

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Case No. 1:04 CV 735

AMY MILLER, MINDI HADDIX,)
and all others similarly situated;)
)
and)
)
OHIO DEMOCRATIC PARTY)
)
Plaintiffs,)
)
v.)
)
J. KENNETH BLACKWELL, Secretary of State;)
Lawrence County Board of Elections and its)
members in their official capacities;)
Scioto County Board of Elections and its)
members in their official capacities;)
Cuyahoga County Board of Elections and its)
members in their official capacities; Franklin)
County Board of Elections and its members in)
their official capacities; Medina County Board)
of Elections and its members in their official)
capacities; Trumbull County Board of Elections)
and its members in their official capacities,)
)
Defendants.)
_____)

Cause No. **1:04 CV 735**
J. DLOTT
J. HOGAN

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

CLASS CERTIFICATION REQUESTED

Individual and representative Plaintiffs, along with Plaintiff Ohio Democratic Party, seek declaratory and injunctive relief against Defendants, and in support, state as follows:

PRELIMINARY STATEMENT

1. The Ohio Republican Party and the Republican National Committee have attacked more than 35,000 registered Ohio voters' fundamental right to vote. In identical mass

challenges filed with county boards of elections throughout the State on the eve of the Election, they have sought to initiate disqualification proceedings in county boards of elections based on evidence that does not exist and under law that does not permit it. The challengers to these registered electors base their challenges not on any evidence of wrongdoing, but on a stack of returned mail -- mail that likely represents voters who have moved (and who are, under Ohio and Federal law, eligible to vote) or simply mail that was misaddressed. And although there is no evidence that these voters are ineligible to vote, Defendants -- the county boards of elections and their members -- are on the verge of sending notices to those challenged voters that the boards will hold hearings to challenge the voter's eligibility. Such proceedings -- indeed even the sending of notice announcing such proceedings with the voters' right to vote at stake -- will cause chaos in the election process at this late date. Indeed, even if there were a remote possibility that the notices would reach the voters whose registration is challenged, there is no basis for the hearings and no reason to send the notices: Federal law expressly prohibits States from stripping citizens of their fundamental right to vote based solely on a returned piece of mail sent by a private party and the Due Process Clause of the Constitution prohibits the stripping of a right as fundamental as the right to vote based on the threatened mass hearing process. Accordingly, Plaintiffs respectfully request that proceedings on the challenges be enjoined.

PARTIES

2. Individual and representative Plaintiff Amy Miller resides at 1201 Sharon Copley Road, Wadsworth, Ohio 44281, in Medina County. She used to live around the corner, in the same precinct; while living at her old address, she received mail at a post office box rather than at her home. When she moved she updated her voter registration with her new address. It appears that a confirmation of her registration was mistakenly sent to the post office box at which she formerly received mail. The post office box was closed, because she now receives

mail at her new address. Based on returned mail, Amy Miller's right to vote has been challenged. She has been told, along with approximately 245 other challenged voters in her county, that she must attend a hearing at 11:00 on Thursday before the board of elections. Because her pregnancy has put her on semi-bed rest, she has been advised by her doctor not to attend the hearing of 245 voters. Plaintiff Miller meets all requirements to vote.

3. Plaintiff Mindi Haddix (collectively, with Plaintiff Amy Miller and the Class, "Plaintiff Voters") resides at 6516 Ridge Road, in Sharon Township, Ohio, which is in Medina County. Like many residents of Sharon Township, her proper mailing address does not include "Sharon Township," but the nearby metropolitan area of Wadsworth, Ohio. (Other residents of Sharon Township have mailing addresses in Sharon Center or Medina.) It appears that the county board of elections sent her a confirmation card (containing information about her polling place) but addressed it to Sharon Center, rather than to her mailing address in Wadsworth, and the mail was returned. When Mindi Haddix's husband did receive his confirmation card through the mail, Mindi Haddix called the board of elections, where an employee checked and assured her that she was registered and eligible to vote. She has been told that she too must attend a hearing at 11:00 on Thursday morning; because her 6-month-old son has an appointment with a medical specialist, she states that she must choose between taking her son to a doctor and defending her right to vote. Mindi Haddix is an independent voter and is undecided about who she will vote for in the presidential election.

