

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

THE NORTHEAST OHIO COALITION	:	Civil Action No. C2-06-896
FOR THE HOMELESS, et al.,	:	
	:	Judge Algenon L. Marbley
Plaintiffs,	:	
	:	
vs.	:	
	:	<b>SUPPLEMENTAL COMPLAINT</b>
JENNIFER BRUNNER, in her official	:	
capacity as Secretary of State of Ohio,	:	
	:	
Defendant.	:	
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	:	
THE NORTHEAST OHIO COALITION	:	
FOR THE HOMELESS, et al.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
THE STATE OF OHIO,	:	
	:	
Intervenor-Defendant.	:	

For their Supplemental Complaint, Plaintiffs add three new Plaintiffs, set out the following occurrences and events that happened after the date on which the Complaint in this action was filed, supplement their existing claims accordingly, and add new claims based on these new facts and the Supreme Court’s decision in *Crawford v. Marion County*, \_\_\_ U.S. \_\_\_, 128 S. Ct. 1610 (2008):

**I. BACKGROUND**

1. Plaintiffs filed this action in October 2006 to challenge the constitutionality of the newly-amended Ohio provisional ballot laws (R.C. §§ 3505.181(B)(4) and 3505.183(B))

(“Provisional Ballot Laws”) and Ohio voter-identification laws (R.C. §§ 3501.01(AA), 3501.19, 3505.18, 3505.181(A)(2), 3505.181(A)(3), 3505.181(A)(4), 3505.181(A)(12), 3505.181(A)(13), 3505.181(B)(6), 3505.181(B)(7), 3505.181(B)(8)(a), portions of 3505.182, 3505.183(B)(3)(d), 3505.183(B)(4)(a)(v), 3505.183(B)(4)(a)(vii), 3509.03(E), portions of 3509.04, portions of 3509.05, portions of 3509.06(D) and portions of 3509.07) (“Voter ID Laws”).

## **II. SUPPLEMENTAL ALLEGATIONS: PARTIES**

### **A. Existing Plaintiff SEIU**

2. Plaintiff SEIU represents more than 34,000 health care and social service workers across West Virginia, Kentucky and Ohio. On information and belief, some of its Ohio members will be required to vote by provisional ballot on Election Day in the November 2008 Election.

### **B. Existing Plaintiff NEOCH**

3. In September and October 2008, Plaintiff NEOCH devoted considerable time and resources to organizing drivers to drive hundreds of homeless voters to their Board of Elections so that they could register and vote at the same time. NEOCH would not have undertaken this effort but for the Defendants’ enforcement of the unconstitutional Voter ID Laws that impose a more severe burden on homeless people who vote on Election Day.

4. Throughout the month of October, Plaintiff NEOCH intends to continue devoting its resources to driving homeless voters to their Board of Elections to vote by absentee ballot so that they are not required to cast provisional ballots on Election Day. NEOCH would not be undertaking this effort but for the Defendants’ enforcement of the Voter ID Laws.

5. The considerable time and resources that Plaintiff NEOCH has devoted, and will devote, to driving homeless voters to the Board of Elections so that they can vote by absentee

ballot, would otherwise have been spent on improving conditions within the emergency shelters in the community, as well as on NEOCH's homeless photography internship program.

**C. New Plaintiff Kyle Wangler**

6. Plaintiff Kyle Wangler is a member of Plaintiff NEOCH.
7. Plaintiff Wangler has been homeless for approximately two years because he was evicted. He does not have a current address.
8. When Plaintiff Wangler is able to do so, he resides in a homeless shelter located at 2100 Lakeside Avenue in Cuyahoga County, Ohio.
9. Plaintiff Wangler is a United States citizen and has a Social Security number.
10. Plaintiff Wangler is registered to vote in Cuyahoga County. His registration uses the 2100 Lakeside Avenue homeless shelter as his address.
11. Plaintiff Wangler has voted previously and intends to vote in the November 2008 election and the elections that follow.
12. Plaintiff Wangler wishes to vote on Election Day.
13. Plaintiff Wangler does not have any of the forms of identification required by the Voter ID Laws.
14. Plaintiff Wangler does not have an original or certified copy of his birth certificate, or any other primary document that would enable him to obtain a State ID card.
15. Plaintiff Wangler is trying to get his birth certificate now but will not have it by the time of the November 2008 Election.

