

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

EFFIE STEWART, et al., :
 :
Plaintiffs, : **Case No.: 5:02CV2028**
 :
vs. : **Judge David Dowd, Jr.**
 :
J. KENNETH BLACKWELL, et al. :
 :
Defendants. :

POST-TRIAL BRIEF OF SANDUSKY COUNTY DEFENDANTS

Defendants, the Sandusky County Board of Elections (“the Board”), Harry Heyman, Thomas Younker, John Rettig, Sandusky County Board of Commissioners, Brad Smith, Daniel Liskai, and Terry Thatcher (collectively “Sandusky County Defendants” or “Sandusky County”), now request that this Court enter judgment in their favor, since Plaintiff Linda See has failed to demonstrate, by a preponderance of evidence, that the Sandusky County Defendants violated her right under the Fourteenth Amendment.¹ The reasons for granting judgment in the Sandusky County Defendants’ favor are set forth below.²

I. Proposed Findings of Fact.

- Since 2001, all voters in Sandusky County utilize an optical scan ballot which is counted with the same machines. This includes all voters who vote by an absentee ballot, since they use the exact same type of optical scan ballot that voters who vote at the polling location use, and the absentee ballots are counted at the same time and in the same manner as are the other optical scan ballots. (Trial Transcript, Vol. IV, 689, 716-718).

¹ Should this Court grant the Plaintiffs’ motion for class certification, Sandusky County respectfully requests that this Court apply the arguments in this brief to the class of Sandusky County voters that is certified.

² The Sandusky County Defendants also adopt and incorporate, to the extent applicable, all of the arguments made by the other defendants in their post-trial briefs.

- Sandusky County has and continues to uniformly administer the optical scan ballot with central location tabulation to all of its voters. (Order, July 12, 2004, at Final Fact Stipulation No. 72).
- The use of an optical scan ballot is very simple and direct. The voters can actually look at a ballot and see what they are doing. All that it requires of the voter is the use of a pencil. (Trial Transcript, Vol. IV, at 690).
- It cost the Sandusky County Board of Elections \$245,000.00 to purchase the optical scan with central location tabulation equipment. Had they purchased DRE's, the cost would have been approximately \$1,500,000.00. (Trial Transcript, Vol. IV, at 690).
- Counting the optical scan ballots centrally at the Sandusky County Board of Elections' office gives the Board of Elections more control over the ballots, since they go into the ballot box and are not taken out until they come back to the Board of Elections' office. (Trial Transcript, Vol. IV, at 710).
- The Sandusky County Board of Elections determined that if any mechanical problems occurred with the tabulating machines at the polls, the poll workers were not going to be able to take the machines apart and figure out why they were not working correctly. Therefore, the Sandusky County Board of Elections believed that it would be better to have the employees at the office dealing with the tabulators, since they work with them all the time, as opposed to the poll workers, who are often different people for each election and who at most, work only twice a year. (Trial Transcript, Vol. IV, at 710-711).
- Precinct tabulation machines for optical scan ballots would require a great deal of storage space and they are so big that it would be difficult to deliver them to each polling location. (Trial Transcript, Vol. IV, at 710-711).
- Voters in Sandusky County are given instructions three different times, twice in writing and once verbally, on how to vote on the optical scan ballot. These instructions include directions to return the ballot if a mistake is made, and then the voter who made the mistake is given a new ballot. A voter can make mistakes on up to three different ballots. (Trial Transcript, Vol. IV, at 693-695; Exhibit NN-OO).
- A voter in Sandusky County can know if they made a mistake on their optical scan ballot with central location tabulation by looking at the ballot to see if they undervoted or overvoted. (Trial Transcript, Vol. IV, at 695).
- On the optical scan ballot with central location tabulation used in Sandusky County, if a voter does not entirely color in the oval next to the name of their choice with a pencil, as long as they marked at least part of the oval with the

pencil, for example by marking it with an “X” or a checkmark, the vote will still count. In fact, even if a voter makes a colossal mistake, for example, by circling each choice’s name with a pencil, then the ballot will be rejected by the tabulator as a blank ballot. In that rare scenario, the four Board members (two Republicans and two Democrats) will examine the ballot to see if they can determine the intent of the voter. If they can, they remark the voter’s ballot for them and run it back through the tabulator so that all of the voter’s votes will be counted. (Trial Transcript, Vol. IV, at 695-707; Exhibit NN-OO).

