

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

NORTHEAST OHIO COALITION	:	
FOR THE HOMELESS, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	CASE NO. C2:06-0896
v.	:	
	:	JUDGE ALGENON MARBLEY
J. KENNETH BLACKWELL,	:	
	:	
Defendants.	:	

**INTERVENOR STATE OF OHIO’S MEMORANDUM IN OPPOSITION TO
PRELIMINARY INJUNCTION**

I. INTRODUCTION

Confidence in the integrity of our elections system underlies a viable democracy. Ohio’s Voter ID law was enacted for two reasons: to comply with the Help America Vote Act (HAVA) and to bring Ohio’s system of verifying identification into the 21st century. Before this law, pollworkers, under laws that have been in effect since the 1930s, verified identity solely by comparing the voter’s signature to that appearing in the pollbooks. Although this is a better system than dipping our fingers in ink, it is out of sync with other identification requirements in our modern world. For example, public access to a federal courthouse implicates the constitutional rights of those seeking access, and yet anyone who desires to enter must show photo ID. This practice, however, is justified by the Court’s concern for its own security. Likewise, Ohio’s common sense Voter ID provisions are justified by a desire to deter fraud and verify identification of those voting, and to bolster confidence in the results of our elections.

Unlike Plaintiffs’ earlier facial challenge to the entire voter id statute, this time they focus on two different, disparate aspects of Ohio’s system. First, they assert that Ohio’s law regarding

the counting of provisional ballots is vague, and that they require injunctive relief to insure that all counties will use the same procedures in 2008. Second, they re-assert their claims, already rejected once by this Court, that the voter id statutes, as applied to homeless persons, are unconstitutional based on allegations that some homeless persons would need to obtain a state identification card or birth certificate in order to vote a regular ballot on election day. These arguments, however, do not justify federal court interference in Ohio's elections procedures on the eve of an election with projected record turnout.

As an initial matter, Ohio's statutes regarding the counting of provisional ballots are unambiguous and provide a standard readily applied by the County boards. Accordingly, the provisional ballot claim is flawed. First, by not challenging the statute itself, and instead asserting that the Boards are not following the statute, Plaintiffs essentially ask this Court for an order requiring Ohio's Boards of Elections to follow state law. This Court, however, lacks jurisdiction under the Eleventh Amendment to address that claim. Second, the existence of a clear standard for the Boards to apply distinguishes this case from *Bush v. Gore*, 531 U.S. 98 (2000), where the problem recognized under the unique facts of that case was that there was no uniform statewide standard to guide the Boards in the process of counting ballots. Accordingly, this Court should deny Plaintiffs request to have this Court issue an order regarding provisional ballots that is both unneeded and outside of the scope of its jurisdiction.

Further, Plaintiffs' claims for an injunction based upon the alleged effects of the voter id statutes on homeless persons is equally unavailing. Plaintiffs are wrong when they assert that State law requires homeless persons to obtain a state identification card in order to vote. Ohio's law permits the use of many different forms of identification, including government checks or the use of the last four digits of a social security number. The law does not require the purchase

of a state identification card or birth certificate. As this Court has already determined, Plaintiffs can vote by using the last four digits of their social security numbers and completing an affirmation. Their decision that they prefer to obtain a state identification card in order to vote a regular ballot does not state a cognizable claim. Voting provisional versus “regular” is not an irreparable harm. And, in the end, Plaintiffs still cannot identify a voter who cannot vote pursuant to Ohio’s voter id statutes, and thus lack standing to bring their challenges to the voter id statutes. See Decision Granting in Part and Denying in Part Motion to Dismiss, September 30, 2008.

Finally, Plaintiffs are not entitled to injunctive relief because they have waited until three weeks before an upcoming election in order to file their second challenge to statutes enacted in 2006. Accordingly, they are not entitled to the expedited relief that they seek.

