

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

King Lincoln Bronzeville Neighborhood	:	Case No.: No. C2-06-745
	:	
Association, et al.,	:	Judge Algenon Marbley
	:	
Plaintiffs,	:	Magistrate Judge Kemp
	:	
vs.	:	
	:	
J. Kenneth Blackwell, et al.,	:	
	:	
Defendants.	:	

**MEMORANDUM IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER**

I. Statement of the Issues

Whether Plaintiffs are entitled to a temporary restraining order under Fed. R. Civ. P. 65 enjoining Defendant Blackwell as Ohio Secretary of State prior to the next statewide general election from violating Plaintiffs' constitutional rights, including the right to vote and the right to equal protection of the laws, and ordering

1. Back-up paper ballots

At all times during the election on November 7th, 2006, absentee ballots, in adequate supply, will be made available at the polling places for any voter who wants to use them, and in particular

- a) whenever an electronic voting machine, including its capability to print a voter verified paper trail, becomes unavailable for use at its assigned voting location, or
- b) whenever, for whatever reason, the apparent waiting time to vote at a precinct location exceeds a half-hour.

Such absentee ballots may be turned in at the assigned voting location for delivery to the County Board of Elections along with other materials.

2. Audit

Before the certification of the election results, a statewide hand count of the voter verified paper trail, the provisional ballots, and the absentee ballots of a random sample of 3% of the voting precincts.

and ordering for circulation of this notice of injunction to the Board of Elections officials in all eighty-eight counties and posting of this notice at all polling places; and appointing a special prosecutor pursuant to F.R.Crim.P.42(b) to prosecute criminal contempt of this injunctive relief on the grounds that the Defendant Blackwell has and continues to violate the Plaintiffs' rights under the Civil Rights Act of 1870 and 1871, 42 U.S.C. § 1983, 42 U.S.C. § 1985(3); The Civil Rights Act of 1964, 42 U.S.C § 1971(a) & (b); Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973(a); 42 U.S.C. § 1988a; the First, Fourth, Thirteenth, Fourteenth, Fifteenth, Nineteenth and Twenty-Sixth Amendments to the United States Constitution; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; and the Constitution and laws of the State of Ohio.

II. Summary of the Argument

Plaintiffs respectfully move for the entry of a temporary restraining order under Fed. R. Civ. P. 65 enjoining Defendant Blackwell from violating the Plaintiffs' constitutional rights and granting equitable relief on the grounds that the Defendant Blackwell and those acting in concert with him under the color of law have conspired to deprive Plaintiffs of their right to vote and have, in fact, deprived Plaintiffs of their right to vote by undermining the bipartisan supervision of elections prescribed by Ohio law and avoiding any election audit so as to permit election fraud, vote dilution, the suppression and/or spoiling of votes in areas that tended to vote for John Kerry, recount

fraud, and other violations of federal and state laws as more specifically detailed in the complaint. As alleged more specifically in the complaint, this ongoing conspiracy and recurring pattern of selective and discriminatory voter disenfranchisement, intimidation, and vote dilution has been and will continue so as to selectively and discriminatorily disenfranchise, intimidate, or otherwise burden the Plaintiffs' right to vote in the upcoming election on November 7, 2006. In the amended complaint filed with this Court, the facts alleged support seventeen federal claims and an eighteenth claim based on violations of the state constitution and laws. For the sake of brevity, the argument in this memorandum will only address the first five federal claims: violation of the Equal Protection Clause, the Due Process Clause, the First Amendment, and the 42 U.S.C. 1988(a) and 1985(a) conspiracy claims. Plaintiffs respectfully request leave to brief additional claims at the discretion of the Court if necessary.

III. Statement of Facts

On November 2, 2004, this Court granted emergency injunctive relief ordering the Defendant Blackwell and the Franklin County and Knox County Boards of Elections to provide paper ballots or another mechanism to provide an adequate opportunity to vote and directed the Defendants to keep the polls open for voters waiting in line at 7:30 p.m. *Ohio Democratic Party v. Blackwell*, C2 04 1055, Nov. 2, 2004. The Defendant Blackwell and the Franklin County Board of Elections appealed this order to the United States Court of Appeals for the Sixth Circuit, which denied the emergency motion for stay of this Court's order. Nonetheless, the Defendant did not comply with this Court's order; paper ballots or another mechanism for voting were not provided; in Franklin County, not every polling place accommodated voters who were in line by 7:30 p.m.