- As long as a voter on an optical scan ballot completely understands and follows the directions given to them, regardless of whether the optical scan ballot is counted at the precinct or at a central location, every intentional vote that voter casts will be counted (absent a machine malfunction). (Trial Transcript, Vol. II, at 305-306; Trial Transcript, Vol. IV, at 837).
- Since the introduction of the optical scan ballots with central location tabulation in Sandusky County, the voters’ response has been very favorable. People have stated that they prefer the optical scan paper ballots to the DREs, since they believe there is less potential for fraud, since they can see how they voted on their ballot. (Trial Transcript, Vol. IV, at 718-719).
- While it was true that a voter can overvote on an optical scan ballot, a voter can vote for the wrong person on a DRE. (Trial Transcript, Vol. IV, at 718-719).
- The only complaints that the Sandusky County Board of Elections has received concerning the optical scan ballots are from elected officials who claim that they don’t need the poll workers to explain to them how to vote on the optical scan ballots, since they already know. However, the Sandusky County Board of Elections does not want to leave it up to the poll workers to decide who need to hear the directions and who doesn’t, so the poll workers are instructed to verbally give the directions to every voter, no matter who they are. (Trial Transcript, Vol. IV, at 718-719).

II. The Sandusky County Defendants Have Not Violated Ms. See’s Constitutional Rights To Equal Protection Or Due Process.

A. Ms. See’s Claims.

Throughout this case, the Plaintiffs have greatly focused upon the use of punch card ballots as well as their § 2 Voting Rights Act claim. However, the Sandusky County Defendants do not use punch card ballots, nor have they had a § 2 Voting Rights Act claim made against them. Moreover, Ms. See has not been entirely clear on what her alleged legal claim is against

the Sandusky County Defendants. During the opening argument, Plaintiffs' Trial Counsel Paul Moke articulated the claim under the Fourteenth Amendment:

The evidence will show that the defendants have violated and continue to violate the federal voting rights of plaintiffs in three respects.

First, it shows that *the certification and simultaneous use of notice and non-notice balloting in Ohio violates the plaintiffs' rights under the Fourteenth Amendment Equal Protection Clause.*

It shows that non-notice voting systematically denies the votes of citizens in counties that continue to use this unreliable equipment, in violation of the principle that each vote, the vote of each voter should be accorded equal weight, and equal dignity should be accorded to each witness – I'm sorry – each voter as set forth in *Bush versus Gore* and the equal protection cases upon which that decision is based.

Just as in those cases, the voting system authorized by the defendants result in discrimination on the grounds of residency.

The evidence will also show that these non-notice systems arbitrarily and capriciously deny the right to vote in violation of the Fourteenth Amendment due process clause.

(Trial Transcript Vol. I, at 22-23)(emphasis added).

Plaintiffs' Counsel Dan Tokaji later attempted to clarify the Plaintiffs' Equal Protection

Claim for the Court:

Mr. Tokaji: The equal protection claim, Your Honor, concerns state wide disparities among voters, and not simply affecting voters of color, African-American voters, but affecting voters throughout the state who continues to use punch card and central count optical scan systems.

So it is on behalf of the voters in Appalachian counties with high residual vote rates as well as those living in communities with large urban –

The Court: You only chose to sue four counties, though.

Mr. Tokaji: We chose to sue four counties, and for purposes of our Voting Rights Act claim we needed three of those counties in there because those, those claims . . .

The Court: I don't mean to slow you down, but when you're talking about the equal protection claim on a state-wide basis, you only joined four counties. That's the reason I point that out.

Mr. Tokaji: . . . As you're probably aware, in the California litigation, for example, the only party they named was the Secretary of State because it was the Secretary of State that, in their view, had the authority and responsibility to remedy that violation, which he ultimately did . . .

The Court: Your view is the Secretary of State has the governmental power to tell each individual county what type of voting machine they will use?

Mr. Tokaji: I wouldn't go that far, Your Honor.

The Court: Well, if you can't go that far, how can you get there by just suing the Secretary of State?

Mr. Tokaji: Because the Secretary of State does have the authority to decertify equipment that is unacceptable.

* * *

The Court: So translated, your view is you didn't have to sue anybody except the Secretary of State?

Mr. Tokaji: I think we probably didn't have to sue anybody except the Secretary.

The Court: On the equal protection.

Mr. Tokaji: Exactly, Your Honor.