II. STATEMENT OF FACTS

The Voter ID Laws challenged by Plaintiffs became effective in 2006. First, the Help America Vote Act (HAVA), enacted in 2002, and requiring first time voters to provide one of a number of different types of ID, is the genesis of Ohio’s Voter ID Laws. But before the General Assembly enacted its Voter ID Laws, it expanded voters’ ability to cast absentee ballots, by allowing any voter to cast a ballot in this manner, as compared to prior law, which required the voter to have a reason as to why they were unable to vote at the polls. See Substitute House Bill 234 (effective January 27, 2006). To provide safeguards against fraud, absentee voting ID requirements were also enacted. See Substitute House Bill 234 (effective January 27, 2006). Then, Amended Substitute House Bill 3 was signed by the Governor on January 31, 2006, and became effective on May 2, 2006, with some provisions taking effect June 1, 2006. Together,

these laws make up the Ohio's Voter ID Laws, which Plaintiffs challenge for the second time in their Motion for Preliminary Injunction.

The intent of the Voter ID Laws is to improve Ohio's election system by increasing protections against fraud, adapting to the availability of new technology, adapting to the expanded use of initiative and referendum to change Ohio's laws and Constitution, and further streamlining the process to maintain the ease with which Ohio voters exercise their right. In addition, the existence of the Voter ID Laws helps to foster voter confidence in Ohio's election system and results.

Under the law, permissible forms of identification include, but are not limited to, a current and valid photo identification. Voters may also provide a copy of any of the following if it includes the current name and address: a utility bill, bank statement, government check, paycheck, military identification with current address, or other government document (excluding the voter reminder card sent by the board of elections). As an alternative, voters may provide the last four digits of their Social Security Number (SSN) and vote provisionally, allowing boards of elections to verify the number and count the ballot. Voters choosing this option will not have to provide their full SSN – only the last four digits of the number. Finally, voters who do not have any of the permissible forms of ID or a SSN will not be turned away. These voters may sign an affirmation as to their identity and vote provisionally.

Additionally, the Voter ID Laws provide clarification for the use of provisional ballots by ensuring that no voter is turned away from the polls and sets forth detailed rules for counting provisional votes. The law ensures that provisional voters may provide additional information to board of elections within 10 days of the election for purposes of verifying eligibility to vote, and

requires boards of election to maintain a toll-free number that voters may call to track their provisional ballots.

R.C. 3505.183 provides the circumstances under which a provisional ballot is to be counted or not counted.

Only the following ballots are not counted:

If the individual is not qualified or registered to vote;

If the individual voted in the wrong precinct;

If the individual did not provide all of the information required by law in the affirmation;

If the individual has already cast a ballot;

If applicable, the individual did not provide additional information as required by R.C. 3505.181(B)(8);

If applicable, the hearing pursuant to R.C. 3503.24 did not result in the individual's inclusion on the registration list; or

If the individual failed to provide id, or to provide the last four digits of the individual's social security number or an affirmation.

R.C. 3505.183(B)(4)(a)(i)-(vii). Indeed, paragraph 8 of the Court's Consent Order (which applied only to the November 2006 election) did no more than restate the Ohio statute, which details those provisions that are to be counted, as well as those that are not to be counted. See R.C. 3505.183.

More recently, on September 5, 2008, the Secretary of State issued a directive regarding the process of casting and counting provisional ballots. See SOS Directive 2008-81 (attached as Ex. A). In her directive, Secretary Brunner has made it clear that Boards are to help voters cast regular ballots where possible, through advising them regarding whether they are in the correct precinct. In addition, Boards are instructed to follow Ohio's statutes and to count as many votes as possible.

