

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARIAN SPENCER, et al.) Case No. 1:04-cv-00738
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Plaintiff,) (Judge Dlott)
)
-v-)
) **INTERVENING DEFENDANTS’**
J. KENNETH BLACKWELL, et al.) **HEARING BRIEF AND CLOSING**
) **ARGUMENTS ON PLAINTIFFS’**
Defendant.) **MOTION FOR TEMPORARY**
) **RESTRAINING ORDER**

Plaintiffs, as movants for a Motion for Temporary Restraining Order (or Preliminary Injunction), have a heavy burden for this Court to enter such extraordinary relief. In this case, Plaintiffs have failed in their burden to show all or any of the four elements necessary for this Court to enter such an equitable order.

I. PLAINTIFFS HAVE FAILED TO PROVE ANY OF THE FOUR FACTORS NECESSARY FOR ENTRY OF A TEMPORARY RESTRAINING ORDER.

This Court must examine four factors prior to entry of any temporary restraining order (or preliminary injunction). ACLU v. McCreary County, 354 F.3d 438, 445 (6th Cir. 2003); McPherson v. Michigan High School Athletic Association, 119 F.3d 453, 459 (6th Cir. 1997) (*en banc*). Plaintiffs/Movants have failed to show any of these four elements:

- (1) That the movant has a “strong” likelihood of success on the merits;
- (2) That movant will be irreparably harmed by the conduct complained of;
- (3) That issuance of the preliminary injunction/TRO would not cause harm to others, including harm to the defendants; and
- (4) That the public interest would be served by the issuance of any such equitable relief.

Id. Because of its far-reaching effects and the extraordinary form of remedy, the standard for granting a temporary restraining order or preliminary injunction is more “stringent” than that required for even summary judgment. See Leary v. Daeschner, 228 F.3d 729, 739 (6th Cir. 2000). Plaintiffs have not passed that high standard.

A. Plaintiffs Have Not Shown a “Strong” Likelihood of Success on the Merits.

A federal court lacks authority to change a state law unless there is credible evidence that the law is unconstitutional on its face or has been applied in an unconstitutional manner. Plaintiffs’ bear the burden of demonstrating unconstitutionality. Here the law is facially neutral. In fact, the law has been in effect since 1953 and has never been held unconstitutional or apparently ever before even been attacked as unconstitutional. Plaintiffs have completely failed to meet their burden. They have not presented any credible evidence that the law has been applied in an unconstitutional manner in the past, and they have presented absolutely no credible evidence that it will be applied in an unconstitutional manner in the future. Plaintiffs have not shown any likelihood of success on the merits.

1. Not Racially Based.

First, the entire premise or assumption for Plaintiffs’ claim is that there is something nefarious, illegal, or improper about “challengers” being assigned to various precincts in Hamilton County, Ohio, which precincts voted for Vice President Gore in the 2000 election by a margin of 60% and above. Plaintiffs speculate, but do not prove, that the allegedly predominantly African-American precincts were chosen on the basis of race. In fact, Plaintiffs have not shown that voter registration data discloses a voter’s race. Rather, the evidence submitted in this case shows that voter registration data does reveal whether voters voted Republican or Democratic in prior elections. The Affidavit of Daniel Schneider, Intervenor Exhibit 1, admitted into the evidence in this case, is the only direct evidence on how

“challengers” were assigned to precincts. This uncontradicted evidence, given by the person who made the assignments, is that approximately 251 of approximately 626 challengers were assigned based upon precincts which voted most heavily Democratic, above 60% to 99%, for Vice President Gore in the 2000 election. Mr. Schneider (who is not from Ohio and not from Hamilton County) had no idea which precincts were predominantly African-American or not. This is absolutely UNREBUTTED EVIDENCE that race had nothing to do with the designation of precinct challengers.

There is also no evidence of racial hostility, purpose, or intent. Plaintiffs’ witnesses, Mr. Burke, Mr. Yates, Mr. Maume, Mr. Hicks, Mr. Tolley, or even Plaintiff Ms. Spencer, did not present one piece of evidence showing racial animus in the Republican Party’s decision to assign challengers to the most “Democratic” or “Gore” precincts from the prior presidential election. Mr. Burke, Plaintiffs’ prime witness, even admitted upon cross examination by Mr. Fischer, that he knew of no racial animus presented by a party assigning challengers to precincts at which the other party received 60% of the vote in the prior presidential election.