**D. New Plaintiff James Wise**

16. Plaintiff James Wise has been homeless for approximately seven years because he cannot find employment or housing. He does not have a current address.

17. When Plaintiff Wise is able to do so, he resides in a homeless shelter located at 2100 Lakeside Avenue in Cuyahoga County, Ohio.

18. Plaintiff Wise is a United States citizen and has a Social Security number.

19. Plaintiff Wise is registered to vote in Cuyahoga County. His registration uses the 2100 Lakeside Avenue homeless shelter as his address.

20. Plaintiff Wise has voted previously and intends to vote in the November 2008 election and the elections that follow.

21. Plaintiff Wise wishes to vote on Election Day.

22. Plaintiff Wise does not have any of the forms of identification required by the Voter ID Laws.

23. Plaintiff Wise does not have an original or certified copy of his birth certificate, or any other primary document that would enable him to obtain a State ID card.

24. It would be difficult for Plaintiff Wise to obtain a copy of his birth certificate because he does not have enough money to purchase it.

**E. New Plaintiff Columbus Coalition for the Homeless**

25. Plaintiff Columbus Coalition for the Homeless (“CCH”) is a coalition of service providers, currently and formerly homeless people, and concerned citizens.

26. Plaintiff CCH has homeless members who lack the identification required by the Voter ID Laws.

27. Part of Plaintiff CCH's mission is to advocate for social and economic justice for all people, especially those who are most vulnerable.

28. One of the ways in which Plaintiff CCH has carried out its mission is by assisting its homeless members and other homeless persons to register to vote and cast their votes.

29. This year, Plaintiff CCH helped to organize homeless providers to transport their clients to the Board of Elections to register to vote and cast their votes.

30. Plaintiff CCH intends to transport its homeless members and other homeless persons to the polls on Election Day in the November 2008 Election.

### **III. SUPPLEMENTAL ALLEGATIONS: CLAIMS**

31. Some of the following claims are brought by Plaintiff SEIU.

32. All of the following claims are brought by Plaintiff Wangler and Plaintiff Wise (the "Individual Plaintiffs"), and also by Plaintiff NEOCH and Plaintiff CCH (the "Coalitions").

33. The Individual Plaintiffs and some of the Coalitions' members do not have any of the required forms of identification and so must cast a provisional ballot on Election Day in the November 2008 Election.

34. Ohio's eighty-eight Boards of Elections did not apply the Provisional Ballot Laws equally in the November 2006 Election, and will not apply them equally in the November 2008 Election.

35. All Ohio voters who cast provisional ballots in the November 2008 Election—including the Individual Plaintiffs, the Coalition's members, and Plaintiff SEIU's members—

face the realistic danger of having their vote be denied, diluted or abridged in violation of the Equal Protection and Due Process Clauses of the United States Constitution.

36. The Individual Plaintiffs and some of the Coalitions' members must purchase a State ID card and, possibly, a birth certificate to cast a regular ballot on Election Day in November 2008 and avoid being required to cast a provisional ballot.

37. The requirement that these voters must purchase a State ID card and, possibly, a birth certificate to avoid being subjected to an inferior and unconstitutional voting procedure, imposes a severe and undue burden on the Individual Plaintiffs and some of the Coalitions' members.

38. The requirement that these voters must purchase a State ID card and, possibly, a birth certificate to avoid being subjected to an inferior and unconstitutional voting procedure imposes an unlawful poll tax on the Individual Plaintiffs and some of the Coalitions' members.

39. Plaintiffs seek the following remedies with respect to the November 2008 Election:

- a. An order declaring that the Voter ID Laws are facially unconstitutional because they impose an unlawful poll tax, and enjoining their enforcement preliminarily;
- b. In the alternative, an order declaring that the Voter ID Laws are unconstitutional as applied to the Individual Plaintiffs and the Coalitions' homeless members, and enjoining their enforcement preliminarily with respect to the Individual Plaintiffs, the Coalitions' homeless members and all similarly situated homeless voters in the State of Ohio; and

- c. An order that sets forth uniform procedures and standards that Ohio's Boards of Elections must apply when determining whether provisional ballots should be counted, provides for monitoring of compliance, and provides remedies for non-compliance.