4. Plaintiff Ohio Democratic Party ("ODP") is a "major political party," as defined in Ohio Rev. Code § 3501.1(F)(1). To elect the candidate who receives the most votes in the November general election, the ODP has an interest in having all votes cast by registered and eligible voters properly counted and included in the election results. The ODP's adherents (the

ODP's "members," *i.e.*, Democratic voters) face a real and imminent threat, through the enforcement of Directive 2004-33, of violation of their federal rights. The ODP sues on its own behalf and on behalf of its members.

5. Defendant J. Kenneth Blackwell is the Secretary of State of Ohio. In that capacity, he is Ohio's chief election officer and is responsible for administering all statewide elections, including those for federal office. Among other duties, Defendant Blackwell: appoints all members of local boards of elections to serve as his representatives; issues instructions by directives and advisories to members of the boards as to the proper methods of conducting elections; prepares rules and instructions for the registration of voters, maintenance of the rolls, and conduct of elections; determines and prescribes the forms of ballots and the forms of all blanks, cards of instructions, pollbooks, tally sheets, certificates of election, and forms and blanks required by law for use by candidates, committees, and boards; compels the observance by election officers in the several counties of the requirements of the election laws; and oversees the canvassing of election results and totals and announces election results.

Defendant Blackwell is sued in his official capacity.

6. Defendant Boards of Elections and their members are the secretary of state's representatives for county election matters. Ohio Rev. Code § 3501.06. Pursuant to § 3503.24, it is the county boards of elections, their members, and the staff members under the board members' control who are responsible for receiving challenges to voter eligibility, sending notices to the challenged voters, and holding hearings on the voters' eligibility. *Id.* § 3503.24.

CLASS ALLEGATIONS

7. Plaintiff Voters seek to bring this case as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of themselves and all others similarly situated as members of a proposed Class, defined as follows:

All persons who have registered to vote in the State of Ohio and whose eligibility to vote in the State of Ohio in the General Election to be held on November 2, 2004, was challenged in a county board of elections on the ground that the person is not a resident of the precinct where the person offers to vote and the purported basis of that challenge is that a mailing had been returned to a political party.

8. The proposed class is so numerous that joinder of all of its members is impracticable. According to a press release from the Ohio Republican Party, the proposed class includes over 35,000 members.

9. Virtually all of the issues of law and fact in this class action are common to the class and include the following:

(a) whether the State, under 42 U.S.C. § 1973gg-6, may remove a voter from the rolls of eligible voters based only on evidence that a piece of mail sent to the voter by a political party was returned to the sender, when that voter had not failed to return a notice that complies with 42 U.S.C. § 1973gg-6(d)(2) and when two Federal general elections had not occurred since such a notice was sent;

(b) whether voters can be subjected to a program that effectively requires them to re-register by means of a hearing on the even an election, consistent with the National Voter Registration Act, 42 U.S.C. § 1973gg, *et seq.*, which prohibits requiring citizens to re-register to vote, authorizes citizens to change their address on election day where the voting lists have inaccurate address information, and prohibits States from engaging in a program of purging their voter rolls, on any basis, when a federal election is less than 90 days away.

(c) whether a notice of a hearing at which a voter's eligibility to exercise the fundamental right to vote, sent three days before the hearing and sent to an address that has been selected solely because it is believed to be the wrong address, complies with the Due Process Clause.

10. Plaintiff Voters' claims are typical of the class members' claims. Plaintiff Voters and all other members of the Class have been challenged in their fundamental right to vote, and if Defendants are allowed to send out notices, to hold hearings, or to remove Plaintiff Voters from the rolls, the Plaintiff Voters' fundamental right to vote, right not to be removed from rolls of eligible voters except in a manner compliant with 42 U.S.C. § 1977g-6, and right to the Due Process of Law will be violated.