The Court: Okay.

Mr. Tokaji: I think we could have just sued the Secretary of State. I think the other defendants we have named, the four county defendants, are proper parties because they are participating in that constitutional violation.

* * *

What we are claiming, and what the issue is in this case, and I think it was framed best by the Court in *Black v. McGuffrage*, that was the Illinois case raising similar issues, is that the state may not "allow the use of different types of voting systems with substantially different levels of accuracy."

(Trial Transcript Vol. II, 317-321).

Based upon the arguments of Mr. Moke and Mr. Tokaji, it appears that Ms. See takes issue with the fact that voters in other counties use different types of voting systems with “substantially different levels of accuracy” than the system she uses in Sandusky County, and that therefore, the Sandusky County Defendants are violating her Fourteenth Amendment rights for “participating” in that alleged constitutional violation. (Trial Transcript Vol. II at 319-320). This argument has absolutely no basis in the law.

B. Ms. See’s Equal Protection Claim Against The Sandusky County Defendants Fails Because There Is No Classification; All Sandusky County Voters Use Optical Scan Ballots With Central Count.

The Fourteenth Amendment to the United States Constitution states that “no State shall deny to any person *within its jurisdiction* the equal protection of the laws.” (emphasis added). Today, the Equal Protection Clause has been interpreted to forbid certain forms of classification that cannot be justified by compelling or important governmental objectives. *Black v. McGuffage*, 209 F. Supp. 2d 889, 897 (N.D. Illinois, 2002). To this end, the Supreme Court has constructed a system of varying levels of scrutiny depending on the classification involved. *Id.* Classifications which affect fundamental rights are subject to strict forms of review. *Id.* (citing *Shelton v. Tucker*, 364 U.S. 479, 488 (1960); *Griswold v. Connecticut*, 381 U.S. 479, 504 (1965); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)).

In the context of voting, the Supreme Court had held that although there is no constitutional right to cast a vote for Presidential electors, once a State legislature grants its citizens the right to vote for President, the State needs to accord equal weight and equal dignity to each voter. *Bush v. Gore*, 531 U.S. 98, 105 (2000). In *Bush*, the Supreme Court was presented with a situation where the Florida Supreme Court, with the power to assure uniformity,

had ordered a statewide recount with minimal procedural safeguards. *Id.* at 109. In fact, the Supreme Court determined that the Florida Supreme Court, through the statewide recount, had ratified uneven treatment of voters in different counties. *Id.* at 107. For example, it determined that the standards for accepting or rejecting contested ballots might not only vary from county to county, but indeed they may have varied within a single county from one recount team to another. *Id.* at 106. The *Bush* Court ultimately found a violation of the Equal Protection clause because the recount mechanisms implemented in response to the decisions of the Florida Supreme Court did not have at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness were satisfied. *Id.* at 109.

Ms. See's claim against the Sandusky County Defendants, however, immediately fails because she cannot demonstrate that they are engaging in any sort of classification within their jurisdiction, which is Sandusky County. Similarly, she cannot demonstrate that the Sandusky County Defendants are valuing one person's vote over that of another. *Id.* at 104-105. Barbara Tuckerman, the Director of the Sandusky County Board of Elections, testified that since 2001, all voters in Sandusky County utilize an optical scan ballot which is counted with the same machines. This includes all voters who vote by an absentee ballot, since they use the exact same type of optical scan ballot that voters who vote at the polling location use, and the absentee ballots are counted at the same time and in the same manner as are the other optical scan ballots. In fact, Plaintiffs have stipulated that Sandusky County has and continues to uniformly administer the optical scan ballot with central location tabulation to all of its voters. (Trial Transcript, Vol. IV, at 687, 689, 691-693, 716-718; Exhibit NN; Order, July 12, 2004, at Final Fact Stipulation No. 72).

Ironically, the only way that Sandusky County would classify its voters by not having a uniform method of voting would be if Ms. See were to be successful in persuading this Court to order the Sandusky County Defendants to purchase DRE's. If that were to occur, then absentee voters would by necessity have to utilize a different type of voting method, such as the optical scan ballots, because, as Ms. Tuckerman testified, "you can't put machines in the mail." (Trial Transcript, Vol. IV, at 717-718). Since Sandusky County does not have a classification within its jurisdiction (Sandusky County), and as all of its voters use the exact same type of voting equipment, to the extent *Bush v. Gore* could apply the Equal Protection Clause to Sandusky County, Sandusky County is according equal weight and equal dignity to each of its voters. See *Bush*, 531 U.S. 98, 105.

