

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

KING LINCOLN, ET AL.

PLAINTIFFS,

AND

THE OHIO ELECTION JUSTICE CAMPAIGN,
PADDY SHAFFER, MARLYS BARBEE,
VIRGINIA BROOKS, MARK BROWN,
BRUCE DUNCANSON, MARIAN LUPO,
PETER JONES, AND TIMOTHY KETTLER

individually and as CLASS REPRESENTATIVES
under Fed.R.Civ.P. 23,

v.

JENNIFER BRUNNER, ET AL.

DEFENDANTS.

Civil Action No. C2 06 745

**JUDGE ALGENON
MARBLEY**

**MAGISTRATE
JUDGE KEMP**

**INTERVENOR-PLAINTIFFS OHIO ELECTION JUSTICE CAMPAIGN AND
NAMED PLAINTIFFS' SHAFFER, BARBEE, BROOKS, BROWN,
DUNCANSON, LUPO, JONES, AND KETTLER PROPOSED COMPLAINT**

1. The organizational plaintiff, the Ohio Election Justice Campaign (OEJC), is an unincorporated statewide association of qualified electors dedicated to election justice issues. Many of its members became involved in the organization through difficulty in casting a vote in 2004 or 2006, or the failure to have past election justice issues redressed at the county or state level, or through their involvement in the electoral process as candidates or in non-major party activities.

2. Named plaintiff Paddy Shaffer is a qualified elector and has resided in Franklin County since before the 2004 presidential election. She is the director of the Ohio Election Justice Campaign, an election researcher, and was 2006 congressional candidate, 12th District of Ohio (Franklin, Delaware, and Licking Counties, receiving 13,513 votes). She was regional and county coordinator for the 2004 recount on behalf of the Green Party.

3. Named plaintiff Marlys Barbee, member of the OEJC, is a qualified elector and has resided in Morgan County since before the 2004 presidential election. She was a candidate for Morgan County Commissioner in 2006 and chairs the Morgan County Coalition of Concerned Citizens, a group initiated to address apparent violations of election laws by the Morgan County Board of Elections in 2004 and 2006.

4. Named plaintiff Virginia Brooks, member of the OEJC, is a qualified elector and senior and has resided in Ashland County since before the 2004 presidential election. She is State Chair of the Reform Party of Ohio, which is affiliated with the New Frontier Coalition, for which she serves as a steering committee member, and which was founded to support any third-party candidate, veterans group, or senior as long as they stand for the Constitution of the United States of America and agree to return this country to a Constitutional and Representative Government.

5. Named plaintiff Mark Brown, member of the OEJC, is a qualified elector and has resided in Franklin County since before the 2004 presidential election. He was a 2004 congressional candidate, 15th District of Ohio (Franklin, Union, and Madison Counties) and is a retired member of the Ohio National Guard.

6. Named plaintiff Bruce Duncanson, member of the OEJC, is a qualified elector and has resided in Franklin County since before the 2004 presidential election. He is also the founder and director (General) of the Peace Army for Mental Health, which seeks to better mental health care and which advocates for the civil and constitutional rights of people with mental disabilities.

7. Named plaintiff Peter Jones, member of the OEJC, is a qualified elector and has resided in Greene County since before the 2004 presidential election. He was an election recount observer in 2004 for the Democratic Party and is a member of the Greene County Citizens for Safe and Secure Elections. He also serves on the Greene County Board of Zoning Commission. During the 2006 election in Ohio, his vote hopped from his candidate of choice to another candidate. He voted at the Greene County Board of Elections.

8. Named plaintiff Marian Lupo, member of the OEJC, is a qualified elector and has resided in Franklin County since before the 2004 presidential election. She is a member of the Ohio Election Protection Coalition and affiliated with the Ohio Disability Voter Coalition, which represents the interests of voters with varying and various disabilities.

9. Named plaintiff Timothy Kettler, member of the OEJC, is a qualified elector and has resided in Coshocton County since before the 2004 election. He is Secretary of the Green Party, 2006 candidate for Secretary of State (receiving 78,075 votes (2.04%)), and currently candidate for Ohio Senate District 20 in the November 2008 election. He was county and regional coordinator for the 2004 recount on behalf of the Green Party.

