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U.S. DIST. COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

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

OHIO REPUBLICAN PARTY **211 South Fifth Street** **Columbus, Ohio 43215**	:	**Case No.** 2:08 CV 913
and	:	**JUDGE SMITH**
LARRY WOLPERT **6216 Clover Place** **Hilliard, Ohio 43026**	:	**MAGISTRATE JUDGE KING**
Plaintiffs,	:	
v.	:	
JENNIFER BRUNNER **Ohio Secretary of State** **100 E. Broad Street** **Columbus, Ohio 43215**	:	
Defendant.	:	

VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTION

Plaintiffs file this Complaint for a Temporary Restraining Order, and Preliminary and Permanent Injunction, pursuant to Article II, Section 1, Clause 1 of the United States Constitution, the Help America Vote Act, the National Voter Registration Act, the Voting Rights Act, and the Fifth and Fourteenth Amendments to the United States Constitution.

NATURE OF ACTION

1. This is an action to vindicate Plaintiffs' rights under the Constitution of the United States, the Fifth and Fourteenth Amendments to the United States Constitution, and under

the Help America Vote Act, the National Voter Registration Act, and Section 2 of the Voting Rights Act, that are being infringed by the Secretary of State's issuance of arbitrary and unlawful directives.

2. Plaintiff, the Ohio Republican Party, is a political organization comprised of several million qualified electors across the State of Ohio. Plaintiff Larry Wolpert is a qualified Ohio elector residing in the Southern District of Ohio.

3. Defendant's arbitrary and unlawful directives allow unqualified voters to obtain an absentee ballot in the upcoming election, frustrate the clearly expressed will of the Ohio Legislature in regard to the selection of Presidential Electors, and deprive potentially millions of Ohioans of the equal protection of the laws.

4. Therefore, Plaintiffs seek a temporary restraining order, a preliminary and permanent injunction, expedited declaratory relief, and other relief necessary to direct the Secretary of State to rescind or retract Directive 2008-63, which allows citizens to request a ballot fewer than 30 days after their initial voter registration; to act in accordance with the Revised Code and to direct county boards of election to act in accordance with the Code; as well as any other relief that this court may find to be fair and equitable. In the alternative, Plaintiffs ask the Court to order that any voter who simultaneously registers to vote and requests a ballot be given a provisional ballot so that proper relief may be preserved for later adjudication on the full merits of the case. In the second alternative, Plaintiffs ask the Court to order Defendant to rescind Advisory 2008-24.

PARTIES AND BACKGROUND

5. Plaintiff, the Ohio Republican Party serves as the organizational vehicle for several million qualified electors across the State of Ohio. Plaintiff Larry Wolpert is a qualified Ohio elector, and currently serves as the Representative for the 23rd House District of the Ohio

House of Representatives.

6. Defendant Jennifer Brunner is the duly elected Ohio Secretary of State. Pursuant to Ohio Revised Code (hereafter "Revised Code") § 3501.05, Respondent shall, *inter alia,* "(B) Issue instructions by directives and advisories in accordance with section 3501.053 of the Revised Code to members of the boards as to the proper methods of conducting elections . . . ; (C) Prepare rules and instructions for the conduct of elections . . . ; (F) Prescribe the form of registration cards, blanks and records; [and] (M) Compel the observance of election officers in the several counties of the requirements of the election laws . . . ." Ohio Rev. Code § 3501.05; *see also* Ohio Rev. Code § 3501.053(A).

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the claims asserted herein pursuant to 28 U.S.C. §§ 1331, 1343 and 42 U.S.C. § 1983, as this is an action to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

8. This Court has personal jurisdiction over Defendant. The Ohio Secretary of State is an executive official of the State of Ohio, whose position is created in Article III, Section I of the Ohio Constitution, and is further described, insofar as it is pertinent herein, in Title 35 of the Ohio Revised Code.

9. Venue is proper for this action in this district and division, pursuant to 28 U.S.C. § 1391(b), in that the events giving rise to this claim occurred, and/or will occur in this judicial district and division.

