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NORTHERN DISTRICT OF OHIO
TOLEDO

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

3:04 CV 7646

LUCAS COUNTY DEMOCRATIC)
PARTY,)

and)

OHIO DEMOCRATIC PARTY,)

Plaintiffs,)

v.)

J. KENNETH BLACKWELL,)

Defendant.)

Case No. _____

Hon. JUDGE DAVID A. KATZ

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

COMPLAINT

Plaintiffs, the Lucas County Democratic Party ("LCDP") and the Ohio Democratic Party ("ODP") ("Plaintiffs"), bring this Complaint against the Defendant, Secretary of State J. Kenneth Blackwell ("Defendant"), and allege as follows:

NATURE OF THE ACTION

1. This is an action for declaratory and injunctive relief arising from actions of the Defendant that violate the requirements of the National Voter Registration Act ("NVRA") with

respect to the registration for federal elections of Ohio citizens who submit voter registration forms in person at state offices.

2. The Ohio voter registration form contains a space, "Box 10," for the applicant to provide his driver's license number or the last four digits of his social security number. Specifically, Box 10 states: "Ohio driver's license No. OR last 4 digits of Social Security No. (required)."

3. In a December 31, 2003 memorandum issued by Defendant's office to Ohio County Boards of Elections that purported to interpret the federal Help America Vote Act ("HAVA"), Defendant directed that, with respect to any individual who submits a voter registration form in person at a county board office, a public library, a Department of Motor Vehicle office, or any other locations accepting such forms, "the application cannot be accepted if Box 10 is not completed[,] unless the applicant" states that he does not possess the requisite information and writes "None" in that space. *See* Memorandum from Dana Walch to County Boards of Elections, Dec. 31, 2003, at 2.

4. In the same memorandum, Defendant's office also stated that if an individual completes the same form by mail, the applicant need not complete Box 10. According to the memorandum, "[t]he board would consider [such] a form a valid registration but would flag that elector's name in the poll book so that, the first time that elector appears at the polls to vote, pollworkers would ask the elector for proof of identity and obtain the missing information." *Id.* at 1.

5. The Defendant is obligated under the NVRA to ensure that eligible Ohio voters are able to register to vote in federal elections under uniform statewide standards. He has failed to carry out that obligation. The Defendant's policy directing that Ohio County Boards of Elections

shall not process in-person voter registration applications that are complete in all material respects, except for the information set forth in Box 10 of the Ohio form, violates the NVRA and is not compelled in Ohio at this time by HAVA..

JURISDICTION AND VENUE

6. Plaintiffs bring this action pursuant to the National Voter Registration Act of 1993, 42 U.S.C. §§ 1973gg to 1973gg-10 (“NVRA”) and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1367. Plaintiffs’ action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

THE PARTIES

9. The LCDP is a political association based in Toledo, Lucas County, which consists of individuals who reside in Lucas County and who support, are affiliated with, or are otherwise members of the ODP. The members of the LCDP support the election of the Democratic Party candidates for President and Vice-President, as well as the rest of the Democratic ticket, in the upcoming election on November 2, 2004. Plaintiff LCDP supports the right of Democratic voters to exercise their right to vote.

10. The ODP is an organization dedicated to the advancement of Democratic candidates for public issues on a statewide basis, including candidates for President and Vice-President. ODP represents its voters, members in Ohio, who support the election of the Democratic Party candidates for President and Vice-President, as well as the rest of the Democratic ticket, in the upcoming election on November 2, 2004. Plaintiff ODP supports the right of all eligible

Ohioans to exercise their right to vote. Plaintiff has reason to believe that a substantial number of the citizens who have been disenfranchised as a result of Defendant's policies would register as Democrats, and would ultimately vote for Democratic candidates in the November elections.

11. Defendant, J. Kenneth Blackwell, is the Ohio Secretary of State. In that capacity he is the chief State election official for purposes of the NVRA. Under Ohio law, he is obliged to coordinate and administer Ohio's duties under the NVRA, and to order county election officials to adhere to the NVRA's provisions. *See* Ohio Rev. Code § 3501.04. He is being sued in his official capacity.

GENERAL ALLEGATIONS

Federal Requirements Under The NVRA and HAVA for State Voter Registration Forms

12. The NVRA is a federal law that was designed to "increase the number of eligible citizens who register to vote," "enhance[] the participation of eligible citizens as voters in elections for Federal office," and "promote the exercise" of the right to vote. 42 U.S.C. §§ 1973gg(a)(2), (b)(1)–(2).

13. Under the NVRA, state election officials may develop and use their own state-specific voter registration forms for federal elections, provided that those forms contain all the eligibility information mandated by the NVRA. 42 U.S.C. § 1973gg-4(a)(2).

