

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

<p>Obama for America,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>Cuyahoga County Board of Elections and its members; Franklin County Board of Elections and its members; Clermont County Board of Elections and its members; and Jennifer Brunner, in her capacity as Ohio Secretary of State,</p> <p style="text-align: center;">Defendants.</p>	<p>CASE No. _____</p> <p>(Judge _____)</p> <p style="text-align: center;">VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF, INCLUDING A TEMPORARY RESTRAINING ORDER AND EMERGENCY INJUNCTIVE RELIEF</p>
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Plaintiff, for its Complaint against Defendants Cuyahoga County Board of Elections and its members in their official capacity and Jennifer Brunner in her capacity as Ohio Secretary of State, alleges as follows:

1. Severe ballot shortages and bad weather have combined to necessitate the extension of voting hours in Cuyahoga, Franklin, and Clermont counties. Unless polling hours are extended until 9:00, so that additional supplies can make it to the polls in these severe weather conditions, voters will be deprived of their right to vote.

PARTIES

2. Plaintiff is a political campaign operating in Ohio, where a presidential primary election is being held today throughout the State.

3. Defendant County Boards of Election are the boards of elections responsible for establishing and running election precincts in Cuyahoga County, Franklin County, and Clermont County pursuant to O.R.C. § 3501.11.

4. Defendant Jennifer Brunner is the Ohio Secretary of State and as such is the chief elections officer for the State, pursuant to O.R.C. § 3501.04.

5. Jurisdiction and venue in this Court are proper, as the events complained of occurred in this County and one defendant resides in this county.

VIOLATION OF FEDERAL AND STATE LAWS AND RIGHTS

6. The right to vote in an election is guaranteed by, *inter alia*, the First Amendment and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1971, as well as Article I of the Ohio Constitution. Plaintiff has standing to enforce these rights, and all rights asserted herein, on behalf of itself and the voters who are its supporters.

7. O.R.C. § 3501.32 provides that on Election Day the polls shall be opened at 6:30 a.m. and shall be closed at 7:30 p.m. “unless there are voters waiting in line to cast their ballots, in which case the polls shall be kept open until such waiting voters have voted.” Ohio law thus requires that the polls be open for 13 hours, plus however much time is needed to accommodate voters waiting to vote at 7:30 p.m.

8. On March 4, 2008, heavy rain, flooding, and other inclement weather has interfered and continues to interfere with the ability of the citizens in the named counties to exercise their constitutional right to vote in the primary election.

9. The National Weather Service has issued flood watches and winter storm warnings in the named counties. Safety-conscious voters have been forced to stay off the roads.

10. The Secretary of State has recognized the effects of the weather on voting by filing suit against the Jefferson County Board of Elections and other boards to permit voters to

cast provisional ballots in locations other than their polling places where there has been flooding in some polling locations. The weather is harming the named counties as well, causing many voters to be unable to reach the polls safely and vote during polling hours. Although the Secretary of State has sought to extend hours in Jefferson County and certain specific counties, weather conditions in Cuyahoga County are and will for some time remain severe.

11. The named counties are also suffering a severe ballot shortage. Although Defendant Board of Elections has indicated that it is trying to get additional supplies to the polling places, weather is slowing those efforts. In several instances requests for replenishment were made by the poll workers long ago, and yet there were delays in getting through to the board of elections and delays in the replenishing supplies to the Boards. Numbers are constantly dwindling causing delays and specific incidences of people who were told they could not vote because of the shortages. In order to ensure that supplies arrive in order to enable voters to cast their vote, polling hours must be extended.

12. Despite bringing suit to allow voters in only a certain part of the State to have the benefit of casting their ballots in a manner other than that which is prescribed by the relevant statutes and regulations, the Secretary of State has taken no action to address the inability of many voters in the named counties to cast their ballot for weather and other reasons.

13. To provide voters the opportunity to exercise their constitutional rights and to ensure at least the 13 hours of open and available polls required under O.R.C. § 3501.32, it is necessary that the polls remain open after 7:30 p.m. for an additional hour and a half, until 9:00 p.m.

14. The defendant was asked to direct that the polls remain open until 9:00 p.m. in order to comply with O.R.C. § 3501.32 or to take such other action as is necessary to ensure that

the polls remain open, but the requested action was not taken, making this Court's intervention necessary in order to protect the voters' constitutional and statutory rights under federal and state law.