2. A Racially Neutral Statute at Issue.

Plaintiffs have not shown that Ohio Revised Code § 3505.20 is anything but racially neutral. That revised code section was even admitted into evidence. There is no testimony to the effect that that law is not racially neutral on its face. Further, any reading of the statute shows there is no racially based purpose. Moreover, the statute has been unchallenged in its constitutionality since at least 1953.¹

Ohio Revised Code § 3505.20 is a fundamental part of the Ohio process aimed at preventing fraud and improper voting, and completely within a state’s well-established authority

¹ Laches is an additional defense in this case. See Defendant Blackwell’s Motion to Dismiss in Memorandum contra Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction (Docket No. 10).

to govern the electoral process. See, e.g., Dunn v. Blumstein, 405 U.S. 330, 343-44 (1972); Bell v. Marinko, 367 F.3d 588, 591-594 (6th Cir. 2004). Under Ohio law and the testimony in this case, “challengers” may not speak to potential voters, “challengers” may not touch potential voters, “challengers” may not harass potential voters. Thus, a statutory system that prevents harassment or intimidation and does not permit questioning at all, least of all based upon race, is constitutional and must be upheld.

3. Adequate Remedies at Law Preclude Any Injunctive Relief.

There are several adequate remedies at law and thus, it is highly unlikely that Plaintiffs will prevail on the merits. As admitted by Plaintiffs’ main witness, Timothy Burke, chairman of the Democratic Party for Hamilton County [as well as required under current federal statutes and case law], the system of “provisional ballots” (see State Exhibit 1) is a remedy, pursuant to Mr. Burke’s own testimony.² Thus, as a matter of law and of fact, this Court lacks the authority to enter an injunction when there is an adequate remedy at law.

As this Court heard, the Help America Vote Act of 2002 (HAVA), 42 U.S.C. §§ 15481, et. seq., requires state and local election officials to permit an individual whose name does not appear on the official registration list, or according to the testimony of this case, the voter book, or whose eligibility to vote is called into question, to cast a “provisional ballot” as long as the potential voter declares that he or she is a “registered voter in the jurisdiction in which [he] desires to vote and that [he] is eligible to vote in an election for Federal Office.” See 42 U.S.C. § 15482(A). See also Amicus Brief Letter at ¶ 1, p. 1, U.S. Department of Justice (Docket #13). The provisional ballot is the federally-mandated remedy which balances the need to prevent

² Although he said he does not like the remedy, Mr. Burke admitted it was a “remedy,” which is the issue before this Court.

fraud with the right to vote. With such mandatory remedy already in place under law, there can be no likelihood that Plaintiffs will prevail on their injunctive claims at trial.

4. Lack of Proper Evidence.

Plaintiffs have offered no evidence that this part of Ohio's statutory scheme for elections has ever deprived minority voters of their ability to elect candidates of their choice. The Voting Rights Act, just like the Fifteenth Amendment and the Equal Protection Clause, is to protect and to ensure "equal political opportunity: that every person's chance to form a majority is the same, regardless of race, or ethnic origin." Nixon v. Kent County, 76 F.3d 1381, 1392 (6th Cir. 1996) (*en banc*). Plaintiffs have not shown any evidence that Ohio Revised Code § 3505.20 gives them "less opportunity to participate" in Hamilton County elections if an injunction is not entered. Plaintiffs also have not shown any unconstitutionality for O.R.C. § 3505.20 under the First, Fourteenth, or Fifteenth Amendments because the statute does not contain any racially discriminatory purpose. See Washington v. Davis, 426 U.S. 229 (1976).

Professor Tolley's declaration and limited testimony described historical conditions **outside of Ohio**. Professor Tolley specifically admitted he had done nothing to research discrimination at polling places in Hamilton County. Under Section 2 of the Voting Rights Act, Movants would need to show that the statutory scheme/electoral process and procedures deprived minority voters of an opportunity to participate effectively in the political process. See Southwest Voter Registration Education Project v. Shelley, 278 F. Supp.2d 1131, 1142 (C.D. Cal.), *aff'd* 344 F.3d 914 (9th Cir. 2003)) *en banc*. Plaintiffs have failed to prove the deprivation of the right to vote.