11. Plaintiff Voters can and will fairly and adequately represent and protect the interests of the class and have no interests that conflict with or are antagonistic to the interest of class members. Plaintiff Voters have retained attorneys competent and experienced in class actions and in election law. No conflict exists between the Plaintiff Voters and class members.

12. A class action is superior to any other available method for the fair and efficient adjudication of this controversy, and common questions of law and fact predominate over any individual questions that may arise.

13. In the absence of a class action, Defendants may proceed with sending notices, holding hearings, and removing Plaintiff Voters from the rolls of eligible voters in a manner that violates Plaintiffs' Federal rights.

JURISDICTION AND VENUE

14. This case is brought under 42 U.S.C. § 1983 and 42 U.S.C. § 1973gg-9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202.

15. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Local Civil Rule 82.1(c), because a substantial part of the real and immediate harm faced by Plaintiffs

and their members is threatened in this judicial district, and at least one defendant resides in this judicial district.

A COORDINATED CAMPAIGN TO INTIMIDATE ELIGIBLE VOTERS

16. In conjunction with the Republican National Committee, the Ohio Republican Party has undertaken a self-described “ongoing, aggressive effort” to challenge voters’ eligibility, and particularly the eligibility of newly registered voters.

17. The goal of this campaign is to discourage and intimidate eligible voters from casting ballots. The newly registered voters disproportionately vote for Democratic candidates.

18. On Tuesday, October 19, 2004, Republican National Committee Chairman Ed Gillespie traveled to Ohio to announce that there are “reports of voter fraud” in Ohio. Appearing with Gillespie, Ohio Republican Party Chairman Bob Bennett displayed what he described as mail that the Republicans had sent but that had been returned by the postal service – suggesting, without further evidence, that election fraud is the only or best explanation for returned mail.

19. At that October 19 event, neither Gillespie nor Bennett discussed any of the other explanations for returned mail. For example, they did not mention that mail might have been returned because some voters may have moved, a fact that does not strip the voters of their right to vote, but requires only that they update their registration when they appear at the polls on election day. They also did not mention that mail could be returned because the mailing address did not include the voter’s apartment number.

20. They did not mention that mail could be returned, as in the case of Plaintiff Mindi Haddix, because in many rural communities, an individual may reside and vote in a township, but may have a mailing address in the nearest city.

21. They did not mention that mail could be returned, as in the case of Lisa Potts, because the voter was registered to vote from her mother's address in Westerville, Ohio, while she is serving in the United States Marines at Camp Lejeune, North Carolina.

22. They did not mention that mail could be returned, as in the case of Raven Shaffer, because his family receives mail not at their Brown Township home, but at a post office box, because the family's mailbox had been repeatedly hit by delivery trucks. When mail like the Republican challengers' is addressed to a place of residence, rather than to the post office box at which the voter receives the mail, the mail is likely to be returned.

23. Perhaps most simply, they did not mention that mail could be returned because the sender – here, the Ohio Republican Party and the Republican National Committee – had misaddressed it. Indeed, the Ohio Republican Party has now admitted that mistakes in its data management rendered thousands of its challenges – and its claims of voter fraud – baseless. Instead of acknowledging that all they had was a piece of returned mail, the Ohio Republican Party and the Republican National Committee tried to twist the returned mail into voter fraud.

**CHALLENGING VOTERS' ELIGIBILITY,
AGAINST THE EVIDENCE AND AGAINST THE LAW**

24. Out of approximately 800,000 newly registered voters in Ohio this year, the Ohio Republican Party filed 35,000 challenges with county boards of elections on Friday, October 22. Even though the challenged individuals include people who were registered to vote as long ago as January, the Ohio Republican Party filed their challenge at the last possible moment under state law. The challenges were directed at Plaintiff Voters (and include Organizational Plaintiffs' members), who are newly registered voters in 65 counties. The challenges allege that because a nonforwardable mailing to the electors at issue from the Ohio Republican Party was

returned, the registered electors should be removed from the ranks of eligible voters and denied their constitutional right to vote.