Voters were disenfranchised. As a result of the Defendant's disobedience to this order and numerous other serious election irregularities revealed during statewide public hearings, Rep. John Conyers Jr., ranking Democrat on the House Judiciary Committee, initiated and supervised a congressional investigation. The report and findings of this congressional investigation are published in *What Went Wrong in Ohio: The Conyers Report on the 2004 Presidential Election*. Although Republican members of the committee declined the invitation to participate in this investigation, the investigation included testimony from Republicans and Democrats, poll workers and election officials, and harassed and/or disenfranchised voters. Based upon this report, on January 7, 2006, U.S. Senator Barbara Boxer (D-CA) and Representative Stephanie Tubbs Jones (D-OH) lodged a formal challenge to the counting of Ohio's electoral votes in the joint session as permitted by the U.S. Constitution, only the second such challenge in the past one hundred years.

The conditions that led to this Court's order on November 2, 2004 have not been remedied; indeed, as the affidavits presented in support of this motion show, they have been exacerbated. In addition, as the affidavits show, a two-year investigation into the election irregularities in Ohio demonstrates an ongoing conspiracy and recurring pattern of vote suppression and voter disenfranchisement and intimidation. Absent equitable relief, the Plaintiffs face an unprecedented and irreparable injury to their voting rights; the confusion and disenfranchisement that occurred in November 2, 2004 guaranteed to be both intensified and amplified: intensified by the current administration of the electoral system in Ohio; amplified by the introduction of electronic voting machines and implementation of new voting procedures. Back-up paper ballots and an audit prior to

certification of the results are minor requests when weighed against the enormity and certainty of injury to the Plaintiffs' voting rights.

Evidence of voter suppression and vote spoiling and switching in the Ohio 2004 election now stands unrebutted. *See* Declaration of Robert Fittrakis, Ph.D., J. D., Affidavit of Steven Freeman, Ph.D., and Verified Affidavit of Richard Hayes Phillips. Furthermore, it is indisputable that the electronic voting machines which Ohio will be using for the first time on a statewide basis in this election are vulnerable to manipulation. *See* GAO Accountability Report, released 2005, www.gao.gov/new.items/d05956.pdf. It is similarly indisputable that following the challenge to the Ohio electoral vote in the 2004 Presidential election, the Defendants deliberately and intentionally made it much more difficult for candidates and voters in the state of Ohio to meaningfully hold the election process to account. These changes include the statutory repeal of the right of either federal candidates or Ohio voters in such federal elections to file an election contest under Ohio law, Ohio R.C. § 3515.08, and the five-fold increase of the statutory cost for candidates in Ohio elections to request a recount, Ohio R.C. § 3515.07. Furthermore, the Republican Secretary of State, Defendant Blackwell, amended the regulation under which any such recounts would be conducted from one that required that 3% of the votes be selected at random for hand recount, so as to constitute a representative sample of the vote counted by machine, to a regulation that permits the Boards of Elections to select a sample by *any* means they desire. (Directive No. 2005-32, paragraph F. 4. The Recount.d, dated November 17, 2005 and attached hereto).

