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OCT 25 2004

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
FOR THE EASTERN DIVISION

FILED  
2004 OCT 25 PM 4:49  
CLERK OF COURT  
CLEVELAND, OHIO

CASE NO. **1:04CV2147**

CITIZENS ALLIANCE FOR SECURE  
ELECTIONS  
3270 Norwood Road  
Shaker Heights, OH 44122

and

CLEVELAND TENANTS ORGANIZATION  
3631 Perkins Ave., Suite 3a-4  
Cleveland, OH 44114

and

ALLIANCE OF HUD TENANTS  
3631 Perkins Ave, Suite 3A-4  
Cleveland, OH 44114

and

VENITA MEREDITH  
551 Helpek Drive  
Bedford, Ohio 44146

and

MICHAEL HARWELL  
1754 Rosedale  
East Cleveland, Ohio 44112

and

CHAUNTIA MARIE DIMMINGS  
11212 Ada Avenue  
Cleveland, Ohio 44108

and

JOLENA OGLESBY  
11319 Durant Avenue  
Cleveland, Ohio 44108

JUDGE MATIA

VERIFIED COMPLAINT

JUDGE BRUCE BRUNNEN

and )  
)  
LATANYA TERESE FARMER )  
4160 East 144<sup>th</sup> Street )  
Cleveland, Ohio 44128 )  
)  
and )  
)  
HAROLD F. SMITH )  
9416 Garfield Boulevard )  
Garfield Heights, Ohio 44125 )  
)  
and )  
)  
ROBERT MARRERO )  
3519 West 98<sup>th</sup> Street )  
Cleveland, Ohio 44102 )  
)  
and )  
)  
Other similarly situated Plaintiffs, )  
As a Class )  
)  
Plaintiffs, )  
)  
-vs- )  
)  
MICHAEL VU, DIRECTOR, CUYAHOGA )  
COUNTY BOARD OF ELECTIONS; GWEN )  
DILLINGHAM, DEPUTY DIRECTOR, )  
CUYAHOGA COUNTY BOARD OF )  
ELECTIONS; ROBERT T. BENNETT, )  
EDWARD C. COAXUM, JR., SALLY D. )  
FLORKIEWICZ AND LOREE K. SOGGS, )  
MEMBERS OF CUYAHOGA COUNTY )  
BOARD OF ELECTIONS )  
2925 Euclid Avenue )  
Cleveland, Ohio 44115 )  
)  
Defendants. )

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Plaintiffs Citizens Alliance for Secure Elections, Cleveland Tenants Organization, and Alliance of HUD Tenants (collectively "organizational plaintiffs"), and plaintiffs Venita Meredith, Michael Harwell, Chauntia Marie Dimmings, Jolena Oglesby, Latanya Terese Farmer, Harold F. Smith, and Robert Marrero (collectively "Individual Plaintiffs"), sue Defendants, Individuals named in their official capacity as the Cuyahoga County Board of Elections ("BOE"), as grounds state:

### **PRELIMINARY STATEMENT**

1. Organizational plaintiffs and other non-profit organizations have made extensive efforts to register new voters throughout Cuyahoga County, and to encourage their Cuyahoga County members to vote. As a result of their efforts and other voter registration efforts, the number of registered voters in Cuyahoga County has reached unprecedented numbers. However, thousands of citizens of Cuyahoga County will be denied the right to vote because the Cuyahoga County Board of Elections failed to comply with state and federal election laws. This lawsuit seeks to preserve the voting rights of more than 14,000 Cuyahoga County residents who are eligible to vote in the general election on November 2, 2004.

2. The named individual Plaintiffs registered to vote in a manner proscribed by Ohio and federal law, yet they do not appear on the roll of registered, legal voters prepared by the Cuyahoga County Board of Elections. All individually named Plaintiffs are eligible voters who registered to vote, in compliance with Ohio election law, before the October 4, 2004 registration deadline. These Plaintiffs will present to this court a copy of the original voter registration card sent to the BOE.