III. LAW AND ARGUMENT

Plaintiffs are not entitled to the preliminary injunction that they seek. In determining whether to grant injunctive relief, a court must consider the following factors: (1) Plaintiffs' likelihood of success on the merits; (2) whether Plaintiffs will suffer irreparable injury if the injunction is not granted; (3) whether third-parties will suffer substantial harm if the injunction is issued; and (4) whether the public interest will be served by granting the injunction. *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1067 (6th Cir. 1998); *Frisch's Restaurant, Inc., v. Shoney's, Inc.*, 759 F.2d 1261, 1263 (6th Cir.1985). A court should not weigh these factors mechanically, *Wayside Farm, Inc. v. Bowen*, 698 F. Supp. 1356, 1359 (N.D. Ohio 1988), but "should weigh each of the factors in light of the factual circumstances of the particular case." *Id.*; *Columbia Gas Trans. Corp. v. An Exclusive Natural Gas Storage Easement*, 688 F. Supp. 1245, 1248 (N.D. Ohio 1988). In this case, the balance of equities weighs against the issuance of a preliminary injunction, for two reasons: because Plaintiffs cannot demonstrate that they have acted with the diligence necessary before invoking the Court's equity jurisdiction, and because Plaintiffs are unable to demonstrate the likelihood that they will succeed on the merits of their challenges. For these reasons, this Court should deny Plaintiffs' motion for injunctive relief.

A. Plaintiffs have no right to seek immediate injunctive relief when they have delayed months before filing the most recent set of facial and as-applied challenges to this statute.

A party seeking to invoke the equitable jurisdiction of the Court must do equity, and cannot, through its own delay, create an emergency that justifies extraordinary remedies. This principle has been invoked by the Sixth Circuit in cases like *Summit County Democratic Central*

and Executive Committee v. Blackwell, 388 F.3d 547 (2004),¹ as well as in reviewing Plaintiffs’ previous attempt to seek last minute relief in this case. See *Northeast Ohio Homeless Coalition v. Blackwell*, 467 F.3d 999, 1012 (6th Cir. 2006). As the Circuit has recognized, “there is a strong public interest in smooth and effective administration of the voting laws that militates against changing the rules” in the middle of an election. *Id.* Similarly, during the 2006 election, the U.S. Supreme Court recognized that court orders affecting elections can themselves result in voter confusion. See *Purcell*, 549 U.S. 1, 127 S. Ct. 5, 7. The ruling in *Purcell* applies with equal force to this case.

Plaintiffs allege that their facial and as applied challenges support a need for relief here. However, given the fact that the challenged statutes have been in effect for almost two and a half years, and this lawsuit has been pending for over two years, Plaintiffs cannot offer any valid excuse for filing a motion for preliminary injunction regarding provisional ballots and voter identification in Ohio three weeks before the election and after absentee balloting has begun. Neither attempts to settle the case or extensions of time by one party to answer (which were consented to by Plaintiffs) excuse Plaintiffs’ apparent failure to work the case at all until Ohio is once again in the middle of an election.

B. Plaintiffs cannot show a strong or substantial likelihood of success on the merits.

1. Plaintiffs cannot demonstrate a likelihood of success on the merits of their challenge to Ohio’s provisional ballot laws.

¹ In *Summit County Democratic Central and Executive Committee v. Blackwell*, 388 F.3d 547 (6th Cir. 2004), the Sixth Circuit stayed a temporary restraining order enjoining Ohio’s laws regarding challengers at the polls during the 2004 general election. In reaching its decision, the court noted that the State’s interest in not having its voting processes interfered with is great. It further noted that “[i]t is particularly harmful to such interests to have the rules changed at the last minute.” *Id.* at 551. And as Judge Ryan noted in his concurrence, should the “horrors the plaintiffs posit become a reality tomorrow, the federal courts will be open to respond to proof-supported allegations of an unconstitutional burden on Ohio’s citizens’ right to vote. *Id.* at 552.

Plaintiffs see a declaratory judgment that (i) “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 with and impose remedies for non-compliance; and (iv) to require Defendant Brunner to issue notice of same to all Ohio Boards of Elections.” Supplemental Complaint (Docket No. 120), at 22-23. They are not entitled to such an order, nor does this Court have jurisdiction to enter an order instructing the Boards of Elections to follow Ohio law.

As an initial matter, the Eleventh Amendment prohibits the relief requested by Plaintiffs, an order telling the County Boards of Elections to comply with Ohio law. Eleventh Amendment immunity bars relief against the State of Ohio in federal courts on claims that the State has violated state law. This immunity extends to the local County Boards of Elections, which are arms of the State for purposes of the Eleventh Amendment.