Movants, moreover, did not show any evidence of a recent history of "voting-related" discrimination in Ohio, least of all in Hamilton County, despite Professor Tolley's testimony.

Even he admitted his information involved voting districts in the 1980s. However, this Court in Mallory v. Ohio, 38 F. Supp.2d 525 (S.D. Ohio 1997), affirmed, 173 F.3d 377 (6th Cir. 1999) stated that there was “no such recent history of voter-related discrimination.” Id. at 541. And recent decisions have supported that same opinion.

5. Pure Speculation.

Finally, Plaintiffs’ case is based upon pure speculation, and hypothetical questions built upon conjectures, resting on assumptions. Questions asked by Movants’ counsel were based upon “hypothetical” voters, not actual Hamilton County voters. Plaintiffs’ so-called evidence was based upon “hypothetical” challengers, not actual Hamilton County challengers [except Mr. Hicks, who as the Court noted, knew nothing on the subject of challengers]. Plaintiffs’ case and questions are based upon a “hypothetical” racial animus, with no actual proof of same. Plaintiffs’ questions and case were premised upon “hypothetical” presiding judges, asking “hypothetical” challenged potential voters “hypothetical” questions, other than from the statutory questions listed in the law. This is not evidence. This is speculation.

Further, the evidence showed that the Republican Party submitted two lists of challengers to the Board of Election: one list of approximately 375 names (in mostly Republican precincts) and another list of approximately 251 names that comprised every precinct in Hamilton County where Vice President Gore received over 60% of the vote in the 2000 Presidential election. Plaintiffs’ expert, Mr. Maume, did not even analyze the full set of Republican challengers. Mr. Maume testified that he only analyzed the list of 251 challengers; **he admitted he was not even told about the other list of 375 challengers.** There was no testimony except idle speculation from the Democratic Party Chairman to distinguish between these lists. Thus, any testimony

from Mr. Maume about the proclivity of an African-American versus a person of another race to vote in a precinct where there was a Republican challenger was completely flawed.

Finally, Plaintiffs' original statements that those presiding judges in the precincts would be Republican was WRONG. Professor Tolley admitted his Declaration regarding Republican judges was WRONG. Further, the entire testimony, when taken as a whole, showed that these "hypothetical" presiding judges in most of the precincts would be Democrats. Thus, all the speculative testimony about delay, harassment, undue burdens, or intimidation caused by unknown Republican presiding judges was also all hypothetical. Speculation piled upon speculation is no basis in evidence for entry of any injunctive relief.

B. Plaintiffs Have Not Shown That They Will Be Irreparably Harmed if One Challenger From Each Party is Present at the Polling Sites as Permitted by Ohio Law.

Plaintiffs are required to establish that irreparable harm will occur if the temporary equitable remedy is not entered. See Fed. R. Civ. P. 65. Plaintiffs have not and cannot carry that burden.

As noted above, at a minimum, a provisional ballot will be provided to a successfully challenged voter on November 2, 2004. State's Exhibit 1, which is the Secretary of State of Ohio's Directive 2004-42, dated October 25, 2004, specifically enforces HAVA, 42 U.S.C. § 15482(A), permitting provisional balloting. Thus, no voters, including Plaintiffs in this matter, could be denied their fundamental right to vote. Without their rights being harmed, there can be no harm, least of all the irreparable harm required for injunctive relief. Mr. Burke, Plaintiffs' main witness, even had to change his testimony in light of State's Exhibit 1, which according to the uncontradicted testimony of John Williams, is "law" in the State of Ohio. Mr. Burke admitted under cross examination that, although he did not like the provisional ballot remedy,

that the remedy for a voter challenged would be a provisional ballot. As such, there can be no harm, least of all, irreparable harm.