3. The named Plaintiffs are not alone. An exhaustive survey calculates that over 14,000 citizens of Cuyahoga County registered to vote but do not appear on the official voting

rolls prepared by the BOE. The Cuyahoga County Board of Elections (“BOE”) has refused to process these applications, improperly processed the applications, or failed to comply with state and federal voting rights laws.

4. The disenfranchisement by the BOE has a disparate impact on minority groups, specifically African-American and Hispanic voters. The named plaintiffs are members of these minority groups.

5. The BOE was informed of the severity and the scope of its failures to comply with state and local election laws. To date, the BOE continues to disregard the plight of Plaintiffs and similarly situated members of the class.

6. Plaintiffs seek emergency relief in the form of a temporary restraining order compelling the BOE to permit legally registered voters to be added to the legal voting rolls, and to otherwise fully comply with state and federal election laws, and any other relief necessary to provide Plaintiffs with legal access to participate in the election.

7. Plaintiffs seek certification as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The claims of the named individual plaintiffs are typical of the claims of the other similarly situated potential plaintiffs, and the representative parties will fairly and adequately represent the interests of the class. Joinder of all members of the class of affected voters is impracticable because the number of potential plaintiffs exceeds 14,000, and contacting each plaintiff in the eight days before the election is not practicable. Moreover, the relief requested in this action will adequately protect the interests of all members of the class. Finally, the individual plaintiffs are predominately members of minority groups, and as such are representative of the class of people affected by the illegal actions of the BOE. F.R.C.P. 23(a).

8. Specifically, Plaintiffs allege that the BOE failed to process voter registration applications, that the BOE failed to notify applicants of purported deficiencies in voter registration applications, that the BOE failed to provide applicants with an opportunity to correct purported deficiencies in voter registration applications; that the BOE refused to cure alleged deficiencies when corrected by Plaintiffs.

9. Defendants' conduct violates Section 2 of the Voting Rights Act of 1965, codified at 42 U.S.C. §§1973 *et seq.*; the Civil Rights Acts of 1957 and 1960, codified at 42 U.S.C. §§1971(a)(1), (a)(2)(A) and 1971(a)(2)(B); the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. §§1973gg *et seq.*; and 42 U.S.C. §1983; and the First, Fifth, Fourteenth and Fifteenth Amendments to the United States Constitution.

10. Plaintiffs' rights can be preserved through declaratory and injunctive relief that is simple, quickly achieved, easily implemented, and fully warranted under established law.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1343 and 1367.

12. A private right of action is properly maintained under the National Voter Registration Act (NVRA), 42 U.S.C. § 1973 - gg(9)(b)(3), because the violations occurred within thirty days of the election. In some instances, a private right of action must be preceded by notice to the state or state officials, 42 U.S.C. §1973gg-(9)(b)(1). Where, as here, the violations occurred "within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official," 42 U.S.C. §1973-gg(9)(c), and "may bring a civil action in an appropriate district court for declaratory or injunctive relief." 42 U.S.C. §1973-gg(9)(b).

13. Jurisdiction is additionally based on 28 U.S.C. §1331, 1343(3) and (4) under the Voting Rights Act, as part of the Civil Rights Act of 1957 and 1960, 42 U.S.C. §1971(c).

14. Plaintiffs' prayer for declaratory and injunctive relief is authorized by 28 U.S.C. §§2201 and 2202; 42 U.S.C. §1973gg-9(b); and Rules 57 and 65 of the Federal Rules of Civil Procedure.

15. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because Defendant BOE is located in this District and Robert T. Bennett, Edward C. Coaxum, Jr., Sally D. Florkiewicz and Loree K. Soggs are members of BOE, Michael Vu is Director of BOE, and Gwen Dillingham is the Deputy Director of BOE, all resident in this District

#### **PARTIES**

16. Plaintiff Cleveland Alliance for Secure Elections ("CASE") is a non-partisan, not-for-profit organization which has as its mission to ensure that persons are registered to vote and are not encumbered from exercising their right to vote. CASE also strives to challenge practices seeking to disenfranchise minorities who have been historically barred or restricted from the exercise of the right to vote and has conducted studies and engaged in advocacy on behalf of persons seeking to exercise the right to vote.