15. The above-referenced conduct violated the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1971, 42 U.S.C. § 1983, Article I of the Ohio Constitution, and O.R.C. §§ 3501.32. These violations have caused plaintiff irreparable harm and will continue to do so absent an injunction.

16. Section 302(c) of the Help America Vote Act of 2002, 42 U.S.C. § 15482(c), provides for precisely the situation at issue here. Specifically, it provides that voters may cast provisional ballots as a result of a court order extending the polls' closing time. Section 302(c) provides in full:

“VOTERS WHO VOTE AFTER THE POLLS CLOSE.—Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.”

17. Defendant therefore should be ordered by this Court to instruct all county boards of election to keep all polls open until 9:00 p.m. tonight, to offer provisional ballots to any voters who arrive at the polling places after 7:30 p.m., and to keep those provisional ballots segregated from provisional ballots cast earlier in the day.

18. Relief of the type sought herein to address the irreparable harm to the citizens in voting in primary elections has been issued in other States where weather or other conditions threatened to interfere with the ability of voters to cast their ballot. Less than one month ago, in Maryland, a court order directed the State's chief elections official to require that the polls be

kept open statewide for an additional hour to ensure that voters were not prevented from casting their ballots due to inclement weather and accidents on roadways affecting certain parts of the State.

COUNT I: 42 U.S.C. § 1983, First and Fourteenth Amendments

19. Plaintiff incorporates paragraphs 1 through 18 of this Complaint as if fully set forth herein.

20. The conduct and circumstances alleged herein is depriving plaintiff and its supporters of their rights with respect to voting as guaranteed by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1971.

21. Absent injunctive relief, plaintiff and its supporters will suffer irreparable harm. Plaintiffs and its supporters have no adequate remedy at law.

COUNT II: O.R.C. § 3501.32, Article I of the Ohio Constitution

22. Plaintiff incorporates paragraphs 1 through 21 of this complaint as if fully set forth herein.

23. The conduct and circumstances alleged herein violates O.R.C. §§ 3501.32 and Article I of the Ohio Constitution.

24. Absent injunctive relief, plaintiff and its supporters will suffer irreparable harm. Plaintiffs and its supporters have no adequate remedy at law.

WHEREFORE plaintiff respectfully requests a temporary restraining order and preliminary and permanent orders directing the county board of elections to keep all polling places in the county open until 9:00 p.m., and require that the votes of all voters who are in line to vote by 9:00 p.m. are permitted to vote provisionally and have their votes counted pursuant to

Section 302(c) of the Help America Vote Act, 42 U.S.C. § 15482(c). Defendants shall also take all necessary steps to notify the news media of the extended polling hours.

Respectfully submitted,

s/ Steven M. Dettelbach, Thomas D. Warren, Stephan Schlegelmilch¹

Steven M. Dettelbach
Thomas D. Warren
Stephan Schlegelmilch
Attorneys for Plaintiff

Verification

I swear that the information contained in this complaint is true to the best of my personal knowledge.

Attorney signature

¹Pursuant to Rule 65, notice to certain of defendants' counsel was not possible given the immediate nature of the emergency. Relief should nonetheless be granted, because the election is scheduled to end in less than an hour.

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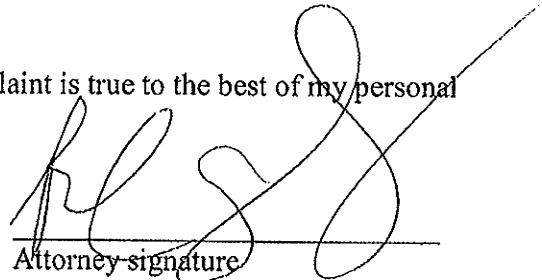
Respectfully submitted,

s/ Steven M. Dettelbach, Thomas D.
Warren, Stephan Schlegelmilch¹

Steven M. Dettelbach
Thomas D. Warren
Stephan Schlegelmilch
Attorneys for Plaintiff

Verification

I swear that the information contained in this complaint is true to the best of my personal knowledge.



A handwritten signature in black ink, consisting of stylized initials and a surname, written over a horizontal line. The signature is positioned to the right of the 'Verification' section.

Attorney signature

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