In addition, it is indisputable that the Republican-dominated Ohio Legislature passed the discriminatory provisions of H.B. 3 with perceived invidious intent to both disenfranchise voters and to legalize Defendant Blackwell's restrictive interpretation of provisional voting – both underlying elements in the challenge to Ohio's electoral college vote in 2004. *See* Declaration of Samuel Gresham, Acting Executive Director of Common Cause/Ohio. Several provisions of H.B.3 have already been enjoined by the U.S. District Court in the Northern District of Ohio in *Project Vote v. Blackwell* and *Boustani v. Blackwell*. In addition, Courts in both Georgia and Missouri have ruled comparable identification laws unconstitutional: *Jackson County v. State of Missouri*, Cole County District Court, State of Missouri and *Common Cause/Georgia v. Billups*, U.S. District Court, Northern District of Georgia (Rome) (complaints, orders, and procedural history for these case are available at <http://moritzlaw.osu.edu/electionlaw/litigation/index.php>.) Although this motion does not challenge H.B. 3, this law and the failure of the Defendant Blackwell to take positive steps to clarify this extensive, contradictory, and discriminatory legislation -- absent Court intervention as in the settlement reached in *Northeast Coalition for the Homeless v. Blackwell* on November 1, 2006 -- points to the urgency of the requested relief. Finally, a petition for a writ of mandamus directed to Defendant Blackwell ordering him to provide clarifying directives to the Boards of Elections, including providing back-up paper ballots and procedures for managing malfunctioning voting machines and assuring the security of the machines, has been pending in the Franklin County Court of Common Pleas since September 11, 2006. The Defendant Blackwell has refused to issue such directives or respond to the concerns raised in that pleading. On December 31, 2006, the

Court rejected the Plaintiff's request for a writ of mandamus. *Ohio Democratic Party v. Blackwell*, Franklin County Court of Common Pleas, 06-CV-011609. Although the state Court was without authority to compel the Defendant Blackwell to issue clarifying directives, this Court does have the authority to issue equitable relief to protect the Plaintiffs' voting rights from irreparable harm.

In addition, it is indisputable that these changes in the law for contesting elections, for recounting elections, and for registering to vote and voting in elections were made in anticipation of the upcoming election on November 7, 2006, which presents hotly contested important political races. There are open seats for the three office, Governor, Auditor and Secretary of State, which will compose the Ohio Apportionment Board; an open race for Ohio Attorney General who has been granted new authority to investigate election fraud; and races for the U.S. Senate and the Ohio congressional delegation in which control of these important bodies appears to be in play. Not only were these changes in the law made with the perceived intent to further unsettle the level playing field of voting, but they have such an effect: the cumulative changes in the voting machines and procedures are still being learned by poll workers, not to mention the everyday voter. The confusion over how one is validly registered to vote and can cast a valid vote is at an unprecedented high, a confusion compounded by the threat of criminal prosecution plastered over everyday voting documents and the widespread perception that the Ohio election in 2004 was neither honest nor fair. Neither these machines nor these voting procedures have been tested in a general election. The unacknowledged and unremedied electoral problems in 2004 and 2005, the common knowledge that the electronic machines have failed and are vulnerable to manipulation, and the perception

that H.B. 3 was an intentional subterfuge for voter intimidation and disenfranchisement along partisan lines and with invidious discriminatory animus profoundly burdens the Plaintiffs' right to vote. Delay and disenfranchisement are inevitable; back-up paper ballots and a pre-certification audit are urgently needed.

The paramount achievement of democracy is the peaceful transfer of power through the will of all the people. Voting is the bedrock of any claim for this nation to be a democracy. Public confidence in the openness and integrity of voting is the bedrock of public confidence in the legitimacy of our nation's leaders and processes. Without fair and honest elections, and public confidence in the fairness and honesty of our elections, the legacy of our nation -- its claim to government by law and not by people, its struggles for civil rights and the progressive enlargement of the franchise, its history of war at home and overseas in the name of democracy -- is eviscerated.

Plaintiffs have no adequate remedy at law for unduly long lines for voting, voting processes which burden the right to vote, or accounting procedures which are vulnerable to partisan manipulation. If Plaintiffs successfully prove, as they are prepared to prove in this underlying case, that the outcome of the 2004 Ohio presidential election was determined by a combination of systematic targeted voter suppression and vote spoiling and switching, the term of the President will nonetheless be near its end. Similarly, after the fact legal challenges to the certified results of the 2006 elections will be even more difficult to mount and sustain before the persons reported to have been elected in this election cycle assume their official responsibilities.