17. Plaintiff Cleveland Tenants Organization ("CTO") was former in 1975 as a non-profit § 501(C)(3) tenants rights organization. Its mission is to preserve and expand the supply of safe, decent, fair, accessible and affordable rental housing in Northeast Ohio. Making sure that tenants participate in the political process is seen as integral in achieving this mission, so it has worked on intensive voter registration in the months of August and September 2004, and registered approximately 1,300 tenants to vote in the November, 2004, election

18. Plaintiff Alliance of Cleveland HUD Tenants is an organization of tenants living in Section 8 privately-owned housing. Its purpose is to advocate for the interests of these tenants and to assist them to participate in the political process including registration and exercise the right to vote.

19. Plaintiff Venita Meredith is an African-American United States citizen, over 18 years of age who resides at 551 Helpek Drive, Bedford, Ohio. On two separate occasions in early September 2004, Ms. Meredith completed a voter registration application and the Coalition delivered them to the BOE shortly thereafter. She registered the second time “just to be sure” that she would be on the voter rolls. To date, Ms. Meredith has not received a confirmation of her registration or rejection thereof, or any other mailing from the BOE. On a visit to the Cuyahoga County Board of Elections on or about October 2, 2004, Ms. Meredith was advised that she was not registered to vote. The employee told Ms. Meredith to “wait a couple of weeks.” On October 2, 2004, Ms. Meredith then submitted a third voter registration form to the BOE, A copy of which is attached as Exhibit E. The form was signed and complete as to all matters, with one minor exception. Ms. Meredith omitted her zip code from her form. A search of the BOE on or about October 18, 2004 revealed that there was no record of Ms. Meredith in the computer records kept by the BOE. The BOE refused to process her voter registration, refused to notify her of any alleged deficiencies in her voter registration, refused to cure any alleged deficiencies. Pursuant to State and federal law, she is a legally registered voter, yet the BOE does not list her on the rolls of eligible voters.

20. Plaintiff Latanya Terese Farmer is a 24 year-old African-American United States citizen who resides at 4160 East 144<sup>th</sup> Street, Cleveland, Ohio, 44128. On September 11, 2004, Latanya Terese Farmer completed a voter registration application, a copy of which is attached as

Exhibit E-4, and the Coalition delivered same to the BOE shortly thereafter. Latanya Farmer has not received a confirmation of her voter registration, or rejection thereof, or any other mailing from the BOE. The BOE refused to process the voter registration application of Ms. Farmer; refused to provide notice to her of any alleged deficiencies; refused to permit her to correct any deficiencies and refused to place her on the list of legally registered voters.

21. Plaintiff Michael Harwell, an African-American United States citizen, resides at 1754 Rosedale, East Cleveland, Ohio, 44112, and is over 18 years of age. In 2000, Mr. Harwell submitted a voter registration application to the BOE. On or about October 14, 2004, a search of the BOE's electronic database confirmed that Michael Harwell is on a list of persons who are not currently eligible to vote, despite their timely submission of registration applications. The BOE excluded Michael Harwell from the voter rolls because of an allegedly "[i]nvalid address." Although Michael Harwell's address is: 1754 Rosedale, East Cleveland, Ohio 44112, the form erroneously specified an address of 1756 Rosedale, East Cleveland, Ohio 44112. The BOE refused to process Mr. Harwell's application for voter registration, refused to notify Mr. Harwell of the alleged deficiency; refused to permit him to cure the alleged deficiency;

22. Plaintiff Robert Marrero is an Hispanic United States Citizen over 18 years of age who resides at 3519 West 98<sup>th</sup> Street, Cleveland, Ohio, 44102. On January 3, 2002, Mr. Marrero completed a voter registration application while he was at the Department of Motor Vehicles getting his driver's license. He never received verification of his voter registration. In August 2004, Robert Marrero filled out and submitted a second voter registration form, at his church. To date, Mr. Marrero has not received a confirmation of his voter registration, or rejection thereof, or any other mailing from the BOE. The BOE refused to process Mr. Marrero's application for voter registration; refused to notify him of any alleged deficiency; refused to

permit Mr. Marrero to cure any alleged deficiency; refused to place Mr. Marrero on the list of legally registered voters.