#### **IV. PROVISIONAL BALLOTS CAST IN THE NOVEMBER 2006 ELECTION WERE TREATED DIFFERENTLY AND UNEQUALLY BY OHIO'S BOARDS OF ELECTIONS.**

40. Ohio's eighty-eight Boards of Elections applied different and unequal standards when determining which of the provisional ballots that were cast in the November 2006 Election were eligible to be counted.

41. Ohio voters cast 127,758 provisional ballots in the November 2006 Election, which was the second-highest total of any state.

42. The following counties reported having the highest numbers of provisional ballots: Franklin (20,322), Cuyahoga (15,917), Hamilton (12,569), Montgomery (6,630), Butler (5,150), Lucas (4,910), Summit (4,891), Stark (4,069) and Lorain (2,979).

43. The U.S. Election Assistance Commission ("EAC") conducted a survey after the November 2006 Election that asked State officials to report certain information about provisional ballots, by county.

44. The results of the EAC survey were released in December 2007.

45. The provisional ballot data reported by Ohio shows that its Boards of Elections applied disparate and unequal standards when deciding which provisional ballots were eligible to be counted.

**A. Significant Differences In Rejection Rates**

46. Of the 127,758 provisional ballots that were cast in the November 2006 election, Ohio's Boards of Elections rejected 23,062, or 18.1%.

47. Individual counties varied significantly from the total rejection rate of 18.1%.

48. The wide variation demonstrates that some Boards of Elections applied stricter standards than others:

a. The Belmont County Board of Elections rejected 43.1% of provisional ballots, or nearly one out of every two ballots that were cast.

b. The Coschocton County Board of Elections rejected 0.85% of provisional ballots, or less than one percent of the ballots that were cast.

c. Five Boards of Elections—in Belmont, Madison, Putnam, Logan and Summit Counties—rejected more than 30% of all provisional ballots cast.

d. Six Boards of Elections—in Seneca, Holmes, Pike, Gallia, Monroe and Coshocton Counties—rejected less than 5% of all provisional ballots cast.

**B. Differences In The Reasons For Rejecting Provisional Ballots**

49. The EAC survey required Boards of Elections to report how many provisional ballots were rejected for each of sixteen reasons.

50. Those data strongly suggest that Ohio's Boards of Elections did not apply the same standards when determining whether provisional ballots should be counted or rejected.

**1. *The voter had already voted.***

51. Some provisional ballots were rejected because the voter had already voted.

52. Twenty-five Boards of Elections rejected 163 provisional ballots for this reason, with the most ballots rejected in Franklin (63), Lucas (21) and Hamilton (17) Counties.

53. Sixty-three Boards of Elections did not reject even a single provisional ballot for this reason.

**2. *The voter was ineligible.***

54. Some provisional ballots were rejected because the Board of Elections determined that the voter was ineligible.

55. Twenty-six Boards of Elections rejected 459 provisional ballots for this reason, with the most ballots rejected in Summit (128), Greene (78) and Belmont (66) Counties.

56. The Belmont County Board of Elections rejected 12.4% of its provisional ballots on this basis, which was a far higher percentage than in any other county.

57. Sixty-two Boards of Elections—including Hamilton, Lucas, Montgomery and Stark Counties—did not reject even a single provisional ballot for this reason.

**3. *Missing ballots.***

58. Some provisional ballots were rejected because the ballot was supposedly missing.

59. Thirteen Boards of Elections rejected a total of 181 provisional ballots for this reason, with the most ballots rejected in Warren (62), Clark (30) and Clermont (18) Counties.

60. The Morgan County Board of Elections rejected 7.0% of its provisional ballots on this basis, which was a far higher percentage than in any other county.

61. Seventy-five Boards of Elections—including in Cuyahoga, Franklin, Hamilton, Summit, Butler, Lorain and Stark Counties—did not reject even a single provisional ballot for this stated reason.

**4. *Lack of identification.***

62. Some provisional ballots were rejected because the voter did not provide identification.

63. Sixty-four Boards of Elections rejected a total of 2,726 provisional ballots for this reason, with the most ballots rejected in Lorain (383), Summit (349) and Lucas (330) Counties.

64. The Putnam County Board of Elections rejected 38.0% of its provisional ballots on this basis, which was a far higher percentage than in any other county.