The Eleventh Amendment bars relief against the states in federal court on the basis of violations of state law. *Pennhurst St. School & Hosp. v. Halderman*, 465 U.S. 89, 117 (1984). As the Supreme Court explained in *Pennhurst*, “it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law.” *Id.* at 106. Allowing such claims to be heard in federal court “directly conflicts with the principles of federalism that underlie the Eleventh Amendment.” *Id.* The *Pennhurst* Court made clear that this jurisdictional bar also applies to state-law claims over which federal courts might otherwise exercise supplemental jurisdiction:

We concluded above that a claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment. . . . We now hold that this principle applies as well to state-law claims brought into federal court under pendent jurisdiction.

Id. at 121.

This court thus lacks jurisdiction to grant the relief now requested by Plaintiffs, an order that the Boards of Elections follow Ohio law (including statutes and SOS directives) during the process of counting provisional ballots. Accordingly, this Court should refuse to enter the disruptive order requested by Plaintiffs, because it is outside of the jurisdiction of this Court.

Nor have Plaintiffs established that they are entitled to an order requiring the Boards to uniformly apply Ohio law. In support of this argument, Plaintiffs cite only statistics from the 2006 election, without any explanation, and attempt to draw conclusions from the fact that some Counties rejected higher percentages of provisional ballots than other Counties. First, this evidence establishes only what occurred during 2006, not what will happen during 2008. Further, Ohio counties have diverse demographics and Plaintiffs are not entitled to draw an improper inference, as they attempt to do, solely from the fact that some Counties rejected more provisional ballots than others. For example, one of the most common reasons leading to the rejection of provisional ballots in 2006 is that the voter cast his or her ballot in the wrong precinct. See Directive 2008-81 at 2 (attached as Ex. A) (this reason accounted for 46% of provisional ballots rejected in 2006). Common sense tells us that those counties with more transient populations will have more voters cast their ballots at the incorrect precinct, thus explaining statistical fluctuation both in the number of provisional ballots cast as well as rejected.

Further, Plaintiffs fail to even address Ohio's statute that details the manner in which provisional ballots are to be counted, or the fact that Secretary of State Brunner issued a directive on the counting of provisional ballots on September 5, 2008. Plaintiffs have failed to explain why they expect widespread failure to follow Ohio law on behalf of the Boards of Elections.

Thus, this is not a case about a lack of any standards as was the case in *Bush v. Gore*, 531 U.S. 98 (2000), instead Ohio has detailed standards, and the Eleventh Amendment prohibits an order telling the Boards of Elections to follow state law.

2. Plaintiffs cannot demonstrate a likelihood of success on the merits of their challenge to the voter id statutes on their face or as applied.

Ohio is not the first State to enact Voter ID provisions. The Voter ID provisions throughout the country vary from extremely strict, such as Georgia's Voter ID laws, to those like Ohio's and Arizona's, which are more liberal. In fact, the United States Supreme Court upheld Indiana's law, which has provisions stricter than Ohio's. See *Crawford v. Marion County Election Board*, ___ U.S. ___, 128 S. Ct. 1610 (2008) (Indiana requires photo ID in all circumstances). Other states, such as Missouri and Georgia, also accept only a photo ID, and their provisional ballot provisions are stricter than Ohio's laws. For example, Georgia requires the voter to return to the election office within 48 hours to present proper ID (Official Code of Georgia Annotated §21-2-417), and Missouri only allows a provisional ballot to be cast without photo ID when the voter swears he or she does not have Voter ID due to a special need, religious belief or a birth date before 1941. See R.S. Mo §115-427.² Accordingly, Ohio's laws are more easily complied with than the Indiana law approved in *Crawford*.