Ms. See's claim that judgment should be rendered in her favor because Sandusky County "participates" in an unconstitutional system whereby different methods of voting are employed in different counties throughout Ohio is also without merit. The Ohio Revised Code provides that:

Voting machines, marking devices, and automatic tabulating equipment may be adopted for use in elections in any county in the following manner:

- (A) By the board of elections;
- (B) By the board of county commissioners of such county on the recommendation of the board of elections;
- (C) By the affirmative vote of a majority of the electors of such county voting upon the question of the adoption of such equipment in such county.

R.C. § 3506.02. Additionally, a county may only select a voting machine that has been certified for use by the Ohio Secretary of State and the Ohio Board of Voting Machine Examiners. See R.C. §§ 3506.05-10. Thus, Sandusky County has no legal authority whatsoever to prevent any of

Ohio's other eighty-seven counties from using different types of voting systems with "substantially different levels of accuracy" than the optical scan ballots with central location tabulation used in Sandusky County. Ms. See has not, and she cannot, plausibly explain how Sandusky County was or is supposed to refrain from participating in the system (put in place pursuant to the Ohio Revised Code) by which Ohio's counties each select their own individual voting machines and systems. Therefore, Ms. See's claim against the Sandusky County Defendants for "participating" in the system mandated by the Ohio Revised Code fails.

To the extent that Ms. See may attempt to claim that Sandusky County is violating her Equal Protection rights because voters in *other* Ohio counties get to use different voting equipment, she can come forward with no legal authority to support such a claim. In fact, the Sixth Circuit has previously considered a similar claim made by voters and taxpayers of the Cleveland School District who challenged the constitutionality of H.B. 269. *Mixon v. State of Ohio*, 193 F. 3d 389, 393 (6th Cir. 1999). In *Mixon*, the plaintiffs contended that H.B. 269 unconstitutionally differentiated between those residents who resided in municipal school districts and those who did not by implementing an appointive system for school boards in municipal school districts while other school districts could elect their school boards. *Id.* at 402-403. The plaintiffs went on to argue that this violation infringed upon their right to vote and therefore, the Sixth Circuit was required to apply strict scrutiny to H.B. 269. *Id.* at 403.

The *Mixon* Court, however, held that although the plaintiffs had a fundamental right to vote in elections before them, there is no fundamental right to elect an administrative body such as a school board, even if other cities in the state may do so. *Id.* (citing *Sailors v. Bd. of Educ.*, 387 U.S. 105, 108 (1967)). Additionally, the *Mixon* Court reaffirmed that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens *in*

the jurisdiction. Id. at 402 (quoting *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972)). Like the plaintiffs in *Mixon*, Ms. See has a fundamental right to vote in the elections that are conducted in Sandusky County, and she has a constitutional right to vote in those elections on an equal basis with other voters in Sandusky County. However, also like the plaintiffs in *Mixon*, she does not have a fundamental right to vote on either a DRE or an optical scan ballot with in precinct tabulation, even if voters in other counties in Ohio do so.

Moreover, the legal authority that Ms. See has relied upon supports an equal protection claim only when the defendant against whom the claim was made was responsible for providing for different methods of voting for *its* voters. See *Black v. McGuffage*, 209 F. Supp. 2d 889, 892 (N.D. Ill. 2002)(the equal protection claim made in that case was made against *only* the State of Illinois, and not the local defendants). Since the Sandusky County Defendants provide the same method of voting to all of their voters, the only way that the holding of *Black v. McGuffage* could be applied to Sandusky County would be if the words “within its jurisdiction” of the Fourteenth Amendment were stricken down. Because there is not even a claim that Sandusky County is valuing one Sandusky County resident’s vote over that of another, no further analysis is necessary, and Ms. See’s Equal Protection claim against Sandusky County fails. See *Bush*, 531 U.S. at 104-105.

Therefore, judgment must be rendered in favor of the Sandusky County Defendants on Ms. See’s Equal Protection claim.