65. Twenty-four Boards of Elections—including in Franklin and Stark Counties—did not reject even a single provisional ballot for this reason.

**5. *Non-matching signatures.***

66. Some provisional ballots were rejected because there was a non-matching signature.

67. Five Boards of Elections rejected a total of 14 provisional ballots for this reason, with the most ballots rejected in Lucas County (9).

68. Eighty-three Boards of Elections—including in Franklin, Cuyahoga, Hamilton, Montgomery, Butler, Summit, Stark and Lorain Counties—did not reject even a single provisional ballot for this reason.

**6. *Not registered.***

69. Some provisional ballots were rejected because the voter was not registered.

70. Eighty-four Boards of Elections rejected provisional ballots for this reason, with the highest rejection rates in Belmont (12.4%), Preble (12.0%), Lorain (11.9%), Carroll (10.6%), Union (10.5%), Wyandot (10.4%) and Warren (10.0%) Counties.

71. Some Boards of Elections in the counties with the most provisional ballots had significantly lower rejection rates, namely Franklin (3.4%), Hamilton (6.2%), Butler (3.7%), Summit (5.7%) and Stark (4.5%) Counties.

**C. Inconsistent Data**

72. Some Boards of Elections did not handle provisional ballots accurately and consistently.

73. Nineteen Ohio Boards of Elections reported provisional ballot data that are inconsistent. For example:

- a. The Summit County Board of Elections reported that voters cast 4,891 provisional ballots, but also reported that it counted 4,511 provisional ballots and rejected 1,525 provisional ballots, yielding a discrepancy of 1,145 ballots.
- b. The Clark County Board of Elections reported that voters cast 1,218 provisional ballots, but also reported that it counted 1,151 provisional ballots and rejected 211 provisional ballots, yielding a discrepancy of 144 ballots.
- c. The Miami County Board of Elections reported that voters cast 897 provisional ballots, but also reported that it counted 713 provisional ballots and rejected 162 ballots, yielding a discrepancy of 22 ballots.

74. The data collected and reported by the EAC show that Ohio's Boards of Elections applied different and unequal standards when determining whether provisional ballots cast in the November 2006 Election were eligible to be counted, in violation of the Due Process and Equal Protection Clauses of the United States Constitution.

**V. THE VOTER ID AND PROVISIONAL BALLOT LAWS DEPRIVE THE INDIVIDUAL PLAINTIFFS AND SOME OF THE COALITIONS' MEMBERS OF THEIR RIGHTS TO DUE PROCESS AND EQUAL PROTECTION, AND IMPOSE AN UNLAWFUL POLL TAX.**

**A. There Are Homeless Voters In Ohio**

75. Ohio law allows homeless voters to register to vote by using the address of the shelter or other location where they usually reside.

76. When registering to vote in Ohio, voters need not provide any of the required identification but instead can provide the last four digits of their Social Security number.

77. Some of Ohio's registered voters are homeless, including the Individual Plaintiffs.

78. Some of these registered homeless voters, including the Individual Plaintiffs and some of the Coalitions' members, intend to vote in the November 2008 Election.

**B. Many Homeless Voters Lack The Required Identification**

79. The Voter ID Laws permit voters to use several types of identification.

80. Most types of permitted identification, including utility bills, bank statements, government checks, paychecks or "other government documents," must contain the voter's current address.

81. Because they are homeless, the Individual Plaintiffs and some of the Coalitions' members do not have identification that contains a current address.

82. The only forms of permitted identification that do not require a current address are military ID cards or current and valid (i.e., unexpired) United States passports, State of Ohio driver's licenses or State ID cards.

83. Although some homeless people in the State of Ohio do have military ID cards or current and valid United States passports, State of Ohio driver's licenses or State ID cards, many homeless people do not have such identification.

84. The Individual Plaintiffs and some of the Coalitions' members do not have military ID cards or current and valid United States passports, State of Ohio driver's licenses or State ID cards.

**C. It Is Difficult For Many Homeless Voters To Vote Absentee**

85. Ohio law allows any registered voter to vote by absentee ballot, either by mail or in-person, before Election Day.

86. Absentee voters are not required to provide one of the forms of required identification but instead can provide the last four digits of their Social Security number.

87. Homeless voters who wish to vote by absentee ballot face numerous difficulties that effectively prevent many of them from doing so.

