asked the court to issue injunctive relief to that effect.

The Court's Order

After considering written and oral arguments on behalf of the plaintiff and the defendants, Franklin County Board of Elections and Ohio Secretary of State, the court issued an opinion and order granting a temporary restraining order and injunctive relief. The court concluded its opinion as follows:

"Plaintiff and other disabled persons who are confined to their homes and cannot travel to their respective County Board of Elections to correct the deficiencies in their absentee ballots, shall be given reasonable accommodations to do so. One example of a

reasonable accommodation is for two employees of the Board of Elections (one Republican and one Democrat) to go to the homes of Plaintiff and other homebound, disabled person to provide them with their absentee ballot to correct the error or deficiency. If that alternative is not practical, another alternative may be to allow an appointed family member or an individual's attorney to pick up the deficient absentee ballot from the Board of Elections, take it to Plaintiff and other homebound, disabled persons to allow them to correct the deficiency, and then return the absentee ballot [to] the Board of Elections. Plaintiff and other homebound, disabled persons must notify their respective County Board of Elections to request such accommodation as soon as possible and such accommodation must be completed by the close of business Friday, November 21, 2008. This order applies to all 88 County Boards of Elections in Ohio."

Points Of Emphasis Concerning the Court Order

1. **The court placed the initial burden on homebound disabled absentee voters to request of the board the accommodation ordered by the court.** That is, boards are not required to themselves identify which absentee voters who have been notified of absentee ballot ID envelope errors or deficiencies are disabled and homebound. Such disabled voters must identify themselves and ask for the accommodation required by the court's order.

The court did not specify what form of communication is required for a request for an accommodation to be honored by a board of elections. Therefore, boards are directed that such communication from a disabled voter who is homebound and who has been notified of one or more absentee ballot ID envelope errors or deficiencies may take the form of a telephone call, email, letter, fax or other notification to the board. This communication may also be from a family member or attorney who is appointed by the homebound disabled voter to pick up the deficient absentee ballot from the board of elections, take it to the disabled voter who is homebound to allow them to correct the deficiency, and then return the absentee ballot to the board of elections. When the ballot is returned, any previously sealed ID envelope must not be unsealed and/or resealed or tampered with, or the ballot may be subject to challenge. In the case of a telephone notification from a family member or attorney, the ballot shall not be released until the family member or attorney presents the board of elections with a appointment in writing of a family member or attorney.

The appointment of a family member or attorney for the purposes of this directive must be in writing and must include the following:

- a. The name and address of the disabled voter who is homebound,
 - b. The name and address of the family member or attorney appointed to pick up the deficient absentee ballot from the board of elections, take it to the disabled voter who is homebound to correct the deficiency, and then return the absentee ballot to the board of elections.
 - c. A statement that the disabled voter appoints the named family member or attorney to pick up and return the voter's ballot, and
 - d. The signature or mark of the voter.
2. **The court suggested two means of accommodating homebound absentee voters who desire to correct an error or deficiency on their absentee ballot envelope:**

- Dispatching a **bipartisan team** of election employees to the disabled voter's home, or
- **Allowing an appointed family member or attorney to transport the absentee ballot** to the disabled voter's home and, after correction, back to the board office.

In the interest of assuring public confidence in the handling of absentee ballots, and consistent with other provisions of the Revised Code, I urge boards to adopt a bipartisan team option. Please note that if a disabled voter is unable to make a signature or mark to appoint a family member or attorney, the board must dispatch a bipartisan team of election employees to the disabled voter's home.

3. Once a disabled absentee voter who is homebound notifies the board that he or she desires to correct an error on the absentee ballot, **the accommodation must be completed and the ballot returned by close of business Friday, November 21, 2008**. Clearly, notifications too close in time to the close of business to allow for such accommodation, such as within an hour of the close of business of the board on November 21, 2008, may be difficult to accommodate; however, boards are advised to make every effort to accommodate every request.

You will be promptly advised if boards of elections' obligations to comply with this order change in any way based on any further developments in this litigation.

A copy of the full text of the court's opinion and order is attached. If you have any questions about this directive or its implementation please contact the elections attorney in this office assigned to assist your county board of elections.

Sincerely,

Jennifer Brunner