IV. Discussion

When ruling on a motion for a temporary restraining order or a preliminary injunction, a Court must balance four factors: (1) whether the Plaintiffs have a strong or substantial likelihood of prevailing on the merits of at least one of their claims; (2) whether the Plaintiffs and other Ohio voters will suffer irreparable harm to their rights as voters unless the relief is granted; (3) whether the threatened injury to the rights of the Plaintiffs and other Ohio voters outweighs whatever damage the proposed injunction may cause the opposing party; and (4) whether the grant of relief would not adversely affect the public interest. *Summit County Democratic Central and Executive Committee v. Blackwell*, 388 F.3d 547, 550 (6th Cir. 2004); *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 460 (6th Cir. 1999). The Court should grant a temporary restraining order of “it clearly appears from specific facts shown by affidavit . . . that immediate and irreparable injury, loss, or damage will result to the applicant. Fed. R. Civ. P. 65(b). The Sixth Circuit has also held that “[i]n general, the likelihood of success that need be shown . . . will vary inversely with the degree of injury the plaintiff will suffer absent an injunction.” *Friendship Materials, Inc. v. Michigan Brick, Inc.*, 679 F.2d 100, 105 (6th Cir. 1982) (internal quotation and citation omitted). As explained below, all of these criteria are satisfied in this case. For the sake of brevity, only the Equal Protection claim, the Due Process claim, the First Amendment claim, and the conspiracy claims pursuant to 42 U.S.C. sections 1988(a) and 1985(3) claims are addressed.

A. A Substantial Likelihood of Prevailing on the Merits

The right to vote occupies a pre-eminent position in the U.S. Constitution. “Voting is of the most fundamental significance under our constitutional structure.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964); *Harman v. Forssenius*, 380 U.S. 528, 537 (1965); *Elrod*

v. Burns, 427 U.S. 347, 373 (1976). In a democracy, the right to vote is both the wellspring and the protector of all other rights: “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.” *Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964). Indeed, “[t]he right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). “In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972).

Defendant Blackwell, acting under color of state law, has created an election process in which fair standards and lawful procedures are not enforced, which severely burdens and denies equal access to the right to vote, and results in arbitrary and disparate treatment of voters from county to county, precinct to precinct. In addition, the current system of voting administration, with its vulnerabilities to manipulation for purposes of targeted vote suppression and corruption, serves no compelling state interest, lacks any substantial relationship to any important state interest, and is not rationally related to any legitimate state interest. Under either standard for determining whether the election process or system of voting administration is lawful, strict scrutiny or rational relation, the Plaintiffs have a likelihood of prevailing on their Equal Protection claim. See, e.g. *Dunn*, 405 U.S. at 342-43 (Statutes that discriminate as to the fundamental right to vote

are subject to strict scrutiny, and are unconstitutional unless “the State can demonstrate that such laws are *necessary* to promote a *compelling* governmental interest”) (emphasis added). Even if a lesser standard were applied, however, the burden posed on the right to vote would still be unconstitutional. See, e.g., *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (“reasonable, nondiscriminatory restrictions” on voting rights are subject to constitutional scrutiny and an important state interest would be required to uphold it.)

There is no compelling state interest in intimidating and disenfranchising voters. Rather, the lack of adequate process has frustrated the individual Plaintiffs in casting a vote, and having their votes properly and equally counted, and has frustrated the purposes of the organizational Plaintiffs in ensuring that their members are able to cast ballots, and have their votes properly and equally counted, violating the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. In addition, physical access to the ballot has been denied and continues to be denied as well as the Plaintiffs’ First Amendment right to choice and right of association. “Fencing out” from the franchise a sector of the population because of the way they may vote is constitutionally impermissible. “The exercise of rights so vital to the maintenance of democratic institutions,” *Schneider v. State*, 308 U.S. 147, 161, cannot constitutionally be obliterated because of a fear of the political views of a particular group of bona fide residents. *Carrington v. Rash*, 380 U.S. 89, 94 (1965); *see also Evans v. Cornman*, 398 U.S. 419, 422-23 (1970) (“A state may not dilute a person’s vote to give weight to other interests ... and a lesser rule could hardly be applicable to a complete denial of the vote.”)