THE SECRETARY OF STATE'S ARBITRARY AND UNLAWFUL DIRECTIVES

10. Respondent Jennifer Brunner is the duly elected Ohio Secretary of State. Pursuant to R.C. 3501.05, Respondent shall, *inter alia*, "(B) Issue instructions by directives and advisories in accordance with section 3501.053 of the Revised Code to members of the boards as

to the proper methods of conducting elections . . . ; (C) Prepare rules and instructions for the conduct of elections . . . ; (F) Prescribe the form of registration cards, blanks and records; (M) Compel the observance of election officers in the several counties of the requirements of the election laws . . . ." Ohio Rev. Code § 3501.05; *see also* Ohio Rev. Code § 3501.053(A).

11. Pursuant to Ohio Rev. Code § 3501.01(U)(1), Respondent Jennifer Brunner is an election officer and must herself observe the requirements of the election laws.

12. Chapter 3509 of the Ohio Revised Code sets forth the laws governing absent voter's ballots. Pursuant to Ohio Rev. Code § 3509.01, "[t]he board of elections of each county shall provide absent voter's ballots for use at every primary and general election, or special election . . . ." Ohio Rev. Code § 3509.02(A) provides that "[a]ny qualified elector may vote by absent voter's ballots at an election."

13. Pursuant to Ohio Rev. Code § 3509.03, except in the case of circumstances not relevant here, "any qualified elector desiring to vote absent voter's ballots at an election shall make written application for those ballots to the director of elections of the county in which the elector's voting residence is located. The application . . . shall contain . . ." *inter alia* "(G) A statement that the person requesting the ballot is a qualified elector . . . ." Ohio Rev. Code § 3509.03(G).

14. The Ohio Revised Code defines "elector" or "qualified elector" as a "person having the qualifications provided by law to be entitled to vote." Ohio Rev. Code § 3501.1(N). The Code further defines "voter" as "an elector who votes at an election." Ohio Rev. Code § 3501.1(O).

15. The qualifications to be entitled to vote, and thus be a qualified elector or voter, are clearly set forth in Ohio Rev. Code § 3503.01. This section provides: "[e]very citizen of the United States who is of the age of eighteen years or over and who has been a resident of the state

thirty days immediately preceding the election at which the citizen offers to vote, is a resident of the county and precinct in which the citizen offers to vote, *and has been registered to vote for thirty days*, has the qualifications of an elector and may vote at all elections in the precinct in which the citizen resides." (emphasis added)

16. Pursuant to Ohio Rev. Code § 3509.04(B), an election officer may not deliver an absent voter's ballot to a person who has not provided the information required by Ohio Rev. Code § 3509.03, including a statement that he or she is a "qualified elector," meaning that such person has been registered to vote for thirty days.

17. The prescribed thirty-day period allows state election officials to verify the registration information and legal status of newly registered voters prior to permitting them to cast ballots. Section 3503.15 of the Revised Code requires that election officials establish and maintain a statewide voter registration database that shall be continuously available to each board of elections and to other agencies as authorized by law. The database shall include, *inter alia*, a search program capable of verifying registered voters and their registration information by name, driver's license number, birth date, social security number, or current address. Ohio Rev. Code §§ 3503.15(A) and (C)(4). The thirty-day registration period thus furthers the state's "strong interest" in the "smooth and effective administration of [its] voting laws." *Summit County Democratic Cent. and Executive Comm. v. Blackwell*, 388 F.3d 547, 551 (6th Cir. 2004).

18. On August 13, 2008, Secretary of State Jennifer Brunner issued Directive 2008-63. This Directive ordered all Ohio County Boards of Elections to "expedite the processing of voter registrations received during the week immediately preceding the voter registration deadline" in light of the "significant number of [] new and changed registrations . . . generated by voter registration drives conducted up to the registration deadline."

19. Directive 2008-63 additionally instructs the County Boards of Elections that

"there are several days before the 2008 general election during which a person may appear at the board of elections and *simultaneously submit for that election applications to register to vote or to update an existing registration and to request an absentee ballot.*" (emphasis added).

20. The Directive further orders that "[b]oards of elections are required to develop procedures to immediately register the applicant and issue an absentee ballot to the newly registered elector of the county *at the time of registration* . . . ." (emphasis added).