88. Absentee voting by mail is difficult for many homeless voters:

- a. Voters who apply for and cast absentee ballots by mail must use their current address;
- b. Some homeless voters do not have mail service at the location where they usually reside;

- c. Although mail service is provided at some homeless shelters, that service can often be unreliable; and
- d. Homeless voters must pay for postage when returning the absentee ballot application and the absentee ballot.

89. In-person early voting at the Board of Elections is difficult for many homeless voters because they lack adequate transportation:

- a. Many homeless people do not own cars;
- b. Many homeless voters do not have ready access to transportation to and from the Board of Elections; and
- c. Many Ohio counties lack public transportation systems.

90. As a practical matter, many homeless voters require assistance to vote by absentee ballot prior to Election Day.

**D. It Is A Severe Burden For Homeless Voters To Buy A State ID**

91. The Individual Plaintiffs and some of the Coalitions' members must purchase State ID cards to vote by regular ballot on Election Day and avoid casting a provisional ballot that will likely be treated differently and unequally by Ohio's Boards of Elections.

92. Unlike the State of Indiana, where the voter identification laws were recently upheld, the State of Ohio does not provide free identification cards to registered voters.

93. The cost of a new State of Ohio identification card is \$8.50.

94. Many homeless voters, including the Individual Plaintiffs and some of the Coalitions' members, cannot afford to purchase a State ID card.

**E. It Is A Severe Burden For Homeless Voters To Buy The Identification That Is Necessary To Obtain A State ID**

95. To obtain a State of Ohio identification card, a person must provide both a “primary document” and a “secondary document.”

96. Acceptable primary documents are: (a) a driver’s license or state-issued identification card from any state which is unexpired or expired not more than six months ago; (b) an original or certified copy of a birth certificate, with a seal; (c) a valid military identification with a photograph; (d) an original and valid U.S. Citizenship and Immigration service document; (e) a certified copy of a court order with the person’s full name and date of birth, and with the court’s seal affixed to it; (f) a release identification card issued after June 22, 2006 by the Ohio Department of Rehabilitation and Correction; or (g) a state-issued learners permit from any state with a photograph which is unexpired or expired not more than six months ago.

97. Often, the only type of primary document that can be obtained by a homeless person is an original or certified copy of a birth certificate, with a seal.

98. A birth certificate is the basis for all forms of identification, but there is no national standard or process for obtaining one’s birth certificate.

99. The cost of obtaining an Ohio birth certificate varies from county to county, and ranges from \$16.50 to \$23.00. Many homeless people, including the Individual Plaintiffs and some of the Coalitions’ members, cannot afford to purchase a copy of their birth certificate.

100. Additional costs can be imposed by travel, postage or other incidental expenses necessary to request or obtain the birth certificate.

101. The process of obtaining a birth certificate can be expensive and time-consuming. Some homeless people must wait six, eight or ten months to receive a birth certificate.

102. A few states make it nearly impossible for a homeless person to get a copy of their own birth certificate. In some instances it is easier to travel to one's place of birth in order to obtain a birth certificate, but that is often not an option for homeless people.

103. In addition, because they are homeless, it is also difficult for homeless voters to keep track of their birth certificate and other important documents.

104. It is a severe burden for some homeless voters, including the Individual Plaintiffs and some of the Coalitions' members, to obtain their birth certificate.

**F. A Substantial Number Of Homeless Voters Lack And Cannot Afford ID**

105. In January 2007, there were an estimated 11,264 homeless people in the State of Ohio.

106. On information and belief, there are currently several thousand homeless people in the State of Ohio.

107. Although some of those homeless people are children, there are still thousands of voting-age homeless persons in the State of Ohio.

108. In addition to the Individual Plaintiffs and some of the Coalitions' members, a substantial number of homeless people in the State of Ohio are registered to vote and intend to vote in the November 2008 Election, but lack the required identification and find it severely burdensome to purchase State ID cards and birth certificates, and so must cast provisional ballots on Election Day.

109. These homeless voters include Whitney Baccus, Rebecca Battle, Sandra Daniels Kira Dickerson, Marica Ellis, Demetra Glover, Brandon Hurd, James Knapp, Warren Langford, Darene Lansing, Yelena Morales, Lalana Pratt, Rachel Roach, Toni Spikts, Sherrell Swab, Christine Ward and Monique Williams.