Plaintiffs specifically seek a preliminary injunction or temporary restraining order against defendants “from discriminating against the members of the class based on race.” (Docket #2) As a matter of law, the “challengers,” whether Democrats or Republicans, cannot discriminate based upon race, already. Further, Plaintiffs seek to include in such temporary restraining order, “if necessary, a ban on challengers at the polls in Hamilton County.” There has been no evidence that any actual voter will even know who the challengers in the precinct voter areas are. Federal monitors may be there. Other voters may be there. The challengers will not be wearing uniforms. Per the testimony to date, the challengers would not be even able to talk to or touch any of the potential voters. Neither Plaintiffs nor potential class members would, in any way, be contacted, and thus could not be “harmed,” and, least of all, irreparably harmed, by the presence of one Democratic challenger and one Republican challenger in the voter area.

Currently, according to the evidence, there are four precinct judges already at a precinct, usually two Democrats and two Republicans. Challengers would change that number to six. There has been no evidence six people is more of an intimidating number than four people. There is no evidence six people, three Democrats and three Republicans, is harmful. There is no evidence six people, three Democrats and three Republicans, is improper. At the hearing on this matter, there has been absolutely no evidence of irreparable harm.

Furthermore, if anyone intimidates the potential voter, under applicable Ohio law and all of the testimony at bar, the presiding judge in these Democratic precincts may, and any law enforcement officer upon his/her request, must, remove someone trying to harass a voter out of the precinct voting area. As Mr. Burke testified, the law enforcement officer must enforce that

provision. Thus, anyone feeling that they are being intimidated or harassed obviously can go the presiding judge at the precinct and point out the harassing or intimidating person. This is yet another remedy and protection, such that there can be no harm, least of all irreparable harm, by the presence of challengers, one Democrat and one Republican, in the polling area.

C. Intervenor and All Other Voters Will Likely Suffer Irreparable Harm if the Board of Elections is Enjoined From Permitting Challengers at Polling Sites.

Plaintiffs have also failed to carry their burden to show that Intervenor and the public would not suffer irreparable harm. Under Bell v. Marinko, 235 F. Supp. 2d 772, 776 (N.D. Ohio 2002), when a person is not a resident of that specific precinct, that person is not a qualified elector/potential voter. Under Ohio law and the U.S. Constitution, states have the right to see that all applicants for registration to vote actually fulfill the requirement of bona fide residency. Bell, 367 F.3d at 592.

Already, as shown in the evidence in this case, there are allegations of frequent and serious fraud in applications to register to vote. As noted in the testimony at this hearing, potential voters may send in voter registration forms without ever seeing a member of the Board of Elections, or any other official. Mr. Tolley, witness for the Plaintiff, admitted a twelve-year-old with a social security number could be placed on the voter registration rolls and show up to vote. Obviously, people in the past have shown up at the wrong voting precincts, or lacked proper residency.

At the hearing, the evidence showed there is a record number of new registrations in Hamilton County, creating additional instances of potential for fraud. Thousands of registration cards have been returned because of unknown addresses. At least one case of election fraud involving a number of fake registrations discussed during testimony has been referred to the County Prosecutor for prosecution.

In light of the recent injunction which disallowed pre-challenges to voter registration, the opportunity for fraud is enhanced by the lack of challengers at the voting precincts, not diminished. It is ironic, that with so many additional voters entering the system, Plaintiffs oppose having one more Democratic and one more Republican along with the four precinct judges, in the voter area. Instead of slowing down the process, there is an equal argument that the Democrat and Republican challengers will enhance the process of making sure voters get to vote.

There is also an issue of dilution. Intervening Defendants, and those similarly situated, will be harmed, irreparably, if fraudulent votes are cast. Every legitimate vote must count, and must count equally. Legitimate voters like Intervening Defendants, properly registered and properly voting in their proper location, have an equal right to make sure that others who are not eligible to vote do not vote, otherwise their voting franchise is diminished. If this Court wishes to protect all legitimate voters, then this Court should not enter an injunction as requested by Plaintiffs.

Finally, under U.S. Supreme Court precedent, the activities of political parties, including their governance, structure, and related activities receive high constitutional protection. See Eu v. San Francisco County Democratic Central Committee, 489 U.S. 214, 230 (1989). The right of political parties to ensure that fraudulent voting does not occur, in this case by both parties who named challengers to these precincts, must be given constitutional protection. Further, under the undisputed evidence in the case at bar, **the Democratic Party filed its list of challengers PRIOR** to the Republican filing of challengers in these approximately 250 precincts, precincts in which most presiding judges will be Democrats! For this Court to interfere in the Hamilton County Republican Party's decision, made **after** the Hamilton County Democratic Party had

already filed a list of challengers, is an act of high constitutional dimension and could irreparably harm the important constitutionally protected rights of the Hamilton County Republican Party, and obviously the rights of all its members, including Intervenors.