FED.R.CIV.P. 23 CLASS CERTIFICATION STATEMENT

The Proposed Intervenor-Plaintiffs adopt the class certification statement in the Plaintiffs' complaint and further specify that the class consisting of all voters who were disenfranchised or intimidated in the November 2004 election and continue to be disenfranchised or intimidated include disabled voters, elderly voters, military voters, and voters residing in non-metropolitan counties.

JURISDICTION

The Intervenor-Plaintiffs adopt the jurisdictional statement in the Plaintiffs' complaint.

VENUE

The Intervenor-Plaintiffs adopt the venue statement in the Plaintiffs' complaint.

PARTIES

The Intervenor-Plaintiffs adopt the Defendants named in the Plaintiffs' complaint.

FACTUAL ALLEGATIONS

The Proposed Intervenor-Plaintiffs adopt the factual allegation in the Plaintiffs' complaint and further specify:

Election Fraud

1. Upon information and belief, election officials in Morgan County engaged in, directed others to engage in, and/or neglected to ensure the proper procedures were in place so as to certify an unqualified candidate in 2004 for county prosecutor, the elected position responsible for advising the board of elections and for bringing actions based upon violations of election law.

2. Upon information and belief, election officials in Greene County engaged in, directed others to engage in, or neglected to ensure the proper procedures were in place so as to deploy voting machines in 2006 that were programmed to register the touch-screen selection of one candidate as the selection of another candidate (vote-hopping).

Vote Suppression

3. Upon information and belief, Ohio election officials failed to receive 180,000 absentee ballots stored at the Port Columbus Air Mail Facility located at the Port Columbus International Airport in 2006, which were stockpiled on one pallet for insufficient postage.

4. Upon information and belief, Ohio election officials engaged in, directed others to engage in, and/or neglected to ensure the proper procedures were in place so that absentee ballots and military absentee ballots in 2004 and 2006 were misleading, inaccessible, and confusing so as to produce the result that many absentee ballots and military absentee ballots were uncounted in 2004 and 2006.

5. Upon information and belief, election officials in Greene County engaged in, directed others to engage in, and/or neglected to ensure the proper procedures were in place in 2004 so that the majority of students at a historically black college were not registered to vote while the majority of students at an adjacent denominational college were registered to vote.

6. Upon information and belief, Ohio election officials engaged in, directed others to engage in, and/or neglected to ensure the proper procedures were in place so that the 2006 purge card was mailed too late to provide a qualified elector an opportunity to timely reregister at the appropriate address, and that this failure to timely mail purge cards disproportionately affected minority, disabled, and elderly voters. Upon information and belief, 54 counties in Ohio employ a private contractor, Triad Systems, located in Greene County, which has remote access to their registration databases.

7. Upon information and belief, Ohio election officials engaged in, directed others to engage in, and/or failed to ensure the proper procedures were in place so as to fail to designate in a timely manner or to move at short notice the polling location for precincts with a disproportionate numbers of minority, disabled, and elderly voters in 2004 and 2006, which led to voters being unable to locate the appropriate polling location or to locate it in a timely fashion.

8. Upon information and belief, Ohio election officials engaged in, directed others to engage in, and/or failed to ensure the proper procedures were in place so as to consolidate precincts in areas with disproportionate numbers of minority, disabled, and elderly voters in 2004, leading to overcrowding and other brutal conditions in the polling places such as overheating, lack of fresh air, long periods of time without water or food, long periods of time with the ability to access restrooms, and other inhumane conditions that prevented access to the polls and produced physical and mental pain and suffering that interfered with or prevented their vote.

9. Upon information and belief, Ohio election officials engaged in, directed others to engage in, and/or failed to ensure the proper procedures were in place so as to consolidate precincts in rural areas in 2004 and 2006 so that voters remote from the polling places were required to engage in extensive travel to reach them, which interfered with or prevented their vote. For example, the precincts in Bloom Township in Morgan County, which spans both sides of the Muskingham River, were consolidated into one polling place on one side of the river, so that electors must now travel to the next town to cross the bridge and reach the polling place, a 30-mile round trip.

