

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

THE NORTHEAST OHIO COALITION	:	
FOR THE HOMELESS, <i>et al.</i>	:	
	:	
Plaintiffs,	:	Case No. C2-06-896
	:	
v.	:	JUDGE ALGENON L. MARBLEY
	:	
J. KENNETH BLACKWELL, in his official	:	
capacity as Secretary of State of Ohio	:	<u>TEMPORARY RESTRAINING ORDER</u>
	:	
Defendant.	:	

This matter came to be heard upon Plaintiffs’ Motion seeking an order of the Court, pursuant to Fed. R. Civ. P. 65, temporarily restraining the enforcement of the following absentee voter identification provisions set forth in House Bill 3:

1. Section 3509.03(E)(1), (2) and (3), which provides:
 - (E) One of the following:
 - (1) The elector’s driver’s license number;
 - (2) The last four digits of the elector’s social security number;
 - (3) A copy of the elector’s current and valid photo identification, a copy of a military identification that shows the elector’s name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and address of the elector.

2. That portion of Section 3509.04 that provides:

(Voter must provide one of the following:)

My driver's license number is (Driver's license number).

The last four digits of my Social Security Number are . . . (Last four digits of Social Security Number).

. . . . In lieu of providing a driver's license number or the last four digits of my Social Security Number, I am enclosing a copy of one of the following in the return envelope in which this identification envelope will be mailed: a current and valid photo identification, a military identification that shows my name and current address, or a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections, that shows my name and address.

3. That portion of Section 3509.05(A) that provides:

If the elector does not provide the elector's driver's license number or the last four digits of the elector's social security number on the statement of voter on the identification envelope, the elector also shall include in the return envelope with the identification envelope a copy of the elector's current valid photo identification, a copy of a military identification that shows the elector's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government documents, other than a notice of an election mailed by a board of elections under *section 3501.19 of the Revised Code* or a notice of voter registration mailed by a board of elections under *section 3503.19 of the Revised Code*, that shows the name and address of the elector.

For the below stated reasons, this Court **GRANTS** the Plaintiffs' Motion.

As a threshold matter, the Court finds that the Plaintiffs have representational standing to bring this case on its own behalf and on behalf of its members. *Miller v. Blackwell*, 348 F.Supp.2d 916 (S.D. Ohio 2004). An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Sandusky*

Co. Democratic Party v. Blackwell, 387 F.3d 565, 573 (6th Cir. 2004). The individual participation of an organization's members is "not normally necessary when an association seeks prospective or injunctive relief for its members." *Id.* at 574 (quoting *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 546 (1996)). The Plaintiffs have met the three-prong test set forth in *Sandusky Co.* and, therefore, have established standing.

The Court finds that Plaintiffs have satisfied the prerequisites for the issuance of the requested temporary restraining order, in that Plaintiffs have demonstrated a likelihood of success on the merits of their claims that these identification provisions violate Plaintiffs' members' constitutional rights, that Plaintiffs' members will suffer immediate and irreparable injury if the restraining order is not granted, that no third parties will be irreparably harmed if the restraining order is granted, and that the public interest will be served by the restraining order.

Specifically, this Court finds that the phrases "current," "other government document," "military identification," and "driver's license number" in the above provisions are unconstitutionally vague and are being unequally applied by the Boards of Elections. Plaintiffs have made a strong showing that these absentee voter identification requirements abridge the Plaintiffs' members' fundamental right to vote by violating both the Due Process Clause and the Equal Protection Clause. The above-referenced provisions violate the Due Process Clause because the vagueness of the language will cause the election to be fundamentally unfair. Because the absentee voter provisions are so vague, county Boards of Elections have handled absentee voters differently, in violation of the Equal Protection Clause. For these reasons, the harm to Plaintiffs' members and the general public is irreparable and must be prevented.

Accordingly, Plaintiffs' Motion is WELL TAKEN and sustained. It is therefore ORDERED that the voter identification law as it applies to absentee voter ballots is enjoined as set forth below, and Defendant, J. Kenneth Blackwell, is to issue a directive not later than 12:00 p.m. on October 27, 2006 requiring the respective County Boards of Elections of the State of Ohio to comply with the following:

1. The following enjoined voter identification laws for absentee ballots shall not be applied to any absentee voter ballots or requests for ballots:

A. Section 3509.03(E)(1), (2) and (3), which provides:

(E) One of the following:

(1) The elector's driver's license number;

(2) The last four digits of the elector's social security number;

(3) A copy of the elector's current and valid photo identification, a copy of a military identification that shows the elector's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and address of the elector.

B. That portion of Section 3509.04 that provides:

(Voter must provide one of the following:)

My driver's license number is (Driver's license number).

The last four digits of my Social Security Number are . . . (Last four digits of Social Security Number).

. . . . In lieu of providing a driver's license number or the last four digits of my Social Security Number, I am enclosing a copy of one of the following in the return envelope in which this identification envelope will be mailed: a current and valid photo identification, a military identification that

shows my name and current address, or a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections, that shows my name and address.

C. That portion of Section 3509.05(A) that provides:

If the elector does not provide the elector's driver's license number or the last four digits of the elector's social security number on the statement of voter on the identification envelope, the elector also shall include in the return envelope with the identification envelope a copy of the elector's current valid photo identification, a copy of a military identification that shows the elector's name and current address, or a copy of a current utility bill, bank statement, government check, paycheck, or other government documents, other than a notice of an election mailed by a board of elections under *section 3501.19 of the Revised Code* or a notice of voter registration mailed by a board of elections under *section 3503.19 of the Revised Code*, that shows the name and address of the elector.

2. All County Boards of Elections shall preserve all absentee ballots in their present form.

The Boards of Elections shall also include correspondence with application forms for absentee ballots and with instructions that accompany the absentee ballots reflecting that the voters need not comply with the above-enjoined provisions.

3. This Court has considered the issue of bond and has concluded that there is no need for Plaintiffs to post any bond, as the incorrect issuance of this Order will not damage Defendant.

4. The foregoing restraint shall remain in effect until the Court's disposition of Plaintiffs' motion for preliminary injunction, unless this Order is extended or withdrawn by further Order of the Court.

5. This matter is set for an evidentiary hearing on Plaintiffs' Motion for a Preliminary Injunction on **Wednesday, November 1, 2006, at 9:00 a.m.**

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: October 26, 2006