D. The General Public Would Be Greatly Harmed by the Issuance of Temporary or Preliminary Equitable Relief in this Matter.

Clearly, the general public is harmed by any injunction proposed by Plaintiffs in its Motion. First and foremost, this Court would be interfering in a statute of the State of Ohio at the very last minute, the day before an election, creating chaos. This Court also would be, in effect, throwing out statutory protections under HAVA, and disregarding the very careful balance created by Congress to deal with these issues of federalism in voting. The Court would be saying that HAVA and Secretary of State Blackwell's Directive 2004-42 (State Exhibit 1), which create and enforce that balance of federal and state interests, determined after months of Congressional hearings and debate, are invalid and are effectively to be superseded by a temporary restraining order or preliminary injunction entered by this Court.

In a practical sense, this Court recognizes that there must be a proper and substantial regulation of election process if such elections are to be considered honest, fair, and enforceable. See Burdick v. Takushi, 504 U.S. 428, 433 (1992). And under Bell, Ohio, like any other state, is free to take reasonable steps to ensure that all applicants for registration to vote actually fulfill the requirements of the residency. 367 F.3d at 592. As this Court is also aware, a state has an important interest in holding secure and proper elections, and statutes to that effect will generally only trigger a reasonable relationship kind of judicial review. See Anderson v. Celebreeze, 460 U.S. 780, 788 (1983).

The statutory scheme under Ohio Revised Code § 3505.20 meets that relationship and it meets it easily. Challengers cannot speak to voters. The presiding or other judges ask a few

short questions. The challengers have no input to the polling judges on how to vote. This is a minimally intrusive statute, at most. With such a minimally intrusive statutory scheme, asking someone about residency or age is no more, and probably less intrusive, than showing a driver's license as one goes through the security on the first floor of the Potter Stewart Federal Court House. With the addition of the provisional ballot under HAVA, this minimally intrusive statutory scheme is made even less intrusive because any voter can ask for a provisional ballot if refused a regular ballot.

All voters have a substantial interest in casting votes which are considered fair, equal, and non-fraudulent. Plaintiffs have not raised at this hearing anything more than the rankest form of speculation as to some unknown, unbased, and undefined speculation as to any potential harm. This Court should balance against that speculation, the clear harm to the public in **not** preventing harm to the election process which would, undeniably, cause a lack of confidence in the outcome, if fairness and integrity in the election caused by fraudulent voting is undermined. With Ohio's minimally intrusive statutory scheme already in place to prevent same, the Court should not tinker. The balance must weigh in favor of fair elections with Ohio's minimally intrusive scheme.

II. THE REMEDY REQUESTED IS OVERREACHING AND NOT BASED UPON THE EVIDENCE AT THIS HEARING.

In their Motion for Temporary Restraining Order and Preliminary Injunction (Docket No. 2), Plaintiffs specifically request the court to issue:

a preliminary injunction restraining the Defendants, their agents, employees and those acting in concert with them, from discriminating against the members of the class based on race, and include in such order if necessary, a ban on challengers at the polls in Hamilton County.

A. No Need to Enjoin What is Already Unlawful.

This Court does not need to issue a preliminary injunction restraining defendants from discriminating against anyone “based upon race,” because there is no proof that any challenger, Democratic or Republican, was instructed, would act, or has acted against the members of any class based upon race, national origin, or on any other protected basis. As a matter of law, both Ohio and Federal, Defendants have not, do not, and there is absolutely no proof that they will, violate such laws.