**G. The State's Interest In Deterring And Detecting Voter Fraud Does Not Justify The Severe Burden That The Laws Place On Homeless Voters**

110. The State of Ohio has a legitimate interest in detecting and deterring voter fraud.

111. There is virtually no evidence of in-person impersonation voter fraud in Ohio.

112. Historically and nationally, there is virtually no evidence of voter fraud committed by homeless voters.

113. It is unnecessary to impose severe burdens on the voting rights of homeless voters to further the State's interest in detecting and deterring voter fraud.

114. The State's interest is sufficiently safeguarded by the availability of criminal penalties for voters who commit fraud.

115. In addition, less onerous means are available that would effectuate the State's interest in detecting and deterring voter fraud. For example:

- a. Each Board of Elections could provide a letter to all homeless voters that shows the voter's registered address; such letters would constitute "other government documents" and provide an acceptable form of ID; and/or
- b. The State could allow homeless voters to provide the last four digits of their Social Security Number, which is a verifiable means of identification that is sufficient for them to register to vote; and/or

- c. The State could allow homeless voters to provide other types of listed identification, such as government checks (e.g., Social Security Disability), that have a name but do not have a current address; and/or
- d. The State could provide free State IDs to homeless voters, as well as financial assistance that will allow them to obtain their birth certificates.

**SUPPLEMENTAL ALLEGATIONS: COUNT TWELVE**

**Violation Of 42 U.S.C. § 1983 And The Due Process Clause  
Of The Fourteenth Amendment To the United States Constitution  
(Non-Uniform Application Of The Provisional-Ballot Laws)**

116. The provisional ballot laws were differently and unequally applied by Ohio's eighty-eight Boards of Elections in the November 2006 Election, and will be differently and unequally applied by Ohio's Boards of Elections in the November 2008 Election.

117. The non-uniform application of the provisional ballot laws by Boards of Elections has violated and will violate the substantive due process rights of the Individual Plaintiffs, some of the Coalitions' members, and some of Plaintiff SEIU members.

118. As a result, Plaintiffs and their members will imminently suffer a concrete and particularized injury-in-fact that is fairly traceable to the Defendants' actions and is likely to be redressed by the relief requested in this lawsuit.

**SUPPLEMENTAL ALLEGATIONS: COUNT THIRTEEN**

**Violation Of 42 U.S.C. § 1983 And The Equal Protection Clause  
Of The Fourteenth Amendment To the United States Constitution**

**(Non-Uniform Application Of The Provisional-Ballot Laws)**

119. The provisional ballot laws were differently and unequally applied by Ohio's eighty-eight Boards of Elections in the November 2006 Election, and will be differently and unequally applied by Ohio's Boards of Elections in the November 2008 Election.

120. The non-uniform application of the provisional ballot laws by Boards of Elections has caused and will cause the votes of the Individual Plaintiffs, some of the Coalitions' members, and some of Plaintiff SEIU's members to be either unduly burdened or improperly denied, diluted or not counted, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

121. As a result, Plaintiffs and their members will imminently suffer a concrete and particularized injury-in-fact that is fairly traceable to the Defendants' actions and is likely to be redressed by the relief requested in this lawsuit.

**NEW COUNT FOURTEEN**

**(Violation Of 42 U.S.C. § 1983 And The Equal Protection Clause Of The  
Fourteenth Amendment To the United States Constitution)**

**(Severe Burden Imposed By The Voter ID Laws)**

122. The Individual Plaintiffs and some of the Coalitions' members must undertake the burden and expense of purchasing a State of Ohio ID card and, possibly, a birth certificate, to cast a regular ballot on Election Day and ensure that their vote will be counted, which imposes a severe, unnecessary and undue burden on their fundamental right to vote.

123. The Voter ID Laws are facially unconstitutional because they impose an unlawful poll tax and/or unlawful wealth restrictions on Ohio voters in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

124. In the alternative, the Voter ID Laws are unconstitutional as applied to the Individual Plaintiffs and some of the Coalitions' members because they impose a severe, unconstitutional and undue burden on their right to vote and have their vote be counted, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

125. As a result, the Individual Plaintiffs and some of the Coalitions' members have suffered and will imminently suffer a concrete and particularized injury-in-fact that is fairly traceable to the Defendants' actions and is likely to be redressed by the relief requested in this lawsuit.

