



because a substantial part of the real and immediate harm faced by plaintiff and its members is threatened in this judicial district.

**VIOLATION OF FEDERAL AND STATE LAWS AND RIGHTS**

5. The right to vote in an election is guaranteed by, *inter alia*, the First Amendment and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1971. Plaintiff has standing to enforce these rights, and all rights asserted herein, on behalf of itself and its members.

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

7. On November 7, 2006, 43 of the 573 voting places failed to open on time, or failed to have appropriate election materials and functioning voting machines available and operating as of 6:30 a.m., as required under state law.

8. Voters were unable to cast ballots beginning at 6:30 a.m. To provide voters at least the 13 hours of open polls required under ORC § 3501.32, it is necessary that the polls remain open after 7:30 p.m. for an hour and a half until 9:00 p.m.

9. The defendant was asked to keep the polls open until 9:00 p.m. in order to comply with ORC § 3501.32, but the requested action was not taken.

10. The above-referenced conduct violated the First and Fourteenth Amendments of the United States Constitution, 42 U.S.C. § 1971, 42 U.S.C. § 1983, and ORC §§ 3501.32.

These violations have caused plaintiff irreparable harm and will continue to do so absent an injunction.

11. Widespread problems with non-functioning and malfunctioning voting machines throughout Cuyahoga necessitated the use of alternative optical scan voting ballots for the recording of regular votes.

12. During the course of the handling of those alternative optical scan ballots to be recorded as regular votes, Defendants through poll workers either treated them inappropriately as provisional ballots and/or failed to segregate the regular ballots from the provisional ballots as required by law.

**COUNT I: 28 U.S.C. § 1983**

13. Plaintiff incorporates paragraphs 1 through 12 of this Complaint as if fully set forth herein.

14. The conduct alleged herein has deprived plaintiff and its members of their rights with respect to voting as guaranteed by the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1971.

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

**COUNT II: ORC § 3501.32**

16. Plaintiff incorporates paragraphs 1 through 15 of this complaint as if fully set forth herein.

17. The conduct alleged herein violated ORC §§ 3501.32

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

WHEREFORE plaintiff respectfully requests a temporary order and preliminary and permanent orders directing the Defendant to keep the 43 polling places referenced in Exhibit A open until 9:00 p.m., and order the Defendant to secure and count those votes that were made upon alternative optical scan ballots to be counted at the same time, manner and place as all other regular ballots.

Respectfully submitted,

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<sup>1</sup>Pursuant to Rule 65, undersigned counsel hereby certifies notice was given by telephone and the reasons supporting the claim to opposing counsel were provided.

**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2006, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*s/Christopher P. Thorman*

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