

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

THE SANDUSKY COUNTY
DEMOCRATIC PARTY, et. al.

v.

J. KENNETH BLACKWELL,
Defendant.

)
) Case No. 3:04CV07582
) Hon. James G. Carr
) **SUPPLEMENTAL MEMORANDUM IN**
) **SUPPORT OF PLAINTIFFS’**
) **APPLICATION FOR PRELIMINARY**
) **INJUNCTION**

Now come Plaintiffs, by and through counsel, and offer this supplemental memorandum in support of their Motion of a Preliminary and Permanent Injunction against the Defendant, Ohio Secretary of State Kenneth Blackwell. New Plaintiffs the North Central Ohio Building and Trades Council (“Building Trades Council”), the International Brotherhood of Electrical Workers, Local 245 (“IBEW Local 245”), and the Farm Labor Organizing Committee, Inc. (“FLOC”), join with the Sandusky County Democratic Party and the Ohio Democratic Party in challenging the Defendant’s Directive on provisional ballots. As discussed below, the new Plaintiffs and the individuals they represent face real and immediate injury from the Secretary of State’s violation of the Help America Vote Act of 2002.

The Building Trades Council, IBEW Local 245 and FLOC each have standing to bring claims in this case on behalf of their members. “Even in the absence of injury to itself, an association may have standing solely as the representative of its members.” *Warth v. Seldin*, 422 U.S. 490, 511 (1975). Associational standing is appropriate if an organization’s members would otherwise have standing to sue on their own behalf, the interests the organization seeks to vindicate are germane to its purpose, and the suit does not require the participation of the members themselves. *Hunt v. Washington State Apple Advertising Comm.*, 432 U.S. 333, 343 (1977).

The new Plaintiffs clearly fulfill all three of the *Hunt* criteria. First, the Organization’s members will suffer a significant injury, redressable by appropriate equitable relief here, as a result of the faulty Ohio system of provisional balloting. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (to establish standing, plaintiff must demonstrate injury in fact, causation and redressability). It is a statistical

certainty that a member or members of the Building Trades Council, IBEW Local 245 and FLOC will, thanks to Directive 2004-33, suffer the injury of being refused the provisional ballot to which they are entitled on Election Day. *See Wiley v. Mayor and City Council of Baltimore*, 48 F.3d 773, 775-76 (4th Cir. 1995) (recognizing standing because of “a sufficient likelihood that some members of [plaintiff organization] will, in the future, be affected by [the challenged] policy”); *Roe v. Operation Rescue*, 919 F.2d 857, 866 (3d Cir. 1990) (recognizing standing in suit implicating abortion clinic blockades by defendant, where abortion rights organization “averred that some of its members will seek the ... services offered by these facilities”). The Building Trades Council’s constituent unions represent 16,000 members. *See Amended Complaint*, ¶8. IBEW Local 245 has 1,500 active and retired members. *Id.* at ¶9. In addition, FLOC represents approximately 200 associate members who are U.S. citizens and permanently reside in northwest Ohio, but frequently change their address and are particularly susceptible to polling places errors as a result of the Ohio Secretary of State’s Directive on provisional ballots. *Id.* at ¶10.

Second, each of these associations provides services to its members that include both member education efforts about political issues, and public voter education efforts that include the endorsement and campaign support for candidates on political issues that affect their membership. As a corollary to these efforts, the Building Trades Council, IBEW Local 245 and FLOC all have a specific interest in facilitating their members’ ability to vote in the November 2004 election. Its members’ votes will directly affect the likelihood that the associations’ education and advocacy efforts will be effectively accomplished.

Third, under *Hunt*, there is no need for these associations' members to participate personally in this suit. The illegality of Directive 2004-33 is apparent without reference to the individual circumstances of those members, and the appropriate relief may be crafted without their participation. *See Hunt*, 432 U.S. at 343.

CONCLUSION

For the foregoing reasons, in conjunction with the Plaintiffs' Motion for a Preliminary Injunction filed on September 27, 2004, Plaintiffs' respectfully request that the relief sought in the Amended Complaint be granted.

Respectfully submitted,

/S/ FRITZ BYERS
Fritz Byers (0002337)
520 Madison Ave., Ste. 824.
Toledo, OH 43604
Phone: 419-241-8013
Fax: 419-241-4215
fbyers@accesstoledo.com
Counsel for THE SANDUSKY COUNTY
DEMOCRATIC PARTY

/S/ JOSEPH J. ALLOTTA
Joseph J. Allotta (0018339)
Allota, Farley & Widman
2222 Centennial Road
Toledo, Ohio 43617
Phone: 419-535-0075
Fax: 419-535-1935
jallotta@afwlaw.com

Counsel for NORTH CENTRAL OHIO
BUILDING AND CONSTRUCTION
TRADES COUNCIL and
IBEW LOCAL 245

/S/ RICHARD M. KERGER
Richard M. Kerger (0015864)
33 S. Michigan St., Suite 201
Toledo, OH 43602
Phone: 419-255-5990
Fax: 419-255-5997
rickkerger@kergerkerger.com

Michael P. O'Grady (0023796)
500 S. Front St., Suite 950
Columbus, OH 43215
Phone: 614-228-5511
Fax: 614-229-4559
ogradypearse@yahoo.com

/S/ JOSEPH V. MCNAMARA
Richard S. Walinski (0013054)
Joseph V. McNamara (0076829)
COOPER & WALINSKI
900 Adams Street
Toledo, OH 43624
Phone 419-241-1200
Fax: 419-242-5675
mcnamara@cooperwalinski.com
Counsel for the FARM LABOR
ORGANIZING COMMITTEE, INC.

Rory Callahan (0072021)
Cloppert, Latanick, Sauter & Washburn
225 E. Broad Street
Columbus, OH 43215
Phone: 614-461-4455
Fax: 614-621-6293
rcallahan@cloppertlaw.com

Counsel for THE OHIO DEMOCRATIC
PARTY

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served on October 1, 2004 via facsimile and via ordinary U.S. Mail, upon:

Richard G. Lillie
Benesch, Friedlander, Coplan & Aronoff
LLP
2300 BP Tower
200 Public Square
Cleveland, OH 44114-2378
Phone: (216) 363-4499
Fax: (216) 363-4588
rlillie@bfca.com

Truman A. Greenwood
Spengler Nathanson P.L.L.
608 Madison Ave., Ste. 1000
Toledo, OH 43603-2027
Phone: (419) 252-6211
Fax: (419) 241-8599
tgreenwood@spenglernathanson.com
Counsel for INTERVENER

Counsel for the J. KENNETH
BLACKWELL, Secretary of State,
in his official capacity,

/S/ JOSEPH V. MCNAMARA
Richard S. Walinski
Joseph V. McNamara