23. Plaintiff Chauntia Marie Dimmings is a 20 year-old African-American United States citizen who resides at 11212 Ada Avenue, Cleveland, Ohio, 44108. On October 3, 2004, Ms. Dimmings filled out a voter registration application, a copy of which is attached as Exhibit E-2, and the Coalition submitted it to the BOE shortly thereafter. The application that Ms. Dimmings submitted was signed and complete as to all matters. Ms. Dimmings never heard from the BOE. Ms. Dimmings tried calling the BOE while at lunch at work one day recently and no one answered the telephone. A search of the BOE's electronic system on or about October 14, 2004 revealed her last name was entered into the Board computer system as "Dimminings." The BOE refused to process the voter registration application of Ms. Dimmings, refused to notify her of any alleged defects, failed to permit her to cure any defects, and failed to place her on the list of registered voters.

24. Plaintiff Jolena Oglesby is a 25 year-old African-American United States citizen who has resided at 11319 Durant Avenue, Cleveland, Ohio, 44108. On or about September 9, 2004, Ms. Oglesby completed a voter registration application and submitted it to a voter registration volunteer at or near the Cleveland Justice Center in downtown Cleveland. On October 2, 2004, just to be safe, Ms. Oglesby filled out a second voter registration form, a copy of which is attached as Exhibit E-3, near a Tops Supermarket that is located on Superior Avenue. The GCVRC delivered Ms. Oglesby's form to the BOE shortly thereafter. The form that Ms. Oglesby submitted was signed and complete as to all matters, with one immaterial exception. Because Ms. Oglesby was moving at the time, she entered her mother's address as a temporary address on her voter registration form. Her mother's address is 2548 Park Midway, Suite C,

Cleveland, Ohio, 44104. Ms. Oglesby has not received a voter registration card from the BOE. The BOE refused to process her registration, refused to notify her of any alleged defects, refused to permit her to cure any alleged defects, and failed to place her on a list of registered voters.

25. Plaintiff Harold F. Smith is a 59 year-old African-American United States citizen who resides at 9416 Garfield Boulevard, Garfield Heights, Ohio, 44125. On June 6, 2004, Mr. Smith completed a voter registration application, a copy of which is attached as Exhibit E-5 and which the GCVRC delivered to the BOE shortly thereafter. To date, Mr. Smith has not received confirmation of his voter registration, or rejection thereof, or any other mailing from the BOE. The BOE was contacted and reported that Mr. Smith was not on its list of registered voters. The BOE has failed to process his registration, failed to notify him of any alleged defects, failed to permit him to cure any defects, and failed to place him on the list of registered voters.

26. The BOE is a duly established board of elections pursuant to Ohio Revised Code (“ORC”) Section 3501.06. Defendants (collectively, “the BOE”) are members of the Board of Elections for Cuyahoga County. Defendants Michael Vu and Gwen Dillingham are the director and deputy director of the BOE duly appointed by the secretary of state (“Director” and “Deputy Director,” respectively). The BOE, and the Director and Deputy Director are sued in their official capacities in connection with their actions taken under color of state and federal law.

## **FACTS**

### **A. LEGAL BACKGROUND**

27. 42 U.S.C. §1971(a)(2)(B) prohibits elections officials from denying the right to vote because of an error or omission on a voter registration application where “such error is not

material in determining whether such individual is qualified under State law to vote in such election.”

28. The Voting Rights Act prohibits persons acting under color of law from applying different standards to individuals within the same county in determining whether an individual is qualified to vote. *See* 42 U.S.C. §1971(a)(2)(A); U.S. Const. Amend. V, XIV and XV.

29. Federal law further prohibits the denial or abridgment of voting rights on the basis of race or color, *see* 42 U.S.C. §§ 1971(a)(1), 1973 (a)(1), and provides that such an unlawful denial is established by showing that a state’s voter registration procedures have a disparate impact on a particular class of protected citizens, including racial minorities. *Id.* §1973(b).

30. Ohio law requires that Defendants establish and maintain voter registration records in Cuyahoga County, ORC §3501.11(T), including maintaining the County’s voter registration records, ORC §3501.11(T)3501.11(U) and ensuring that all voter registration activities in the County are in compliance with federal voting rights laws.