21. The Ohio Revised Code creates a thirty-day period after voter registration before a citizen becomes a qualified elector or voter. This statute corresponds to the identical provisions of Article V, Section 5 of the Ohio Constitution. The Secretary of State's Directive, in effect, prescribes violations of Ohio election law in three respects. First, the Directive encourages a person to appear at the board of elections and simultaneously submit an application to register to vote and a request for an absent voter's ballot, even though such person is not yet a qualified elector or voter. Second, in order to request an absent voter's ballot, the Directive encourages a citizen to falsely attest that he *is* a qualified elector or voter. Third, contrary to Ohio election law, the Directive requires election officials to issue an absent voter's ballot to applicants that officials know are not qualified electors.

22. Sections 3509.02 and 3509.03 of the Revised Code govern the qualifications to request and vote via absent voter's ballot. The Revised Code provides that "any qualified elector may vote by absent voter's ballots at an election." Ohio Rev. Code § 3509.02(A). Thus, the limitation of the right to vote by absent voter's ballot to a qualified elector means that only a citizen who has been registered to vote for thirty days may vote by absent voter's ballot.

23. Additionally, in order to request an absent voter's ballot, a citizen must, in a written application, attest that he is, *at present*, a "qualified elector." Ohio Rev. Code § 3509.03(G) (emphasis added). Further underscoring the fact that only registered voters may

request such a ballot, a citizen must additionally provide "[t]he address at which the elector is registered to vote" at the time of application. Ohio Rev. Code § 3509.03(C).

24. Ohio law requires election officials to reject an absent voter's ballot if the official finds that "the applicant is not a qualified elector." Ohio Rev. Code § 3509.07.

25. Incorporating the mandatory provisions of Ohio Rev. Code § 3509.03(G), Ohio's current Application for Absent Voter's Ballot (Form No. 11-A Prescribed by the Secretary of State (08-08)) requires a citizen to attest that he is a qualified voter at the time he requests an absent voter's ballot. The declaration reads: "I hereby declare, under penalty of election falsification, I am a qualified voter and the statements above are true to the best of my knowledge and belief. I understand that if I do not provide the requested information, my application cannot be processed." There is no basis for distinguishing between the terms "qualified elector" and "qualified voter" under Ohio election law. *See* Ohio Rev. Code § 3501.1(N)-(O),

26. The Form No. 11-A declaration is accompanied by a section wherein the citizen indicates the date he signed the declaration requesting an absent voter's ballot.

27. Both Ohio Rev. Code § 3509.03(G) and Form No.11-A indicate that a citizen must be a qualified elector or voter at the time at which he requests an absent voter's ballot.

28. Directive 2008-63 contemplates that persons "may appear at the board of elections office and simultaneously submit for that election applications to register to vote or to update an existing registration and to request an absentee ballot." Any simultaneous application to register to vote and to request an absent voter's ballot will require that the person swear or attest to being a qualified elector or voter as required to request an absent voter's ballot. Such an affirmation would be false and in obvious contravention of established Ohio law because a person cannot be a qualified elector or voter unless such person has been registered to vote for 30

days.

29. Directive 2008-63 requires local election officials to immediately issue an absent voter's ballot to a person who simultaneously submits an application to register to vote and request for an absentee ballot with full knowledge of the falsity of the registrant's declaration that he is a qualified elector or voter. In so doing, the Directive orders local election officials to act in a manner that contravenes established Ohio law.

30. Form No. 11-A states "[w]hoever commits election falsification is guilty of a felony of the fifth degree." Thus, citizens who are not qualified electors or voters, but nevertheless request an absent voter's ballot by attesting to being a qualified voter, are subject to punishment for committing a felony. Similarly, election officials who comply with Directive 2008-63, and thus direct a citizen to attest to being a qualified elector or voter, with knowledge that the citizen is not a qualified voter, are also potentially committing a felony.

31. On September 23, 2008, the Secretary of State issued Advisory 2008-24 which advised county boards of election that they are "not required to allow election observers during the 35-day in-person absentee voting period immediately preceding Election Day."