14. The NVRA requires state election officials to establish procedures to facilitate the acceptance of in-person applications for the registration of voters in Federal elections. 42 U.S.C. § 1973gg-2(a)(3).

15. With respect to in-person registration, the NVRA states that each location designated for acceptance of registration applications must "[d]istribut[e] . . . mail voter registration application forms." 42 U.S.C. § 1973gg-5(4)(A)(i)."

16. The NVRA provides that such state-issued voter registration applications “may require *only* such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is *necessary* to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 42 U.S.C. § 1973gg-7(b)(1) (emphasis added).

17. The NVRA does not authorize a State to condition eligibility for in person voter registration on the applicant’s provision of his driver’s license number or the last four digits of his social security number, or alternatively, an indication that the application does not possess any such number.

18. The NVRA mandates that any State location designated for in-person completion or submission of voter registration forms must “[a]ccep[t] . . . completed voter registration application forms for transmittal to the appropriate State election official.” 42 U.S.C. § 1973gg-5(a)(4)(A)(iii).

19. HAVA provides that for purposes of compliance with computerized statewide voter registration requirements imposed by HAVA, “an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes (I) in the case of an applicant who has been issued a current and valid driver’s license, the applicant’s driver license number; or (II) . . . the last four digits of the applicant’s social security number.” 42 U.S.C. § 15483(a)(5)(i) (A).

20. States were to have complied with the computerized statewide voter registration requirements of HAVA “on or after January 1, 2004.” 42 U.S.C. § 15483(d)(1)(A). However, HAVA also provides that a state could receive a waiver from the federal Election Assistance

Commission (“EAC”) if it certified to the EAC that, for good cause, it could not comply with the requirements in the time specified in HAVA. 42 U.S.C.15483(d)(1)(B).

Ohio Voter Registration Requirements

21. Ohio law provides that an applicant to vote “shall be entitled to be registered” if he (1) “will be of the age of eighteen years or more at the next ensuing November election; (2) “is a citizen of the United States”; and (3) “continues to reside in the precinct until the next election” for at least 30 days. Ohio Rev. Code §§ 3503.7, 3503.6.

22. Ohio law requires Defendant to “prescribe the form and content of the registration” form, which “shall set forth the eligibility requirements needed to qualify as an elector and meet the requirements of the National Voter Registration Act of 1993.” Ohio Rev. Code § 3503.14.

23. Where an applicant completes or submits a registration form in person, Ohio statutes do not condition eligibility on provision of the applicant’s driver’s license number or the last four digits of his social security number.

24. The Ohio Voter Registration Business Procedures Manual issued by Defendant defines an “in-person” registrant as “any voter registration that is not a registration by mail.” In light of that definition, the Defendant’s office has taken the position that all voter registration forms delivered to state offices by third party organizations that are seeking to register voters in Ohio shall be treated as “in person” applications.

The Ohio Registration Form

25. Defendant has designed and issued a voter registration application form that Ohio citizens may use to register for the November 2, 2004 presidential and congressional elections in Ohio (“Ohio form”), as well as for the state elections occurring on that date.

26. Box 1 of the Ohio form asks the applicant to state whether he is a U.S. citizen. Box 2 asks whether the applicant will be 18 years old before the next general election. Boxes 3 through 8 ask for the applicant's name and address. Box 9 asks for the applicant's birthday.

27. Box 10 asks for the applicant's driver's license number or the last four digits of his social security number. Specifically, Box 10 states: "Ohio driver's license No. OR last 4 digits of Social Security No. (required)."

28. Box 14 asks for the signature of the applicant, attesting to the accuracy of the information provided in the form, under penalty of state criminal law.¹

Processing of the Ohio Form for In-Person Registrants

29. In a December 31, 2003 memorandum issued by Defendant's office to Ohio County Boards of Elections that purported to interpret HAVA, Defendant directed that, with respect to any individual who seeks to complete a registration form in person at a county board office, a public library, a DMV office, or any other locations accepting such forms, "the application cannot be accepted if Box 10 is not completed[,] unless the applicant" states that he does not possess the requisite information and writes "None" in that space.

30. On information and belief, in light of the December 31, 2003 directive from the Defendant, Ohio County Boards of Election are not processing voter registration forms submitted in person when the applicant has not filled in Box 10 on the Ohio form, and failed to include the word "None" in that space.

¹ Boxes 11 through 13 ask for information that is either voluntary or required only in certain circumstances.

31. Ohio has applied for and been granted a waiver by the EAC from compliance with the computerized statewide registration requirements of HAVA, including the requirement that state voter registration forms seek the applicant's driver's license number or the last four digits of his social security number. As a result, that requirement is not in force in Ohio at this time.