10. Upon information and belief, election officials in Ashland County engaged in, directed others to engage in, and/or failed to ensure the proper procedures were in place so as to design the 2004 ballot so that it misled a voter into a separate vote for president and vice-president, which separate votes then resulted in the disqualification of the vote for president as an overvote.

11. Upon information and belief, Ohio election officials, through the quasi-private organization, the Ohio Association of Election Officials, drafted and adopted policies and procedures in 2004 for the Ohio Secretary of State that facilitated the challenge of voters at the polling places for reasons unrelated to their qualifications to vote.

Recount Fraud

12. Upon information and belief, election officials in Coshocton County engaged in, directed others to engage in, or neglected to ensure the proper procedures were in place so that a precinct was pre-selected for the recount and recounted prior to the official recount. Upon finding discrepancies in the count, officials then received permission to file an “amended official” from the Ohio Secretary of State’s office, recounted the entire county, and then changed the previously certified results prior to the official recount.

13. Upon information and belief, election officials in Greene County engaged in, directed others to engage in, or neglected to ensure the proper procedures were in place so that the precincts were pre-selected and the recount was conducted by the president of a private vendor, Triad GSI.

14. Upon information and belief, election officials in Delaware County engaged in, directed others to engage in, or neglected to ensure the proper procedures were in place so that the recount was conducted, in part, by a technician from a private vendor, Election Systems & Software.

Voter Identification Statutes, O.R.C. §§ 3501.01 et seq.

15. Upon information and belief, over 20,000 voters in Ohio were unable to cast a vote in 2006 because of the restrictive provisions of the identification statutes, which disproportionately affected minorities, the disabled, and the elderly, and which were further applied in an inconsistent and arbitrary manner so as to delay, intimidate, and disenfranchise qualified electors.

Violation of Ohio Laws

16. Upon information and belief, Ohio election officials engaged in, directed others to engage in, or neglected to ensure the proper procedures were in place so as to prevent citizen access to election records following the 2004 and 2006 elections so that the integrity of the election could be verified. For example, election officials in Greene County and in Delaware County in 2004 and in 2006 refused to permit access to their records.

LEGAL ALLEGATIONS

The Intervenor-Plaintiffs adopt the Plaintiffs' legal allegations.

LEGAL CLAIMS

The Intervenor-Plaintiffs adopt the Plaintiffs' legal claims and further specify:

Violation of the Voting Accessibility for Elderly & Handicapped Act of 1984, (VAEHA Act), 42 U.S.C. §§ 1973ee et seq.

1. Plaintiffs hereby incorporate and reallege all of the allegations contained in the paragraphs above.
2. The VAEHA Act provides: "Within each State... each political subdivision responsible for conducting elections shall assure that all polling places for

Federal elections are accessible to handicapped and elderly voters,” and “[e]ach State or political subdivision responsible for registration for Federal elections shall provide a reasonable number of accessible permanent registration facilities.”

3. Defendants, acting under color of state law, violated the above act.

Violation of Section 504 of the Rehab. Act of 1973, 29 U.S.C. § 794

1. Plaintiffs hereby incorporate and reallege all of the allegations contained in the paragraphs above.

2. Section 504 provides: “No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”

3. Defendants, acting under color of state law, violated the above act.

Violation of The Voting Rights Act of 1965 (VRA), 42 U.S.C. §1973aa-6

1. Plaintiffs hereby incorporate and reallege all of the allegations contained in the paragraphs above.

2. The VRA provides: “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.”

3. Defendants, acting under color of state law, violated the above act.

**Violation of the Americans with Disabilities Act of 1990 (ADA),
42 U.S.C. § 12101 et seq.**

1. Plaintiffs hereby incorporate and reallege all of the allegations contained in the paragraphs above.

2. The ADA provides: “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity,” 42 U.S.C. § 12132.

3. The Defendants, acting under color of state law, violated the act.

Violation of 42 U.S.C. § 15481

1. Plaintiffs hereby incorporate and reallege all of the allegations contained in the paragraphs above.

2. Defendants, acting under color of state law, violated the detailed voting systems standards articulated in the above section, including but not limited to the accessibility provisions.

