

The Right of Felons to Register to Vote After Release

CURE-Ohio v. Blackwell (Sandra S. Beckwith, S.D. Ohio 1:04-cv-543) and *Racial Fairness Project v. Summit County Board of Elections* (John R. Adams, N.D. Ohio 5:04-cv-1948)

A federal complaint against the state’s secretary of state and twenty-one county boards of elections challenged false representations by election officials that persons convicted of felonies cannot be registered to vote even if they are on parole or have been released from confinement. Following an agreement to provide former prisoners with notices of the right to reregister to vote, the action was dismissed voluntarily. A subsequent action in the state’s other district challenged another county’s election officials’ not including in notices of registration cancelations to felons notices that felons can reregister following confinement. The district judge in the second case held that notices of registration cancelations were not required, but if they are provided they must not be misleading, which they would be if they failed to provide notice of the right to reregister following confinement.

Subject: Registration procedures. *Topics:* Registration procedures; prisoner voters; class action; case assignment.

Citizens United for the Rehabilitation of Errants (CURE-Ohio) and the Racial Fairness Project (RFP) filed a federal complaint in the Southern District of Ohio on August 17, 2004, against Ohio’s secretary of state and twenty-one county boards of elections—nine out of forty in the Northern District and twelve out of forty-eight in the Southern District—challenging false representations by election officials that persons convicted of felonies could not be registered to vote even if they were on parole or had been released from confinement.¹ With their complaint, the plaintiffs filed a motion for a preliminary injunction.² The court reassigned the case from Senior Judge Herman J. Weber to Judge Sandra S. Beckwith.³ On August 25, the plaintiffs filed a motion for a temporary restraining order.⁴

Following a proceeding on August 27, Judge Beckwith denied the plaintiffs a temporary restraining order on August 31, “because the likelihood of success at this point is not strong and the injury to Plaintiffs appears at this time to be

1. Complaint, *CURE-Ohio v. Blackwell*, No. 1:04-cv-543 (S.D. Ohio Aug. 17, 2004), D.E. 1; see 28 U.S.C. § 115; see also Scott Hiaasen, *Officials Kept Felons from Voting, Lawsuit Says*, Cleveland Plain Dealer, Aug. 18, 2004, at B1; Dan Horn, *Ex-Cons Misled on Voting, Suit Says*, Cincinnati Enquirer, Aug. 18, 2004, at 1A.

2. Preliminary-Injunction Motion, *CURE-Ohio*, No. 1:04-cv-543 (S.D. Ohio Aug. 17, 2004), D.E. 2.

3. Notice, *id.* (Aug. 18, 2004), D.E. 5; Order, *id.* (Aug. 17, 2004), D.E. 4.

4. Temporary-Restraining-Order Motion, *id.* (Aug. 25, 2004), D.E. 8.

speculative.”⁵ Judge Beckwith and the parties agreed to a trial schedule leading to trial briefs due on September 9.⁶

On September 10, following promises of notices to felons about their rights to reregister to vote, the parties stipulated dismissals.⁷ Agreements leading to voluntary dismissals hit a rough patch later in the month when Ohio’s attorney general notified the plaintiffs that representations by Ohio’s department of rehabilitation about notices that it would provide were unenforceable because the department was not a party to the lawsuit.⁸

The RFP and a voter who had been convicted of a felony filed a federal class action in the Northern District of Ohio on September 27 against Summit County’s board of elections—who was not a defendant in the Southern District action—seeking a remedy for notices of voter-registration cancellations to persons convicted of felonies for failure to state that they could register to vote again once they were released from confinement.⁹ With their complaint, the plaintiffs filed a motion for a temporary restraining order.¹⁰

Judge John R. Adams heard the motion on the day that it was filed¹¹ and granted it on the following day.¹²

Although the Board does not have a legal duty to notify persons whose voter registration has been cancelled due to a felony conviction, any such notice voluntarily issued must not mislead by either affirmation or omission. Accordingly, the Court hereby ORDERS that the Board must, no later than 9/29/04, mail to the last [known] address of each individual who received notice in the previous 36 months that his/her voter registration had been cancelled due to a felony conviction, a letter advising that convicted felons who are not currently incarcerated may re-register to vote. The letter shall further advise that the registration deadline for the November 2, 2004 election is October 4, 2004, and shall indicate that registration may be accomplished at the locations listed on the Board’s website.¹³

5. Order, *id.* (Aug. 31, 2004), D.E. 19.

6. *Id.* at 1.

7. Stipulated Dismissals with Prejudice, *id.* (Sept. 10, 2004), D.E. 34 to 39; see Transcript, *id.* (Sept. 3, 2004, filed Sept. 21, 2004), D.E. 44 [hereinafter *CURE-Ohio* Transcript] (describing initial settlement discussions); see also Dan Horn, *Officials Will Tell Felons of Voting Right*, Cincinnati Enquirer, Sept. 14, 2004, at 1C.

8. See Scott Hiasen, *State Broke Deal, Voting Group Says*, Cleveland Plain Dealer, Sept. 24, 2004, at B3; Dan Horn, *Undone Deal Riles Prison Aid Group*, Cincinnati Enquirer, Sept. 24, 2004, at 2C; see also *CURE-Ohio* Transcript, *supra* note 7, at 263–64 (discussing getting records from an agency not a party to the suit).

9. Complaint, Racial Fairness Project v. Summit Cty. Bd. of Elections, No. 5:04-cv-1948 (N.D. Ohio Sept. 27, 2004), D.E. 1.

10. Temporary-Restraining-Order Motion, *id.* (Sept. 27, 2004), D.E. 3.

11. Docket Sheet, *id.* (Sept. 27, 2004).

12. Opinion, *id.* (Sept. 28, 2004), D.E. 4 [hereinafter *Racial Fairness Project* Opinion]; see *Felons Briefed on Voting*, Cleveland Plain Dealer, Sept. 29, 2004, at B3; Sherri Williams, *Many Felons Surprised to Learn They Can Vote*, Columbus Dispatch, Oct. 3, 2004, at 1B.

13. *Racial Fairness Project* Opinion, *supra* note 12, at 2–3.

On October 4, “satisfied they have obtained the relief sought,” the plaintiffs voluntarily dismissed their case.¹⁴

14. Notice, *Racial Fairness Project*, No. 5:04-cv-1948 (N.D. Ohio Oct. 4, 2004), D.E. 4; Order, *id.* (Oct. 8, 2004), D.E. 6.