#### **NEW COUNT FIFTEEN**

**(Violation Of 42 U.S.C. § 1983 And The Due Process Clause Of The Fourteenth Amendment To the United States Constitution)**

**(Severe Burden Imposed By The Voter ID Laws)**

126. The Individual Plaintiffs and some of the Coalitions' members must undertake the burden and expense of purchasing a State of Ohio ID card and, possibly, a birth certificate, to cast a regular ballot on Election Day and ensure that their vote will be counted, which imposes a severe, unnecessary and undue burden on their right to vote.

127. The Voter ID Laws have therefore violated and will violate the substantive due process rights of the Individual Plaintiffs and some of the Coalitions' members.

128. As a result, the Individual Plaintiffs and some of the Coalitions' members have suffered and will imminently suffer a concrete and particularized injury-in-fact that is fairly traceable to the Defendants' actions and is likely to be redressed by the relief requested in this lawsuit.

**NEW COUNT SIXTEEN**

**(Poll Tax In Violation Of 42 U.S.C. § 1983 And The Twenty-Fourth And Fourteenth Amendments To the United States Constitution)**

129. There are candidates for federal office in the November 2008 Election.

130. Because the Individual Plaintiffs and some of the Coalitions' members must purchase a State of Ohio identification card and, possibly, a birth certificate to be permitted to exercise their right to vote on Election Day and have their vote be counted, the Voter ID Laws constitute an unlawful poll tax in violation of the Twenty-Fourth and Fourteenth Amendments to the United States Constitution.

131. As a result, the Individual Plaintiffs and some of the Coalitions' members will imminently suffer a concrete and particularized injury-in-fact that is fairly traceable to the Defendants' actions and is likely to be redressed by the relief requested in this lawsuit.

**IRREPARABLE HARM/INADEQUATE REMEDY AT LAW**

132. The State of Ohio will hold a general election on November 4, 2008 that will be subject to the Voter ID and Provisional Ballot Laws.

133. Plaintiffs and their members will be irreparably harmed if they are chilled from exercising their right to vote or denied their right to vote, or their right to have their vote counted and not be denied, diluted or abridged, and therefore must forfeit their rights as registered voters to vote in this election and subsequent elections.

134. Plaintiffs and their members cannot be adequately compensated for this harm in an action at law for money damages.

WHEREFORE, Plaintiffs supplement their prayer for relief to request the following:

- a) The Court: (i) enter a declaratory judgment under 28 U.S.C. § 2201 declaring that the Voter ID Laws are facially unconstitutional and are in violation of federal law, null and void; (ii) enter a preliminary and permanent injunction that restrains and enjoins Defendants from enforcing or applying the Voter ID Laws; and (iii), Defendant Brunner to issue notice of same to all Ohio Boards of Elections; or
- b) In the alternative, the Court: (i) enter a declaratory judgment under 28 U.S.C. § 2201 declaring that the Voter ID Laws are unconstitutional as applied to the Individual Plaintiffs and the Coalitions' homeless members, and are in violation of federal law, null and void; (ii) enter a preliminary and permanent injunction that restrains and enjoins Defendants from enforcing or applying the Voter ID Laws with respect to the Individual Plaintiffs, the Coalitions' homeless members and similarly-situated homeless voters in the State of Ohio; and (iii) require Defendant Brunner to issue notice of same to all Ohio Boards of Elections; and
- c) The Court: (i) enter a declaratory judgment under 28 U.S.C. § 2201 declaring that all Boards of Elections must equally apply uniform standards and procedures when interpreting the Provisional Ballot Laws to determine whether provisional voters' ballots should be counted; (ii) enter an order that sets forth those standards and procedures; (iii) enter an order that sets forth a process to monitor compliance

and impose remedies for non-compliance; and (iv) require Defendant Brunner to issue notice of same to all Ohio Boards of Elections; and

- d) Plaintiffs recover their reasonable attorneys' fees and costs; and
- e) Plaintiffs have such other and further relief that the Court deems just and equitable.

Respectfully submitted,

/s/ Caroline H. Gentry  
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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the counsel of record in this case.

/s/ Caroline H. Gentry  
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