In order to address Plaintiffs' challenges to a statute regarding the administration of an election, this Court must consider the nature of the burden created by the statute and consider whether the State's interests are important enough to warrant that burden. *Crawford*, 128 S. Ct. at 1616. The Court recognized in that case that voter id statutes serve the State's interests in

² Missouri's laws were found to violate the Missouri Constitution. See *Weinschenk v. Missouri*, 203 S.W.3d 201,204 (Mo. 2006). While Georgia's law was originally enjoined, the challenge was later dismissed for lack of standing. See *Common Cause/Georgia v. Billups*, 504 F. Supp.2d 1333 (N.D. Ga. 2007).

modernizing the means by which elections are conducted, in preventing voter fraud, and protecting confidence in the electoral system. *Id.* at 1617-1620. And, the Court noted there that “[t]he severity of the burden is, of course, mitigated by the fact that, if eligible, voters without photo identification may cast provisional ballots that will ultimately be counted.” *Id.* at 1621. In ruling on a facial challenge, the Court held that a plaintiff cannot sustain its burden simply by focusing on “a small number of voters who may experience a special burden under the statute.” *Id.* at 1622.

Here, Plaintiffs focus on the alleged effects of the Voter ID Laws on homeless persons. They cannot demonstrate a likelihood of success on the merits of these claims because they still cannot demonstrate standing to bring this challenge. Plaintiffs still have not established the existence of a person who cannot vote under the provisions of Ohio’s law. Nor can they establish that they have a likelihood of success on their claims under the equal protection clause, the due process clause, or that Ohio’s voter id is a poll tax.

According to the statutory framework of the Revised Code and Secretary of State Directive 2007-06, even in the event a homeless voter is unable to present one of the forms of identification permitted by law, she can still cast a provisional ballot. *See* R.C. 3505.181. When this Court issued its decision granting Defendants’ motion to dismiss Plaintiffs’ poll tax claim, see Decision, 9/30/2006, at 13-14, Plaintiff’s declarants all had social security numbers and thus the ability to vote a provisional ballot by providing the last four digits of that number. R.C. 3501.19(A)(3). And, even if they cannot remember their social security numbers, they “will still be able to vote by signing an affirmation swearing to the voter’s identity under penalty of elections falsification and by casting a provisional ballot.” *Id.* Once the identity of the voter has been verified, the provisional ballot will be counted with the same weight as any other vote. *See*

R.C. 3505.183. Nor do Plaintiffs' proposed new plaintiffs and additional declarant add anything new to this issue. Proposed Plaintiffs Wangler and Wise both admit that they have social security numbers. Proposed Supplemental Complaint (Docket No. 120), at ¶¶ 9, 18. And Declarant Baccus also admits that she has a social security number. See Ex. H to Plaintiffs' Motion for Preliminary Injunction. Accordingly, as was true when this Court previously held that Plaintiffs did not have standing to bring this particular claim, Plaintiffs have not identified an individual whose vote will not be counted under Ohio's Voter ID Laws.

Plaintiffs premise their argument on the fact that their plaintiffs and declarants wish to vote a regular ballot on Election day, but will not be able to, they allege because they do not have any other form of identification, although they have social security numbers,. They then assert that in order to obtain a state identification card, they will have to pay a fee, as well as perhaps obtain a birth certificate. However, Ohio's Voter ID Laws do not require any individual to obtain a State Identification Card. There are any number of forms of identification that are acceptable. The fact that an extremely limited number of voters may not have any one of those other forms of identification does not transform the fact that a State Identification Card is an acceptable form of identification into a poll tax because those cards are not free. See *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich. 1, 36-41 (rejecting argument that Michigan voter id law constituted a poll tax); *Indiana Democratic Party v. Rokita*, 458 F. Supp.2d 775, 827-828 (S.D. Ind. 2006), *aff'd sub nom Crawford v. Marion Co. Election Bd.*, 472 F.3d 949 (7th Cir. 2007) (rejecting argument that Indiana voter id constituted a poll tax); *Gonzalez v. Brewer*, 485 F.3d 1041, 1048-1049 (9th Cir. 2007) (rejecting argument that Arizona voter id constituted a poll tax). In the end, Ohio's Voter ID Laws do not constitute a poll tax because they do not require voters to pay a fee in order to vote.

Nor has Plaintiffs demonstrated a likelihood of success on their new proposed claims for a violation of the equal protection clause or the due process clause, which is again premised on the faulty premise that Ohio law requires homeless persons to obtain State identification cards to vote. Homelessness is not a suspect class, nor do the Ohio statutes make classifications that are not rational or that unreasonably infringe upon a fundamental right.