32. Plaintiffs, the Ohio Republican Party, representing the interests of its constituent members, as well as Larry Wolpert individually, will be irreparably harmed if these members act pursuant to the procedures set forth in Directive 2008-63. Following this Directive, members will affirm that they are "qualified electors" despite have just registered moments prior, and thus possibly subject themselves to criminal penalties.

33. Plaintiffs, the Ohio Republican Party, representing the interests of its constituent members and Plaintiff Larry Wolpert, will be further irreparably harmed if the votes of qualified Ohio electors are diluted by the impermissible extension of absentee ballots to persons who are, by law, unqualified electors.

CLAIMS FOR RELIEF

COUNT I: VIOLATION OF ARTICLE II, SECTION 1, CLAUSE 2 OF THE UNITED STATES CONSTITUTION

34. Article II, Section 1, Clause 2 of the Constitution of the United States of America mandates that each state's Presidential Electors must be selected "*in such manner as the Legislature thereof may direct.*"

35. Article II requires that state officials who are tasked with administering voter registration and voting as they relate to presidential elections must abide by the legal regime for such voter registration and voting that has been established by the Legislature.

36. Defendant Jennifer Brunner, as Ohio's Secretary of State, is a state official who, among other things, is tasked with administering voter registration and voting for the 2008 presidential election, which will take place on November 4, 2008, and through which Ohio will select its Presidential Electors.

37. Recent actions and decisions by Defendant relating to voter registration and absentee voting for the 2008 presidential election are inconsistent with Ohio state law as established by the Ohio legislature on these subjects and therefore violate Article II.

38. Directive 2008-63 contravenes the express language of the Ohio legislature, manifest in Ohio Rev. Code § 3509.03, by permitting non-qualified electors to attest that they are qualified electors, in violation of section 3509.03.

39. By instructing election officials to deliver absentee ballots to non-qualified electors, Directive 2008-63 contravenes the expressed will of the Ohio legislature, as manifest in Ohio Rev. Code § 3509.04(B).

40. Directive 2008-63's instruction that election officials must tender absentee ballots upon request to those person who registered to vote just moments before contravenes the express

language of the legislature, as manifest in Ohio Rev. Code § 3509.07.

41. Directive 2008-63 contravenes the express language of the legislature, manifest in Ohio Rev. Code § 3503.01, by allowing non-qualified electors to receive ballots.

COUNT II: VIOLATION OF THE HELP AMERICA VOTE ACT, 42 U.S.C. §15301

42. Section 303 of the Help America Vote Act ("HAVA") requires that Ohio create a computerized statewide voter registration list that contains the name and registration information of every legally registered voter. 42 U.S.C. § 15483(a).

43. HAVA also requires that Ohio verify a prospective voter's registration information. Section 303(a)(5). Under 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 the applicant's driver's license number or the last four digits of the applicant's social security number." *Id.* (emphasis added). Ohio must also "determine whether the information provided by an individual is sufficient to meet the requirements of [HAVA], in accordance with State law." *Id.*

44. Ohio law, in turn, requires that election officials verify the registration information before modifying an existing registration. The Secretary of State must adopt rules that "[r]equire any updated voter registration information to be verified by the secretary of state or a board of elections *before* the information is added to the statewide voter registration database for the purpose of modifying an existing voter registration." Ohio Rev. Code § 3503.09(B)(2) (emphasis added).

45. On information and belief, Defendant is failing to verify voter registration against the computerized database, including those registering pursuant to Directive 2008-63. This Directive makes no reference to any verification pursuant to HAVA. This failure constitutes a

violation of HAVA.

46. Moreover, even if Defendant was otherwise complying with HAVA's verification requirement, her "same day registration" scheme would preclude the timely verification of the registration information of prospective voters who register and vote on the same day. Under the Defendant's plan, an applicant would receive a regular absentee ballot at the same time as registering to vote, even though the applicant's registration information has not been verified and even though there is no time to verify that information.

47. Finally, the Secretary of State's recent September 23, 2008 Advisory opinion, Advisory 2008-24, would allow county boards to prevent observers from monitoring the voting process, thereby further undermining HAVA's purposes. This latest directive removes the best opportunity for the political party and/or candidates to identify voters who may be ineligible to cast a ballot.