C. Similarly, Ms. See’s Due Process Claim Fails.

Ms. See has offered little specificity as to what her Due Process claim is against the Sandusky County Defendants. In Plaintiffs’ opening argument, Mr. Moke stated that “[t]he evidence will also show that these non-notice systems arbitrarily and capriciously deny the right

to vote in violation of the Fourteenth Amendment due process clause.” (Trial Transcript Vol. I, at 22-23). In *Bush v. Gore*, the Supreme Court held that the absence of specific standards did not ensure equal application as to what constituted a legally cast vote. *Bush*, 531 U.S. at 105-106. Therefore, it determined that the recount mechanisms did not satisfy the minimum requirement for non-arbitrary treatment of voters necessary to secure the fundamental right to vote. *Id.* And in *Black v. McGuffage*, the district court determined that plaintiffs had stated a Due Process claim under the U.S. Constitution by challenging a law that allowed significantly inaccurate systems of vote counting to be imposed upon some portions of the electorate and not others without any rational basis. 209 F. Supp. 2d at 901. As stated above, *all* voters in Sandusky County utilize an optical scan ballot with central location tabulation. (Exhibit NN; Order, July 12, 2004, at Final Fact Stipulation No. 72). Since all voters in Sandusky County are having their votes counted equally, there is no arbitrary treatment of any of Sandusky County’s voters. Accordingly, the Sandusky County Defendants are entitled to judgment in their favor on Ms. See’s Fourteenth Amendment Due Process claims.

D. Even Assuming *Arguendo* That The Sandusky County Defendants Did Classify Their Voters, Ms. See’s Fourteenth Amendment Claims Still Fail Because The Sandusky County Defendants Have A Rational Basis For Utilizing An Optical Scan Ballot With Central Location Tabulation.

Even assuming that Ms. See could demonstrate that the Sandusky County Defendants somehow classify their voters (which she cannot do), her Fourteenth Amendment claims would still fail because the Sandusky County Defendants have a rational basis for utilizing an optical scan ballot with central location tabulation. The Supreme Court, in examining whether a challenged practice should be subject to strict scrutiny or rational basis, typically examines whether the challenged practice “has an impact on [plaintiffs’] ability

to exercise the fundamental right to vote.” *McDonald v. Board of Election Comm’rs of Chicago*, 394 U.S. 804, 807 (1969). Thus, so long as the regulation does not impact directly the right to vote, but rather a claimed right to vote in a particular manner, such a regulation is subject to rational basis review. *Id.* (using rational basis review on an Illinois regulation that allowed certain people to receive absentee ballots but refusing to give absentee ballots to unsentenced inmates). The Sixth Circuit has recognized that while any legislation that grants some residents the right to vote while denies that right to others is subject to strict scrutiny analysis, if the state practice does not infringe on the right to vote itself, it is subject to rational basis review. *Mixon v. State of Ohio*, 193 F.3d 389, 402 (6th Cir. 1999). Since the selection of voting technology does not infringe directly upon the right to vote, Sandusky County merely needs to demonstrate a rational basis for utilizing the voting method that it does.

The State of Ohio has certified, pursuant to State law, several different types of voting machines for the local Boards of Elections to use. Each Board of Elections, then, has a choice as to which voting technology it will use. See R.C. §§ 3506.02-.10. Sandusky County has rational reasons for choosing to utilize an optical scan ballot with central location tabulation.

During the trial, Ms. Tuckerman discussed the decision by the Board to switch from a punch card to an optical scan ballot. She testified that the Board’s software vendor was deciding to retire from the election business, so the members of the Board began looking at equipment from different vendors at the Board of Election conventions and the Secretary of State conventions. Additionally, various vendors came to the Board’s offices so that the vendors could demonstrate their equipment. They also spoke with the Sandusky County Board of Commissioners, since the Board knew that they would have to spend a considerable amount of money to purchase a new voting system. After looking at all the voting equipment that was on

the market, the Board members all decided to choose optical scan paper ballots. (Trial Transcript, Vol. IV, at 688-690). Ms. Tuckerman explained the reasoning behind this decision:

- A. The first reason was the fact that it's very simple, it's very direct. The people can actually look at a ballot and see what they are doing. It requires a pencil, and that's it. I mean, we have to have something of course to tabulate it but for the voters it is a simple process, very easily understood.

And we decided that was the – and of course, it's much more economical. It only [involves two] tabulators at this moment. We may be required in the future to purchase – what we spent was \$245,000.00. Now had we purchased machines, DREs, you were probably talking a million and a half dollars.

(Trial Transcript, Vol. IV, at 690).