Violation of 42 U.S.C. § 1973

1. Plaintiffs hereby incorporate and reallege all of the allegations contained in the paragraphs above.

2. Section 1973 prohibits “[d]enial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites” and electoral systems that dilute minority voting strength.

3. Defendants, acting under color of state law, violated this section.

Violation of State Laws

1. Plaintiffs hereby incorporate and reallege all of the allegations contained in the paragraphs above.

2. O.R.C. § 3501.29 provides for polling place access; 3503.12 provides for registration place access; 3505.24 provides for right to be aided by person of voter's choice other than employer or union agent/officer; 3506.19 provides for at least one DRE or marking device accessible to disabled voters; 3515.01-13 provides for recount/contest procedures and further provides that a candidate may file for a recount; 3509.01-08 provides the procedure for absentee and military absentee ballots; 3599.161 provides for access to election records; and 149.43 provides for inspection and copying of public records.

3. Defendants, acting under color of state law, violated the above provisions.

PRAYER FOR RELIEF

The Intervenor-Plaintiffs adopt the Plaintiffs' prayer for relief and further request this Court enter judgment:

1. Enjoining Defendants from future use of voting registration forms, absentee ballots, ballot faces, poll worker handbooks, provisional ballots, and other written instruments integral to the voting process that are not fully accessible to all voters, composed in Plain English (or the equivalent for other language voters), and publicly and widely circulated thirty-days prior to the election.

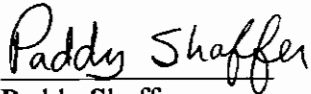
2. Enjoining Defendants from maintaining an electoral process that is physically and mentally hostile to voters with disabilities so as to interfere or prevent their vote.
3. Enjoining Defendants from future use of remote servers tabulating the vote, of remote access to the registration databases, of electronic signature books, and all other automated electoral systems, including automated mailing of the purge card, absent an IT enterprise architecture analysis of Ohio's entire automated electoral system.
4. Enjoining Defendants from the continuation of the current bipartisan structure of the county boards of elections that prevents persons with disabilities, third-party, and non-partisan members from any participation in the administration of the electoral process, from poll worker to director.
5. Enjoining Defendants from certifying the results prior to a manual recount by independent citizen-researchers upon seven-day prior notice to board of elections and providing for *in forma pauperis* status for such citizen-researchers.
6. Enjoining the Defendants from maintaining in deployment, tampering, or shaking any malfunctioning voting machine, including any machine that inaccurately displays the selection of a candidate, absent the completion of a forensic investigation and report.

Affirmation of Paddy Shaffer

I am Director of the Ohio Election Justice Campaign, and I have personal knowledge of the following:

1. I was one of the members of the Ohio Election Justice Campaign that conducted an in-person visit to the Southern District of Ohio's Office of the Clerk of Court on July 1, 2008.
2. The purpose of the visit was to verify that evidence regarding the destruction of ballots was filed with the court.
3. On that date, we viewed the electronic filing system, available to the public on a computer in that office.
4. Following viewing the electronic filing system, we spoke with the appropriate personnel.
5. I followed-up with a telephone call on July 2, 2008 to the Clerk of Court's office.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 8 day of August, 2008, in Franklin County, Ohio.


Paddy Shaffer
2408 Sonnington Drive
Dublin, Ohio 43016

Certificate of Service

I hereby certify that on August 8, 2008, the foregoing Reply to Defendant's Memorandum in Opposition to Motion to Intervene of the Ohio Election Justice Campaign, et al was filed on paper in person with the clerk of court pursuant to U.S. District Court, S.D. Ohio local Civil Rule 5.1(c). A true copy of this motion was sent by regular U.S. mail to the following counsel of record:

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