48. Accordingly, the Defendant's actions violate both the letter and spirit of HAVA. "The fact that HAVA section 303(b) requires states to obtain the applicant's identification numbers before accepting a registration application and also to 'determine whether the information provided . . . is sufficient to meet [that] requirement[]' indicates that Congress deemed the identification numbers material to determining eligibility to register and to vote." *Florida St. Conf. of the NAACP v. Browning*, 522 F.3d 1153, 1174 (11th Cir. 2008).

COUNT III: VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT

49. Section 2 of the Voting Rights Act ("VRA") prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice, or procedure that results in the denial or abridgement of the right to vote on account of race or color. 42 U.S.C. § 1973.

50. By preventing observers from monitoring the voting process, Defendant's recent

advisory opinion, Advisory 2008-24, violates Section 2 by establishing a procedure that increases the likelihood that the rights of minority voters will be denied or abridged due to an increased possibility that, without the safeguards and prophylactic effect provided by the existence of observers, those voters will be subjected to intimidation while attempting to exercise their franchise.

51. Advisory 2008-24 removes the opportunity for the political parties to ensure that minority voters are afforded the chance to vote free from intimidation that results in the denial or abridgement of their right to vote and that minority voters, in particular, are allowed an opportunity equal to that afforded other members of the electorate to participate in the political process and elect candidates of their choice in violation of Section 2 of the VRA.

52. Upon information and belief, racially polarized voting patterns prevail in elections within certain regions of Ohio.

53. Upon information and belief, African Americans in Ohio have suffered from a history of official discrimination.

54. Upon information and belief, significant socioeconomic disparities exist between white and African American residents of Ohio, and social, civic and political life in Ohio is largely divided along racial lines. Such disparities have the effect of limiting African American participation in Ohio's electoral processes.

55. Upon information and belief, Ohio elections are characterized by the use of large election districts, majority vote requirements, staggered terms, primary elections which produce nominees, and other voting practices or procedures that may enhance the opportunity for discrimination against the minority group.

56. Upon information and belief, African Americans in Ohio bear the effects of discrimination in such areas as education and employment, which hinders their ability to

participate fully and effectively in the political process.

57. Upon information and belief, political campaigns have been characterized over the years by subtle and overt racial appeals.

58. The policy underlying the latest directive is legally tenuous and lacks sufficient justification for continuing to remain in force and effect.

59. Under the totality of the circumstances, Advisory 2008-24 has the effect of increasing the likelihood that the rights of minority voters will be denied or abridged due to an increased possibility that, without the safeguards and prophylactic effect provided by the existence of observers, those voters will be subjected to intimidation while attempting to exercise their franchise, all in violation of Section 2 of the VRA.

60. Unless enjoined by order of this Court, Defendant will continue to conduct elections under the present practices and procedures that deny African American voters the meaningful opportunity to participate equally with white voters in the political process in violation of Section 2 of the VRA.

COUNT IV: VIOLATION OF THE NATIONAL VOTER REGISTRATION ACT

61. Under Section 8 of the National Voter Registration Act ("NVRA"), Ohio may not remove the name of a registrant from the official list of eligible voters except as provided by State law, by reason of criminal conviction or mental incapacity. 42 U.S.C. § 1973gg-6(a)(3)(B).

62. Furthermore, Section 8 of the NVRA requires Ohio election officials to determine and ensure the eligibility of voters before registering them to vote. 42 U.S.C. § 1973gg-6(a)(1).

63. Ohio law, in turn, mandates that a person convicted of a felony under the laws of any state or the United States is incompetent to be an elector unless and until the conviction is reversed or annulled, or such person is granted parole, judicial release, or a conditional pardon or is released under a non-jail community control sanction or a post-release control sanction. Ohio

Rev. Code § 2961.01.

64. Furthermore, Ohio law mandates that the registration of a registered elector shall be canceled upon the occurrence of the conviction of the registered elector of a felony under the laws of any state or the United States as provided in section 2961.01 of the Revised Code. Ohio Rev. Code § 3503.21(A)(3).