25. The Republicans challenge these registered voters on the basis that the voters intend to vote in a precinct in which they are not eligible to vote. The basis for the challenge cannot be known until Election Day, and thus the challenge cannot be heard at this time.

26. The challengers have no personal knowledge of any reason that the registered electors whom they challenged are no longer eligible to vote. Their only basis for claiming that Plaintiff Voters are ineligible to vote is that the Ohio Republican Party or the National Republican Committee sent the elector a piece of mail, and that piece of mail was returned.

27. Mail sent by the Ohio Republican Party, or by anyone else, may be returned as undeliverable for reasons that have nothing to do with a voter's right to remain a registered voter under Chapters 3503 and 3505 of the Ohio Revised Code. Mail may be returned because of a Postal Service error, because the addressor erred in writing the address, because the address omitted an apartment number, because the voter is in the military, or because the voter had moved – even if the move was within Ohio, within the same county, within the same precinct, or within the same building.

28. The fact mail addressed to Plaintiff Voters was returned to the Ohio Republican Party is not evidence of fraud. According to the United States Census Bureau, more than 1% of the population moves every month. That means in Ohio, an average of over 100,000 people move every month, and since the Republicans began collecting the addresses of the voters they would challenge last Friday, more than one million Ohioans changed addresses. Moving does not render an individual ineligible to vote. To the contrary, both Federal and Ohio law provide numerous mechanisms for protecting the right to vote when an individual moves, including

simply requiring an individual to update his or her address when the voter shows up at the polls on Election Day. *See, e.g.*, 42 U.S.C. § 1973gg-6; Ohio Rev. Code § 3503.16.

29. Even if the challengers established that the elector has moved, the law requires that the elector's residence be updated to his or her new precinct, not that the elector be disenfranchised. When an elector moves, Federal law *prohibits* states from removing the elector from the rolls of eligible voters unless (a) the elector confirms that he or she has moved to a new jurisdiction, or (b) three conditions are met: the State sends the elector a notice (by forwardable mail) asking whether he or she has moved (and providing information on how to update registration if the move was to a new precinct), the elector fails to respond to the notice, *and* the elector has not shown up to vote in any election during the period beginning on the date of the notice and ending after two Federal general elections have occurred. 42 U.S.C. § 1973gg-6(d)(1)(B).

30. Here, none of these statutory requirements for disenfranchisement is met. No § 1973gg-6 notice was sent. There was, consequently, no notice to which the elector could have failed to respond. And two Federal general elections have not passed since the notice was sent.

RAMPANT INACCURACIES IN THE CHALLENGES THEMSELVES

31. Because the challenges to Plaintiff Voters' eligibility are themselves facially invalid, some county boards of election have indicated that they will immediately dismiss the challenges. Noting that the challenges themselves were riddled with error, and that the challenges themselves misidentified proper voting precincts, some county boards have refused to hear the challenges.

32. The Hamilton County Board of Elections discovered that the Republicans' challenges to 5,000 registered electors in the county were themselves rife with errors. On being challenged, Republican state chairman Bob Bennett acknowledged that there had been a clerical

error in creating the challenges, and Republicans withdrew their challenges in Hamilton County. According to Republican spokesman Jason Mauk, the party does not think there are problems with their other challenges in other parts of the state.

33. Notwithstanding Mr. Mauk's weak assurance that there were no other problems with their other challenges, an initial review of challenges filed in Franklin County revealed that *forty* of fifty challenges evaluated listed incorrect ward or precinct information for the challenged voter.