By signing an affirmation and providing the last four digits of their social security numbers, homeless persons without any other form of identification have the opportunity to cast a provisional ballot that will be counted, and that thus is indistinguishable from a regular ballot. During absentee voting, homeless persons may vote absentee simply by providing the last four digits of their social security number. Thus, Ohio's laws do not unduly burden any category of voter, including homeless persons, but instead reasonably balance the rights of voters against the State's need to verify identification.

C. The Plaintiffs have not shown irreparable injury.

As asserted above, Plaintiffs waited two and a half years to file this particular challenge to Ohio's Voter ID laws. And despite that stretch of time, they've failed to come up with real people who have been constitutionally harmed by the law. A preference for voting a regular ballot over a provisional ballot is not sufficient to demonstrate irreparable injury that warrants enjoining any portion of Ohio's Voter ID statutes. Unless and until injury can be demonstrated by the Plaintiffs, they are not entitled to injunctive relief. And, as discussed above, at any rate, they are not entitled to injunctive relief given their failure to pursue their predominantly facial claims in a timely manner.

D. A preliminary injunction will cause great harm to all Ohioans.

The chaos that Plaintiffs created by filing this lawsuit and seeking the relief they want at this hour before the election has already caused and will continue to cause great harm to Ohio voters. As stated in *Purcell v. Gonzalez*, litigation disrupts elections and the integrity of the election process.

E. The public has a great interest in maintaining a stable elections process.

Not only will a preliminary injunction harm Ohioans, it is in the best interest of the public for Ohio to continue to utilize the statutes that have been in place during balloting to date. To proceed otherwise will interfere with Ohio's election, disrupt the current status quo, and create yet one more changed circumstance to be implemented by the local Boards, thus creating the very inconsistencies that Plaintiffs complain of. Plaintiffs are asking this Court to intrude upon election procedures on the eve of a presidential election. Accordingly, the injunction sought will harm Ohio voters and Ohio boards of elections, and invalidate legislation duly enacted by representative of all of the people in Ohio.

F. This Court has the duty to give effect to as many portions of the law as possible.

In the event that this Court enjoins any portion of the Voter ID laws, the Court is obligated to enjoin only those provisions of law successfully challenged by Plaintiffs. Thus, Plaintiffs' attempt to enjoin the entire voter id law on the basis of its alleged effect on homeless persons who vote must fail.

The issue of whether parts of a statute are severable is a question of state law. *WMPC v. Voinovich*, 130 F.3d 187, 202 (6th Cir. 1997). In this case, section 15 of H.B. 3 contains a severability clause that provides:

If any item of law that constitutes the whole or part of a codified section of law contained in this act, or if any application of any item of law that constitutes the whole or part of a codified section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that

can be given effect without the invalid item of law or application. To this end, the items of law of which the codified sections contained in this act are composed, and their applications, are independent and severable.

In order to determine whether an unconstitutional provision may be severed under Ohio law, the Court must consider the following questions:

- (1) Are the constitutional and the unconstitutional parts capable of separation so that each may read and may stand by itself?
- (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the legislature if the clause or part is stricken out?
- (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only?

WMPC v. Voinovich, 130 F.3d at 202.

The current challenge to the Voter ID statutes primarily focuses on their effects on homeless persons. In the unlikely event that this Court decides that Plaintiffs are entitled to some relief, that relief should be limited to the statute as applied in those circumstances.

IV. CONCLUSION

For these reasons, the State of Ohio asks the Court to deny Plaintiffs' motion for a preliminary injunction.

Respectfully submitted,

Nancy H. Rogers
OHIO ATTORNEY GENERAL

/s/ Sharon A. Jennings

SHARON A. JENNINGS (0055501)
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Telephone: 614-466-2872
Fax: 614-728-7592

*Counsel for Intervenor
State of Ohio*

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October, 2008, the foregoing Memorandum in Opposition to Motion for Preliminary Injunction was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing has been served by facsimile upon all parties for whom counsel has not yet entered an appearance and upon all counsel who have not entered their appearance via the electronic system.

/s/ Sharon A. Jennings
Sharon A. Jennings