65. Through her allowance for simultaneous voter registration and receipt of absentee ballots, Defendant violates the NVRA because her plan renders the state unable to timely confirm the eligibility of applicants by verifying that they are not convicted felons and thus incompetent to be qualified electors before adding their names to the official list of eligible voters in Ohio. 42 U.S.C. § 1973gg-6(a)(1).

66. Under the Defendant's plan, an applicant would receive a regular absentee ballot at the same time as registering to vote, even though the applicant's registration information has not been verified and even though there is no time to verify that information or to verify that the applicant is not a convicted felon and thus incompetent to be electors. Ohio law requires that applicants register to vote thirty days prior to Election Day, precisely so that election officials will have the opportunity to verify their information and to confirm that applicants are qualified, eligible electors. Ohio Rev. Code § 3503.01.

67. Accordingly, the Defendant's actions violate both the letter and spirit of the NVRA.

COUNT V: VIOLATION OF PLAINTIFF'S RIGHT TO EQUAL PROTECTION OF THE LAWS AND DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

68. On August 25, 2008, Steven Knowling, Prosecuting Attorney of Holmes County, Ohio, responded to a request by the Holmes County Board of Elections to review the legality of

Directive 2008-63. Prosecuting Attorney Knowling ultimately determined that the Directive contravened the clear language of the Revised Code. Prosecuting Attorney Knowling further advised the Holmes County Board of Elections that it "should also be aware that Ohio Revised Code 3509.04(B) specifically provides that a board of elections can only provide an absentee ballot to an individual who is a 'qualified elector.' To the extent that the Secretary of State Directive 2008-63 orders a board of elections to act contrary to the above stated existing Ohio law, I find *it is without legal foundation and should be disregarded.*" (emphasis added).

69. On September 4, 2008, Gary A. Nasal, Prosecuting Attorney of Miami County, Ohio, responded to a request by the Miami County Board of Elections to review the legality of Directive 2008-63. Prosecuting Attorney Nasal opined that the Directive contravened the clear language of the Revised Code. Prosecuting Attorney Nasal further informed the Miami County Board of Election that "[i]t is my opinion, and you are advised that the suggestion that your office engage in same day registration and voting in a manner which is contrary to Ohio law...*is illegal, inappropriate, and impermissible.*"

70. On September 5, 2008, Stephen J. Pronai, Prosecuting Attorney of Madison County, Ohio, responded to a request by the Madison County Board of Elections to review the legality of Directive 2008-63. Prosecuting Attorney Nasal concluded that Directive 2008-63 contravened the clear language of the Revised Code and the Ohio Constitution. Prosecuting Attorney Pronai further advised the Madison County Board of Elections "to follow the law of Ohio." He elaborated that "[a]ccording to Ohio law an absentee ballot cannot be issued to a person who is not a qualified elector. One of the requirements to be a qualified elector is to be a registered voter for 30 days. Therefore, according to the law you cannot issue an absentee ballot until the voter has been registered for 30 days. *I am unclear of the Secretary of State's reasoning. I urge the Board of Elections to follow the law as statue (sic) in the Ohio Revised*

Code." (emphasis added).

71. Following the issuance of the above legal opinions, Secretary of State Brunner, on September 11, 2008, issued Directives 2008-91 and 2008-92. In Directive 2008-91, Secretary Brunner affirmed her earlier instruction that persons that register during the five day "overlap" period be immediately granted an absentee ballot upon request, even if they have not been registered to vote for 30 days. She further instructed county boards of election that such voters were not to be made to vote via provisional ballot. In Directive 2008-92, Secretary Brunner reiterated that boards of elections were required "to follow this and all previous directives . . . unless subsequently and specifically superseded, revoked, or replaced by a subsequent directive of the Secretary of State . . . ."

72. Because the county boards of elections are receiving divergent and contradictory instructions from their respective prosecuting attorneys and from the Office of the Secretary of State, there will be not be uniform implementation (or rejection) of the procedures regarding same day registration and absentee ballot requests described in 2008-63.