**35,000 HEARINGS IN THREE DAYS,
WITHOUT NOTIFYING THE VOTERS OF THEIR HEARINGS**

34. Although some county boards of elections have reviewed the challenges and found them facially invalid, other county boards will proceed with the challenges to Plaintiff Voters' right to vote. These county boards of elections intend to mail (or already have mailed) the challenged registered electors a notice, informing the elector that the Board of Elections will hold a hearing on that elector's eligibility to vote – even though the elector has already attested to his or her eligibility.

35. If the county boards of elections proceed with this plan, the boards of elections will proceed with up to 35,000 individualized hearings regarding each Plaintiff Voter's eligibility to vote. Ohio Rev. Code § 3503.24. Because state law provides that the hearing cannot be held until three days after the notice was sent out, *id.*, and that the hearings be held no later than two days before the Election, *id.*, under the current plan the county boards of elections will be required to hold up to 35,000 individualized hearings between Thursday, October 28, and Saturday, October 30. Under state law, challenged voters have a right to counsel and may introduce evidence and cross-examine witnesses.

36. In Cuyahoga County alone, Republicans filed 17,717 challenges. Spread over a three day period, with no breaks, the board of elections can complete the hearings by holding one every fifteen seconds.

37. Given the overwhelming burden such hearings will entail, the deputy elections director in Hamilton County admitted before the Republican admitted their errors and withdrew the challenges, "I'm not sure how we're going to accomplish this."

38. State law requires that the notices be sent in order to inform the registered elector that his or her eligibility has been challenged and that a hearing will be held to resolve the issue. But sent at the challengers' behest, these "notices" are in no way likely to provide the required notice. To the contrary, the notices are being sent to the registered electors at addresses the challengers believe to be wrong. Even if the notices are forwarded by the post office to a correct address, there is no likelihood that the notices will arrive in time to give Plaintiff Voters notice of the hearing.

39. Some voters have been told that they will have to attend hearings in order to protect their eligibility. Plaintiff Mindi Haddix cannot attend a hearing scheduled for Thursday because she has an appointment to take her son to a specialist. She believes it is terrible that she should have to choose between taking her child to the doctor and defending her right to vote. Plaintiff Amy Miller cannot attend because she is on semi-bed rest, and attending a single hearing scheduled for 245 people will be too stressful for her pregnancy.

40. Even if one of the notices were correctly addressed, or were forwarded to a corrected address, and it arrived in time before each Plaintiff Voter's hearing, it would arrive (at best) the day before the hearing, or even the day of the hearing itself. Threatened with the loss of their franchise, up to 35,000 registered electors will be forced to rearrange their lives to attend

this hearing and prove what they have already attested to in their registration – or risk disenfranchisement.

41. If the notices are allowed to be sent, and they do not arrive before the hearing (as is almost a certainty), the notices may reach the voters *after* the hearing date listed on the notice but *before* the Election itself. In those cases, which may very well be the majority, the registered electors will be told that their eligibility was challenged, there *was* a hearing to determine their eligibility, and that they *failed to attend it* – information that will cause thousands of properly registered voters will conclude that they are no longer eligible to vote, and they will stay home from the polls. This creates a real and imminent threat that Plaintiff Voters and Organizational Plaintiffs' members will be deprived of their fundamental rights to vote and to due process of law.

42. Such harm also threatens Plaintiff Ohio Democratic Party's interests in assuring that Democratic candidates receive all of the votes that eligible voters who would vote for those candidates wish to cast.

43. This harm will occur even if this Court ultimately rules, in accord with the National Voter Registration Act and the Due Process Clause, that the registered electors in question are eligible to vote. Under the time pressures created by the Ohio Republican Party's last-minute challenges, allowing the county boards of elections to send notices to the challenged voters will convince voters that they have been disenfranchised – which is as good as disenfranchising them in fact.

FIRST CAUSE OF ACTION
(Violation of National Voter Registration Act, 42 U.S.C. 1977gg et seq.)