Likewise, Plaintiffs have a likelihood of success on their 42 U.S.C. section 1988(a) and 42 U.S.C. section 1985(3) conspiracy claims; the latter specifically prohibits

conspiring to prevent “by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States.” As alleged, the challenged actions are specifically motivated by racially or class-based invidious discriminatory animus. *Burnett v. Grattan*, 468 U.S. 42 (1984). In addition, both sections 1988(a) and 1985(3) reach private action. *Griffin v. Breckenridge*, 403 U.S. 88 (1971). The privileges and immunities protected by these sections include the right to vote in presidential and congressional elections (including primaries) without intimidation or suppression; see *Oregon v. Mitchell*, 400 U.S. 112 (1970) (relying in part on U.S. Const. Art. I, section 4 & Art. II, section 1); *United States v. Classic*, 313 U.S. 299, 308 (1941) (court sustained an indictment charging a conspiracy “to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and Laws of the United States, namely, (1) the right of qualified voters who cast their ballots in the primary election to have their ballots counted as cast for the candidate of their choice, and (2) the right of the candidates to run for the office of Congressman and to have the votes in favor of their nomination counted as cast.”) The Plaintiffs have a substantial likelihood of prevailing on these claims; the Defendant Blackwell has suppressed and/or diluted the vote in 2004, 2005 and the primary in 2006. In addition, the ongoing conspiracy and recurring pattern of voter intimidation, augmented by the now quasi-criminal nature of voting at the polls, directly threatens the Plaintiffs in the exercise of their privileges and immunities, specifically in giving their support or advocacy in an election.

Finally, the Plaintiffs have a substantial likelihood of success on these claims against Defendant Blackwell in his individual and official capacities. The state has a compelling interest in preventing voter intimidation and election fraud. *Burson v. Freeman*, 504 U.S. 191 (1992). Defendants who hold a public office owe the public a fiduciary duty to render honest services, including, when applicable, preventing voter intimidation and election fraud, and even defendants who do not hold a public office may nevertheless owe the public such a duty if others rely upon the defendant because of his special relationship with the government or if the defendant de facto makes governmental decisions. See, e.g. *United States v. Turner*, 2006 U.S. App. LEXIS 25690 (6th Cir. 2006) and cases cited therein. In order to find liability under section 1983 for violations of Plaintiffs' constitutional rights, the Sixth Circuit requires some sort of direct involvement, whether through encouragement, participation, or at the very least knowing acquiescence. *Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984). Liability under section 1983 can be premised on explicit causation, deliberate indifference to the violation of Plaintiffs' constitutional rights, or personal abandonment of duties so as to cause the deprivation of the Plaintiffs' constitutional rights. *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978).

For example, in *Taylor v. Michigan Dept. of Corrections*, 69 F.3d 76, 81-82 (6th Cir. 1995), a prison inmate who was raped after he was transferred to another facility brought a section 1983 claim against the warden alleging that the warden should have had policies in place to review the transfer of inmates susceptible to abuse. The warden argued that he could not be liable for the injuries caused by the plaintiff's transfer because he had delegated responsibility over such transfers to his subordinates. *Taylor*, 69 F.3d at

80-81. The Sixth Circuit rejected that argument, noting that plaintiff had accused the warden of personally abandoning the duties of his position by failing to establish a procedure by which transfers would be adequately reviewed. Importantly, the plaintiff did not attempt to hold the warden liable for the particular discreet act of his transfer (an act in which the warden played no role); in contrast, plaintiff claimed that his transfer was caused by the *warden's failure to adopt and implement an appropriate operating procedure to handle such transfers in the face of actual knowledge of a breakdown in the proper workings of the department*. Therefore, the Court in Taylor did not hold that delegation could be used as a lynchpin for section 1983 liability, but rather that delegation could not be used to avoid liability where the supervisor fails to perform the specific duties of his position -- in that case, adopting and implementing an appropriate inmate transfer procedure (not handling the transfers himself) (emphasis added).