73. Because Directive 2008-63 contravenes the language of the Revised Code, it creates demonstrable confusion at the county board of election level. This confusion will inevitably lead to a split among counties as to whether to allow people to simultaneously register to vote and receive an absentee ballot. For those persons who reside in counties that choose to follow the language of the Ohio Code, as opposed to the Secretary of State's Directive, they will be deprived of the ability to vote on equal terms as a person similarly situated in another county. This disparate treatment is a substantial burden on the fundamental right to vote. *See League of Women Voters of Ohio v. Blackwell*, 432 F. Supp. 2d. 723, 727 (N.D. Ohio 2005) (citing *United States v. Mosley*, 238 U.S. 383, 386 (1915)).

74. This disparate treatment violates Plaintiffs' right to equal protection of the laws.

75. On September 23, 2008, the Secretary of State issued Advisory 2008-24 which advised county boards of election that they are "not required to allow election observers during the 35-day in-person absentee voting period immediately preceding Election Day."

76. In the absence of a legislative mandate regarding the issue, the Secretary of State's vague "advice" will inevitably result in disparate, county-by-county rules concerning the permissibility of election observers. The fact that some counties will allow election observers, who will serve as a check against voter intimidation, while other counties will not allow such observers, impermissibly denies similarly situated Ohio voters the equal protection of the laws.

77. Further, because Directive 2008-63 unlawfully allows people to request a ballot when they ordinarily would be time-barred from doing so, it impermissibly expands the franchise from qualified electors to non-qualified electors. In providing a mechanism for these invalid ballots to be cast, the Secretary of State inappropriately dilutes the votes of qualified electors. Indeed, "[t]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Purcell v. Gonzalez*, 549 U.S. 1, 7 (2006) (quoting *Reynolds*, 377 U.S. at 555); *see also League of Women Voters*, 432 F. Supp.2d at 728 (citing *Ury v. Santee*, 303 F. Supp. 119 (N.D. Ill. 1969)).

78. Upon information and belief, the Secretary of State is establishing and operating remote site "vote-a-ramas," and doing so primarily in counties with a higher proportion of Democratic voters than Republican voters. Because some counties in Ohio have a significantly higher proportion of Democratic voters than other counties, residents of these latter, less-Democratic counties will not have the same opportunity to simultaneously register and request an absentee ballot as those voters that reside in heavily Democratic counties. As discrimination on the basis of residence constitutes an Equal Protection violation, *see United States v. Mosley*,

238 U.S. 383, 386 (1915), the Secretary of State's "vote-a-ramas" violate the constitutional rights of Ohio residents, including those represented by Plaintiff.

PRAYER FOR RELIEF

For the reasons set forth above, Plaintiffs respectfully request relief from this Court, as follows:

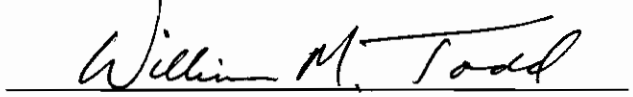
1. That this Court temporarily restrain, and then preliminary and permanently enjoin the Secretary of State to rescind or retract Directive 2008-63 which allows citizens to request a ballot fewer than 30 days after their initial voter registration, to act in accordance with the Revised Code and to direct county boards of election to act in accordance with the Code, as well as any other relief that this court may find to be fair and equitable.

2. In the alternative, Plaintiffs ask the Court to order that any voter who simultaneously registers to vote and requests a ballot, be given a provisional ballot so that proper relief may be preserved for later adjudication on the full merits of the case.

3. In the second alternative, Plaintiffs ask the Court to direct Defendant to rescind Advisory 2008-24.

4. That Plaintiffs be granted such other and further relief as may appear during this action including an award of costs and attorney's fees, under 42 U.S.C. § 1988.

Respectfully submitted,



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Ohio Republican Party and Larry Wolpert

VERIFICATION

STATE OF OHIO

COUNTY OF FRANKLIN SS

Robert T. Bennett being first duly sworn, deposes and states as follows:

I have read the foregoing Complaint and verify that the facts stated therein are true and accurate based on my own knowledge, information and belief.

Robert T. Bennett

SUBSCRIBED and SWORN to before me this 26th day of September, 2008

NOTARIAL SEAL STATE OF OHIO

KARI BOWIE HERTEL
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

Kari B. Hertel

Notary Public