31. Defendants have violated and continue to violate federal and state law by, among other things:

- (1) failing or refusing to process registration applications
- (2) failing or refusing to notify applicants of errors;
- (3) failing or refusing to permit applicants to cure alleged effects in voter application materials;
- (4) failing or refusing to cure application materials when notified of the correction;
- (5) failing or refusing to register voters based on immaterial errors on voter registration applications;

- (6) failing or refusing to enter voter information onto the electronic list in an expedited manner;

## **B. FACTUAL BACKGROUND**

32. Voter rights groups and other non-profit organizations have made extensive efforts to register new voters throughout Cuyahoga County, and to encourage their Cuyahoga County members to vote. As a result of their efforts and other voter registration efforts, the number of registered voters in Cuyahoga County has reached unprecedented numbers.

33. The Greater Cleveland Voter Registration Coalition ("GCVRC") is an independent, non-partisan coalition of labor unions, as well as religious, social justice, community, fraternal, civil rights, and ideological organizations, that share a commitment to registration of new voters, education of these new voters and the general public about issues and candidates on the ballot, and maximization of voter turnout in every election. The GCVRC was formed in March 2004. As of October 28, 2004, some forty-four (44) organizations were listed as participants in the GCVRC. *See* List of Participants in the Greater Cleveland Voter Registration Coalition (attached as Exhibit A). Some fifty (50) organizations are formally affiliated with the Coalition. The GCVRC has a cooperative relationship with other groups including the Partnership for America's Families, the Cleveland Chapter of the NAACP, the Puerto Rico Federal Affairs Administration, People for the American Way, ACORN, Voter Fest, America Votes, and others. In the past year, the Coalition has registered over 8,000 new voters, and has trained over 300 people in a wide range of community organizations about how to do voter registration correctly at the agencies where they work and their communities.

34. Through a coordinated effort to increase voter registration in the greater Cleveland area, the GCVRC obtained thousands of new voter registrations during the past six months. As part of their protocol, voter registration cards were copied and then delivered to the BOE. The GCVRC maintains copies of voter registration cards for the voters that it recently registered. The GCVRC has thus provided the named individual plaintiffs here, as well as members of the class of similarly situated voters, with proof of voter registrations to the BOE.

35. The 2004 general election is scheduled for November 2<sup>nd</sup>. In that election, Ohio electors will have an opportunity to vote for the President and Vice President of the United States, the United States Senate and various other state offices and ballot initiatives.

36. The deadline for registering to vote in the November 2<sup>nd</sup> general election was October 4, 2004. ORC §3503.01 (voter registration books close 30 days before each election).

37. Actions of BOE negatively impact minority voters.

38. On information and belief, the BOE adheres to the following procedures after receiving voter registration cards: information from the voter registration card is entered into a computer database. If the BOE becomes aware of a discrepancy or believes the application is incomplete, then the voter's registration applicant is placed on a "Fatal Pending" list.

39. On or about September 15, 2004, BOE made available, upon request of the GCVRC, the "Fatal Pending" of 14,742 names. The list also includes addresses and coded reasons for rejection of such individuals' applications for registration as "incomplete."

40. On September 17, 2004, the GCVRC completed a study of voter registration cards, by comparing the copies of voter registration cards that GCVRC maintained with the data

on the “Fatal Pending” list from the BOE and with the list of registered voters from the BOE. The study examined a random sample (N=2451) of voter registration cards obtained from the GCVRC. The study reported that approximately 4.2% (N=104) of the applications had clerical errors made by the Board or no entry made on any of the Board’s records and an additional 2.4% contained possible voter error, most of which were immaterial errors.

41. The errors discovered include failure to enter the voter registration application (no record found) (N=13), failure to enter change of address forms (N=25), transcription errors that could lead to a successful challenge of the voter (N=66). The first two types of error in this category will result in disenfranchisement because the voter will not appear on the voter rolls or will appear on the voter rolls for the incorrect precinct due to the failure of BOE to update its records. The third type of error – transcription errors – could lead to a successful challenge of the voter, resulting in disenfranchisement.