The Plaintiffs have alleged sufficient facts and provided supporting evidence to demonstrate that Defendant Blackwell either explicitly caused, encouraged, participated, or knowingly acquiesced in the violation of Plaintiffs' constitutional rights; at a minimum, he and others failed and continue to fail to adopt the appropriate operating procedures to address election fraud, vote dilution, voter intimidation, and voter disenfranchisement in the face of actual knowledge of a breakdown in the proper workings of the electoral process in Ohio and in the actual performance of his statutory duties; at a minimum, Defendant Blackwell abandoned the specific duties of his position.. As in *Hill v. Marshall*, 962 F.2d 1209 (6th Cir. 1992), *cert. denied*, 125 L. Ed. 2d 687, 113 S. Ct. 2992 (1993), Defendant Blackwell personally had a job to do, and he did not do it. See, e.g., *William Thomas Gregory v. City of Louisville*, 444 F.3d 725 (6th Cir.

2006) (explaining liability under section 1983). Thus, the Plaintiffs have a likelihood of success on the allegations that Defendant Blackwell, in his personal and official capacities, is liable for the violations of the Plaintiffs' constitutional rights. In addition, the Defendant does not have the defense of qualified immunity, since this motion seeks only equitable relief. Finally, this Court is not divested of subject matter jurisdiction by state administrative agencies or commissions because this case raises claims under the U.S. Constitution. Neither is this motion for equitable relief barred by laches; the election itself has yet to be held.

B. Plaintiffs Will Be Irreparably Injured Absent a Temporary Restraining Order

The right to vote is one of the most fundamental rights in our system of government. *Reynolds v. Sims*, 377 U.S. at 554 (1964). For that reason, the loss of the constitutionally protected right to vote “for even minimal periods of time, constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Plaintiffs will suffer irreparable injury in the upcoming election if back-up paper ballots and an audit are not ordered; the Defendant Blackwell continues to control a process that he and the other Defendants have discriminatively manipulated for partisan advantage and that is even more vulnerable to partisan manipulation and discrimination now with the implementation of the electronic voting machines and unequal and discriminatory enforcement of the restrictive identification requirements to register to vote or vote.

C. The Threatened Injury Outweighs any Damage to Defendants

The threatened injury to Plaintiffs outweighs any damage that an injunction might cause the Defendant. The only harm to Defendant Blackwell in issuing an injunction would be the expense in circulating the notice of relief to the eighty-eight Boards of

Elections; in many cases, the injunctive relief will actually save the Defendant money and relieve the looming burden upon the eighty-eight Boards of Elections in conducting the upcoming election. That burden, however, is remote given the fact that the regular general election is not scheduled to be held until November 7, 2006. In any event, the purported expense or administrative inconvenience is outweighed by the loss of the equal right to vote that will be suffered by Plaintiffs. *See Taylor v. Louisiana*, 419 U.S. 522, 535 (1975) (“administrative convenience” cannot justify a state practice that impinges upon a fundamental right). Given the abundant evidence of election fraud in Ohio, at a maximum, and the abundant evidence of an breakdown in the proper workings of the electoral process, at a minimum, the state cannot seriously argued that its interests would in any way be harmed by a temporary restraining order.

D. A Temporary Restraining Order Would Be in the Public Interest

The public has a broad interest in the integrity of elections and seeing election laws applied in a non-discriminatory manner. Subjecting the Plaintiffs and other Ohio voters to this continuing unconstitutional and discriminatory electoral process would be adverse to the public interest. Under the circumstances, a temporary restraining order would promote the public interest.

V. Conclusion

For the foregoing reasons, Plaintiffs’ motion for a temporary restraining order should be granted.

Dated: Columbus, Ohio
November 3, 2006

Respectfully Submitted,

By: /S/ Clifford O. Arnebeck, Jr.

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CERTIFICATE OF SERVICE

This is to certify that the foregoing amended complaint was filed electronically on the 3rd day of November 2006 in accordance with the Court's Electronic Filing Guidelines. Notice of this filing will be sent to Larry H. James, Crabbe, Brown & James, Counsel for Defendant J. Kenneth Blackwell, Ohio Secretary of State, by operation of the Court's Electronic Filing System.

/S/ Clifford O. Arnebeck, Jr.

Clifford O. Arnebeck,