COUNT I

(Violation of NVRA)

32. Plaintiff incorporates Paragraphs 1 through 31 as if alleged herein.

33. Defendant's policy, as set forth in the December 31, 2003 memorandum issued by his office, is that voter registration applications completed or submitted in person on the Ohio form should not be processed if the applicant has not filled in Box 10 by providing the applicant's driver's license number or the last four digits of the applicant's social security number, or written "None" in that box.

34. The NVRA provides that State-issued voter registration applications "may require *only* such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is *necessary* to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process." 42 U.S.C. § 1973gg-7(b)(1) (emphasis added).

35. By requiring applicants who seek to register in person to complete Box 10 of the Ohio form at a time when the information specified therein is not required in Ohio under HAVA, Defendant is conditioning the right to register in person on provision of information -- the applicant's driver's license number or last four digit of the applicant's social security number -- that is unnecessary to ensure the integrity of the electoral process. The rest of the Ohio form

asks the applicant to provide ample information, such the applicant's name and address, and whether she is a U.S. citizen and will be over 18 on election day, that will enable the Defendant to assess eligibility and administer voter registration.

36. Defendant's policy of not processing in-person voter registration applicants who fail to complete Box 10 thus violates the NVRA because the policy requires applicants to provide more than "only such identifying information. . . as is necessary" to allow Ohio county election supervisors "to assess the eligibility of the applicant and to administer voter registration and other parts of the election process."

COUNT II

(Section 1983 Claim for Violation of Rights Granted under the NVRA)

37. Plaintiff incorporates Paragraphs 1 through 36 as if alleged herein.

38. Defendant, acting in his official capacity as the Ohio Secretary of State, has adopted an express policy of not processing all in-person voter registration applications on which Box 10 has not been completed.

39. Defendant's enforcement of this policy is in violation of the NVRA, which provides that State-issued voter registration applications "may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process." 42 U.S.C. § 1973gg-7(b)(1) (emphasis added).

40. By its own terms, the rights and remedies established by the NVRA are in addition to all other rights and remedies provided by law. 42 U.S.C. § 1973gg-9(d).

41. The NVRA creates an enforceable right under 42 U.S.C. § 1983, which provides relief for persons who, under color of state law, have been deprived of any rights, privileges or immunities secured by the Constitution or federal law.

42. In failing to comply with the requirements of the NVRA, Defendant has at all times acted under color of state law and within the scope of her public employment as delegated to her by the State of Ohio. The regulations, policies, practices, and usages referred to above deprive plaintiffs of rights secured by the NVRA.

WHEREFORE, Plaintiffs Lucas County Democratic Party and the Ohio Democratic Party ask this Court to enter an Order:

(1) Declaring that Defendant's policy of not processing all voter registration applications submitted to state offices in person on which Box 10 has not been completed violates the NVRA and is not compelled by HAVA.

(2) Granting injunctive relief in the form of an order requiring Defendant to direct Ohio County Boards of Elections (i) to process in-person voter registration applications on which Box 10 has not been completed, and to treat as eligible to vote in the November 2, 2004 election all Ohio citizens whose in-person applications have been rejected under the Defendant's Box 10 policy prior to the date of the order, and (ii) going forward, to process in-person voter registration applications submitted after the date of the order on which Box 10 is not completed.

(3) Awarding Plaintiffs their attorneys' fees and costs in accordance with 42 U.S.C. § 1988; and

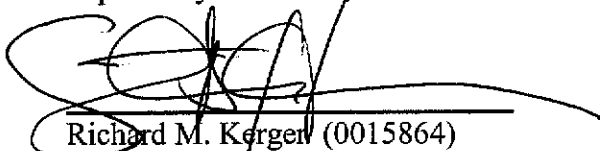
(4) Granting Plaintiffs such additional relief as the interests of justice may require, together with their costs and disbursements in maintaining this action.



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Respectfully submitted,



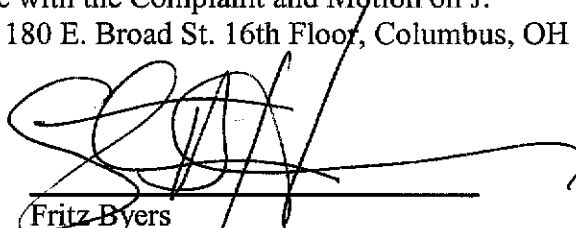
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CERTIFICATE OF SERVICE

The undersigned certifies that on the 15th day of October, 2004, in accordance with Civil Local Rule 4.2, the foregoing Memorandum in Support of Plaintiffs' Application for Preliminary Injunction was delivered to the Clerk for service with the Complaint and Motion on J. KENNETH BLACKWELL, Secretary of State, 180 E. Broad St. 16th Floor, Columbus, OH 43215.



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DEMOCRATIC PARTY