42. In addition to errors by the BOE, a number of voter registration applications contained incomplete information supplied by the voter. In many instances, the voter application card was inadequately completed by the voter (N=32). In other cases, the card sent by the BOE was returned (N=15) or the BOE has failed to verify the address as valid (N=13). These errors will result in disenfranchisement because the BOE has failed to provide the voter with the opportunity to correct the voter registration application. These voters will not appear on the voting rolls and will not vote.

43. Using statistical extrapolation, the study projected the total number of voters in Cuyahoga County affected by the actions and failure to act by the BOE. A “clerical error” rate

of approximately 4.2% combined with new voter registrations in excess of 350,000, yields a catastrophic number of voters incorrectly withheld from the voter registration rolls.

44. The BOE made available upon request of the Coalition an updated Fatal Pending List on October 14, 2004. A follow-up study on that list reflected only minor improvement that cannot be considered statistically significant. Thousands of errors remain uncorrected.

45. The GCVRC urged the BOE to review all of its original records and to seek confirmation of address information from readily available sources, but the BOE failed or refused to do so to correct the above errors.

46. In addition, the GCVRC urged the BOE to obtain additional funding for additional employees in order to perform the necessary review and checking but the BOE failed or refused to do so. Specifically,

- a) On September 21, 2004, representatives of the Coalition and Director Vu attended a meeting of the Cuyahoga County Commissioners. The Coalition urged Director Vu to accept the offer of the Commissioners to provide additional money to the BOE to hire additional employees to review and check the above clerical errors and locate the missing applications. Director Vu stated that the BOE did not require additional employees to accomplish its work.
- b) On October 19, 2004, Director Vu and representatives of the Coalition again attended the Commissioners' meeting. Again, Director Vu refused

additional funds to hire employees to assist in correction of errors and offer other registrant assistance.

47. Plaintiffs allege that the actions of the BOE will cause irreparable harm if not corrected. Specifically, Plaintiffs allege that the BOE has violated voting laws by:

- (1) failing or refusing to process registration applications
- (2) failing or refusing to notify applicants of errors;
- (3) failing or refusing to permit applicants to cure alleged effects in voter application materials;
- (4) failing or refusing to cure application materials when notified of the correction;
- (5) failing or refusing to register voters based on immaterial errors on voter registration applications;
- (6) failing or refusing to enter voter information onto the electronic list in an expedited manner;

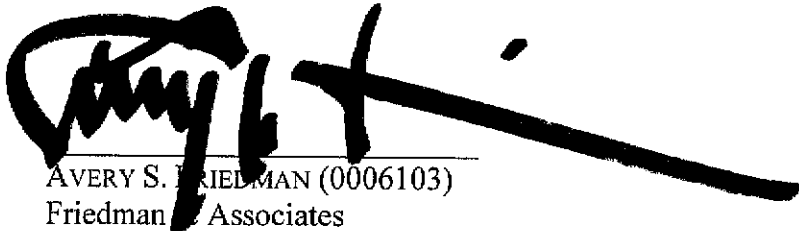
48. Further, Plaintiffs allege that they will suffer irreparable harm if the relief requested is not granted. Specifically, Plaintiffs will be prevented from voting in the election on November 2, 2004.

### **FIRST CAUSE OF ACTION**

#### **(CLAIM FOR VIOLATION OF THE NATIONAL VOTER REGISTRATION ACT OF 1993 (NVRA), 42 U.S.C. §1973gg *et seq.*) (FAILURE TO REGISTER ELIGIBLE VOTERS)**

49. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs 1 through 48 above as if fully set forth herein.

14. Providing any other relief the Court deems necessary.



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VERIFICATION

In accordance with Rule 65 of the Federal Rules of Civil Procedure, I, PEARL LIVINGSTONE, hereby verify that the foregoing allegations are true to the best of my knowledge.

Pearl Livingstone

SWORN TO and subscribed in my presence this 25<sup>th</sup> day of October, 2004.

Stephen G. Thomas  
STEPHEN G. THOMAS (0007382)  
Notary Public  
My Commission has No  
Expiration Date