44. Plaintiffs reallege each allegation contained in each of the paragraphs above as if fully set forth herein.

45. Section 1977gg-6 prohibits States from a) engaging in any effort to systematically remove voters from the list of eligible voters unless that effort was i) was completed more than 90 days before the date of the federal election and ii) is uniform (i.e., applied to everyone in the jurisdiction), non-discriminatory, and in compliance with the Voting Rights Act of 1965; b) forcing any citizen, once registered, to re-register in order to vote in federal elections; and c) removing a registrant from the official list of eligible voters in elections for Federal office based on inaccurate residence information unless the registrant confirms in writing that the registrant has changed residence to a place outside the jurisdiction in which the registrant is registered, or unless the State sends a notice to the registrant seeking confirmation of the registrant's address, the registrant fails to respond to such a notice, and the registrant fails to vote in two Federal general elections after the notice was sent.

46. Action on the challenges to Plaintiff Voters' eligibility to vote will have the effect of removing eligible voters from the rolls in a manner prohibited under the National Voter Registration Act, as well as the state law provisions implementing the NVRA.

47. NVRA provides a private right of action. 42 U.S.C. § 1977gg-9(b). The violation of the NVRA is occurring within 30 days of the date of the federal election and thus Plaintiffs need not provide notice to the Secretary of State, a Defendant in this action, prior to bringing suit pursuant to 42 U.S.C. § 1973gg-9(b)(3).

SECOND CAUSE OF ACTION
(Violation of the Due Process Clause
of the Fourteenth Amendment of the United States Constitution)

48. Plaintiffs reallege each allegation contained in each of the paragraphs above as if fully set forth herein.

49. This action arises under the United States Constitution and 42 U.S.C. § 1983. The Due Process Clause of the Fourteenth Amendment of the United States Constitution prohibits

States from denying fundamental rights such as voting unless the State provides the process required by law, with notice reasonably calculated to inform the citizen of his or her process.

50. By sending notices that are not reasonably calculated to provide the Plaintiff Voters with notice of a hearing at which their eligibility to vote will be determined, Defendants will violate Plaintiffs' Fourteenth Amendment rights.

51. The procedures adopted by Defendants violate Plaintiffs' Fourteenth Amendment rights because they fail to protect adequately against the erroneous deprivation of Plaintiff Voters' fundamental right to vote and because the Defendants have no substantial interest in avoiding additional procedural safeguards.

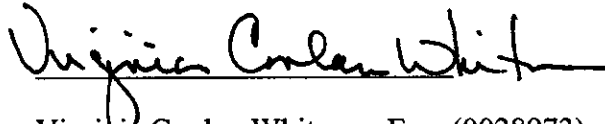
PRAYER FOR RELIEF

WHEREFORE, Plaintiff Voters, on behalf of themselves and all others similarly situated, and Plaintiff Ohio Democratic Party, request of this Court the following equitable relief:

- A. An order certifying that the action may be maintained as a class action and appointing Plaintiffs and Plaintiffs' undersigned counsel to represent the class;
- B. A temporary, preliminary, and/or permanent order, prohibiting the Defendants, their respective agents, servants, employees, attorneys, successors, and all persons acting in concert with each or any of them, from sending notices of a hearing regarding Plaintiffs' eligibility to vote in the November 2, 2004 election; from holding any hearings on the challenges to voter eligibility filed on October 22, 2004 by the Ohio Republican Party, its agents, its local affiliates, or persons acting in concert with each or any of them; and from removing any voter from the rolls of eligible voters based on nothing more than the return of a mailing sent by a private party and attendance (or non-attendance) at a hearing or based on any evidence that fails to meet the standards of the National Voter Registration Act;

- C. An order declaring that no challenges to voter eligibility may be made except in good faith, supported by probable cause that is stated by the challenger, and based on the personal knowledge of the challenger;
- D. Attorney fees and costs of this litigation pursuant to 42 U.S.C. § 1988, 42 U.S.C. 1973gg-9(c) or any other valid basis;
- E. Such other and further relief as this Court may deem necessary or proper.

Respectfully submitted,



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