B. The Remedy Requested Harms Other Duties of Challengers

As for the second part of the injunctive request, “if necessary, a ban on challengers at the polls in Hamilton County,” this Court has seen at this hearing that there is no basis for believing that any challenger would discriminate against any person based upon their race. The only evidence on race has been that some of the precincts [and we do not know exactly which precincts any injunctive order would apply because Mr. Burke’s decision to change his testimony from 99% to 2/3rds of the precincts being predominantly African-American] have a large number of predominantly African-American voters. See Testimony of Mr. Maume. Nothing more. However, under Ohio Revised Code § 3506.13, which deals with the duties of challengers and the statutory process under which they act, their duty is **not** just to challenge voter registrations, age, and residency. Under that section of the Ohio Revised Code, challengers also have the specific duty to watch that the ballots are properly placed in the containers to be sent to Defendant Board of Elections. O.R.C. § 3506.13. Thus, an injunctive order banning all challengers from all polls in Hamilton County would impede that proper and important duty of challengers to prevent fraud, specifically the mishandling of ballots or inadvertent loss of ballots. The overarching breadth of Plaintiffs’ request is clear on its face.

Hence, the remedy requested by Plaintiffs is overly broad, without basis in fact, without basis in the evidence, and without basis in law. The remedy requested would undermine Ohio's statutory and constitutional right and duty to ensure fair and free elections. The injunction as requested by Plaintiffs would undermine the entire tapestry of Ohio's law regulating elections. This Court should not grant such a clearly overbroad request.

C. If Any Remedy Is Needed, It Must Apply to Both Democratic and Republican Challengers and Can Only Be Limited Precincts.

Intervening Defendants deny any remedy needs to be fashioned by this Court. Assuming *arguendo* only that the Court, however, will issue any equitable remedy of any type, it must apply to both Democratic and Republican challengers. If the Court finds that the presence of a Republican challenger in these approximately 250 precincts is a discriminatory voting practice, then so too must the presence of a Democratic challenger. For under the undisputed evidence in the case at Bar, the Hamilton County Democratic Party filed its list of challengers in those precincts. Thus, any remedy that precludes Republican challengers from polling places in Hamilton County must also preclude Democratic challengers from those same polling places.

Furthermore, Plaintiffs have failed to carry the burden as to which Hamilton County precincts such injunctive relief would apply. As noted above, Mr. Burke's own testimony is unclear. At first, Mr. Burke, Democratic Chair for Hamilton County, Ohio, testified that of the approximately 250 precincts at issue, 99% were predominantly African-American. After a vigorous cross examination on day one, the next day Mr. Burke recanted his testimony and said that only 2/3rds [66.7%] of those precincts were predominantly African-American. However, he never said which ones. For example, during cross examination of him and Mr. Yates, it came out that certain precincts in Pleasant Ridge, Clifton, and other areas were not predominantly African-American. This testimony puts into question the quality of Plaintiffs' Exhibit 10 and

even questions whether the Court can put any reliance upon it. However, even *arguendo* only accepting Plaintiffs' witnesses' own testimony (which Intervening Defendants do not), Mr. Burke's evidence shows that even if the Court does fashion an equitable remedy, such a remedy could **not** apply to all of Hamilton County, could **not** apply to over 1000 precincts, and would not even apply to all 250 precincts. Under Plaintiff's own evidence, only 2/3rd of the 250 precincts are even at issue, and that even assumes *arguendo* only that the Court agreed fully with Plaintiffs. Thus, over 80 of the 250 precincts of which Plaintiffs have complained are not even relevant to any equitable remedy, if one is ever entered.

III. INCLUSION BY REFERENCE.

Intervening Defendants include by reference in this document: Defendant Blackwell's Motion to Dismiss and Memorandum Contra Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (Docket #10); the Hamilton County Board of Elections Response and Opposition Motion for Primary Injunction or Motion for Temporary Restraining Order (Docket #8); Intervening Defendants Previous Response and Opposition to the Motion for Preliminary Injunction or Motion for Temporary Restraining Order (Docket #5); and the Amicus Curiae Brief /Letter filed by the U.S. Department of Justice, on October 29, 2004 (Docket #13).

IV. CONCLUSION.

For all foregoing reasons, Intervening Defendants respectfully urge this Court to deny in all ways Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, or in the alternative, that if any remedy be fashioned, that it be applied equally to all challengers, regardless of party affliction, that it is be the minimal remedy possible, as is required under federal law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing document, namely, INTERVENING DEFENDANTS' HEARING BRIEF AND CLOSING ARGUMENTS, was served upon counsel of record via the Court's ECF/CM system this 31st day of October, 2004.

/s/ Patrick F. Fischer