The Board also considered the advantages of optical scan ballots that are counted in each precinct, versus optical scan ballots that are counted centrally at the Board's office. Ms. Tuckerman testified that the Board determined that counting the ballots centrally at the Board's office was advantageous because it gives the Board more control over the ballots, since they go into the ballot box and are not taken out until they come back to the Board's office. Also, the Board believed that if any mechanical problems occurred with the tabulating machines at the polls, the poll workers were not going to be able to take the machines apart and figure out why they were not working correctly. Therefore, the Board believed that it would be better to have the employees at the office dealing with the tabulators, since they work with them all the time, as opposed to the poll workers, who are often different people for each election and who at most, work only twice a year. Other practical problems existed with the precinct tabulation machines, which included the fact that they would require a great deal of storage space and they were so big that it would be difficult to deliver them to each polling location. (Trial Transcript, Vol. IV, at 710-711).

Ms. Tuckerman also explained that despite the optical scan ballot's simplicity, voters in Sandusky County are given instructions three different times, twice in writing and once verbally, on how to vote on the optical scan ballot. These instructions include directions to return the ballot if a mistake is made, and then the voter who made the mistake is given a new ballot. Ms. Tuckerman stated that in Ohio, a voter can make mistakes on up to three different ballots. She also testified how a voter in Sandusky County is supposed to know if they made a mistake on their optical scan ballot with central location tabulation. "They can look at it with their own two eyes. They are the final judge of their ballot and all they have to do is look at it to see that they voted for whom they wanted and they didn't make an overvote . . . or something, or skipped a race," stated Ms. Tuckerman. She also explained that even if a voter does not entirely color in the oval next to the name of their choice with a pencil, as long as they marked at least part of the oval with the pencil, for example by marking it with an "X" or a checkmark, the vote will still count. In fact, even if a voter makes a colossal mistake, for example, by circling each choice's name with a pencil, then the ballot will be rejected by the tabulator as a blank ballot. In that rare scenario, the four Board members (two Republicans and two Democrats) will examine the ballot to see if they can determine the intent of the voter. If they can, they remark the voter's ballot for them and run it back through the tabulator so that all of the voter's votes will be counted. (Trial Transcript, Vol. IV, at 693-707; Exhibit NN-OO).

Perhaps most importantly, the Plaintiffs' own expert witnesses, Roy G. Saltman and Dr. Herbert Asher, have both testified that as long as a voter on an optical scan ballot completely understands and follows the directions given to them, regardless of whether the optical scan ballot is counted at the precinct or at a central location, every intentional vote that voter casts will be counted (absent a machine malfunction). (Trial Transcript, Vol. II, at 305-306; Trial

Transcript, Vol. IV, at 837) Finally, since the introduction of the optical scan ballots with central location tabulation, Ms. Tuckerman testified that the voters' response has been very favorable. In fact, people have told her that they prefer the optical scan paper ballots to the DREs, since they believe there is less potential for fraud, since they can see how they voted on their ballot. She also stated that while it was true that a voter can overvote on an optical scan ballot, a voter can vote for the wrong person on a DRE. Finally, Ms. Tuckerman testified that the only complaints that she has received are from elected officials who claim that they don't need the poll workers to explain to them how to vote on the optical scan ballots, since they already know. However, Ms. Tuckerman explained that the Sandusky County Defendants do not want to leave it up to the poll workers to decide who needs to hear the directions and who doesn't, so the poll workers are instructed to verbally give the directions to every voter, no matter who they are. (Trial Transcript, Vol. IV, at 718-719).

Thus, even if Ms. See could demonstrate that Sandusky County has classified its voters, which she cannot, the Sandusky County Defendants clearly have a rational basis for using optical scan ballots with central location tabulation. Therefore, judgment on Ms. See's Fourteenth Amendment claims must be rendered in the Sandusky County Defendants' favor.

III. Conclusion.

For the above reasons, Ms. See has failed to demonstrate by a preponderance of the evidence that the Sandusky County Defendants have violated any of her rights under the Fourteenth Amendment to the U.S. Constitution through their uniform use of the optical scan ballot with central location tabulation. Therefore, the Sandusky County Defendants respectfully ask this Court to enter judgment in their favor on all of the claims against them.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 15, 2004, a copy of the foregoing was filed electronically. Notice of the filing will be sent to and can be accessed by all parties by operation of the Court's electronic filing system.

/s/ Jeffrey Stankunas
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