

**RECOMMENDED FOR FULL-TEXT PUBLICATION**

**Nos. 04-4265, 04-4266**

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**FILED**

**OCT 23 2004**

**LEONARD GREEN, Clerk**

SANDUSKY COUNTY DEMOCRATIC PARTY, *et al.*,  
 Plaintiffs-Appellees,  
 v.  
 J. KENNETH BLACKWELL,  
 Defendant-Appellant.

**ORDER**

**Before: BOGGS, Chief Judge; GILMAN, Circuit Judge; and WEBER, District Judge.\***

**PER CURIAM.** Defendant-Appellant J. Kenneth Blackwell, Ohio Secretary of State ("the Secretary"), appeals an October 14, 2004 Order of the United States District Court for the Northern District of Ohio finding that *Ohio Secretary of State Directive 2004-33*, issued by the Secretary on September 16, 2004, violated the federal Help America Vote Act, Pub. L. 107-252, Title III, § 302, 116 Stat. 1706 (codified at 42 U.S.C. § 15301 *et seq.*) ("HAVA"), and requiring him to issue a revised directive that conforms to the requirements of HAVA.

The motions of Plaintiffs-Appellees and *Amicus Curiae* the United States to file oversized briefs are granted. Also granted are the motions for leave to file briefs *amici curiae* of Congressman Elijah E. Cummings and members of the Congressional Black Caucus; the American Association

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\*The Honorable Herman J. Weber, United States District Judge for the Southern District of Ohio, sitting by designation.

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of People with Disabilities; Senator Christopher J. Dodd and U.S. Representative Steny Hoyer; Tennessee Representative Delores Noguerra Gresham and Mr. Timothy Ishii; and members of the Ohio congressional delegation. Defendant-Appellant's motion to stay the district court's orders of October 14, 2004 and October 20, 2004 is denied as moot.

Upon consideration of the briefs of parties and *Amici*, we **AFFIRM** the district court's rulings that (1) the right created by 42 U.S.C. § 15482(a) to cast a provisional ballot in federal elections is enforceable under 42 U.S.C. § 1983; (2) at least one of the Plaintiffs-Appellees has standing to enforce that right in the district court; and (3) *Directive 2004-33* violates HAVA insofar as it fails to ensure that any individual affirming that he or she "is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office . . . shall be permitted to cast a provisional ballot." See 42 U.S.C. § 15482(a).

However, to the extent that the district court held that HAVA requires that a voter's provisional ballot must be counted as a valid ballot if it is cast anywhere in the county in which the voter resides, even if it is cast outside the precinct in which the voter resides, we **REVERSE**. Accordingly, the district court may require the Secretary to implement "Directive Number 2: Provisional Voting: Home Precinct Balloting Only" that was sent to all Ohio County Election Boards on October 22, 2004 in response to the district court's orders of October 20, 2004. The district court may not require the Secretary to implement "Directive Number 1: Provisional Voting: County-Wide Balloting."

A written opinion will follow.