IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

4:06 CV 2546

Case No.: _____

Judge: _____

MAG. JUDGE GALLAS

JUDGE GWIN

TED STRICKLAND,
320 North Market Street
Lisbon, Ohio 44432

Plaintiff,

vs.

J. KENNETH BLACKWELL,
In his Official Capacity as Ohio
Secretary of State,
180 East Broad Street, 6th Floor
Columbus, Ohio 43215

and

THE COLUMBIANA COUNTY BOARD
OF ELECTIONS,
41 North Park Avenue
Lisbon, Ohio 44432

and

LARRY BOWERSOCK,
In his Official Capacity as
Chairman of the Columbiana County
Board of Elections,
41 North Park Avenue
Lisbon, Ohio 44432

and

JERRY J. WARD,
In his Official Capacity as a
Member of the Columbiana County
Board of Elections,
41 North Park Avenue
Lisbon, Ohio 44432

and

FILED
2006 OCT 23 PM 1:39
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

ORIGINAL AND 6 COPIES OF COMPLAINT WITH
AND MAGISTRATE CONSENT FORM ISSUED TO 6 COPIES OF SUMMONS
COUNSEL FOR PLAINTIFF ON 10-23-06
Receipt # 4466000305 $350.00

DENNIS C. JOHNSON,
In his Official Capacity as a
Member of the Columbiana County
Board of Elections,
41 North Park Avenue
Lisbon, Ohio 44432

and

ALFRED S. FRICANO,
In his Official Capacity as a
Member of the Columbiana County
Board of Elections,
41 North Park Avenue
Lisbon, Ohio 44432

Defendants.

VERIFIED COMPLAINT

Introduction

1. This is an action for injunctive relief seeking to enjoin actions of the Defendant Secretary of State and Defendant Columbiana County Board of Elections which constitute violations by the Defendants of Plaintiff's rights 1) guaranteed by the First Amendment to the United States Constitution and 42 U.S.C. §1983 to seek the elective office of governor for state of Ohio, and of freedom of speech and association; 2) to his right of equal protection guaranteed by the Fifth and Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 on account of the fact that he is being treated differently than the other electors of Columbiana County and similarly situated candidates for elective office because his opponent is the current Secretary of State; and 3) for redress of deprivations of protected interests without due process of law as guaranteed by the Fifth and

Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, as well as Article I, Section 16 of the Ohio Constitution.

Jurisdiction and Venue

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1343, and 1367. This Court has jurisdiction over the Plaintiff's state law claims pursuant to its supplemental jurisdiction.

3. This Court has venue over this action pursuant to 28 U.S.C. §1391(b).

Parties

4. Plaintiff, Ted Strickland, is a resident of Columbiana County, Ohio and is a duly elected member of the United States House of Representatives. Plaintiff is the duly certified candidate from the Democratic Party for the 2006 election for the office of Governor of the state of Ohio.

5. Defendant, J. Kenneth Blackwell is the duly elected Secretary of State of the state of Ohio. Defendant Blackwell is the duly certified candidate from the Republican Party for the 2006 election for the office of Governor of the state of Ohio. Defendant Blackwell is sued in his official capacity as Secretary of State. At all times material Defendant Blackwell was acting under color of state law.

6. Defendant Columbiana County Board of Elections is the duly constituted and appointed Board in the County of Columbiana with powers set forth in Ohio Rev. Code § 3501.11. At all times material the Defendant was acting under color of state law.

7. Defendant Larry Bowersock is a duly appointed member of the Defendant Columbiana County, Ohio Board of Elections and serves as the chairperson for

the Board. Defendant Bowersock is a registered Democrat. Defendant Bowersock is sued in his official capacity and at all times material was acting under color of state law.

8. Defendant Jerry C. Ward is a duly appointed member of the Defendant Columbiana County Board of Elections. Defendant Ward is a registered Republican. Defendant Ward is sued in his official capacity and at all times material was acting under color of state law.

9. Defendant Dennis C. Johnson is a duly appointed member of the Defendant Columbiana County Board of Elections. Defendant Johnson is a registered Democrat. Defendant Johnson is sued in his official capacity and at all times material was acting under color of state law.

10. Defendant Alfred S. Fricano is a duly appointed member of the Defendant Columbiana County Board of Elections. Defendant Fricano is a registered Republican. Defendant Fricano is sued in his official capacity and at all times material was acting under color of state law.

Facts

11. On or about November, 1992 Plaintiff Strickland was elected to serve as a member of the United States House of Representatives from the 6th Congressional District located in southern and eastern Ohio. Plaintiff Congressman Strickland was again elected to serve the 6th Congressional District in November, 1996, and thereafter he has continuously served as a representative in the United States Congress.

12. During the time that Plaintiff Congressman Strickland was serving in the United States House of Representatives since approximately 2003, he has maintained a residence located at 320 Market Street North, Lisbon, Ohio, 44432, which is located in Columbiana County, Ohio.

13. During the time that Plaintiff Congressman Strickland was serving in the United States House of Representatives since approximately 2003, he continued to vote in Columbiana County, Ohio using his aforementioned 320 Market Street residence address. A copy of Plaintiff's recent voting record is attached as Exhibit "A".

14. On or about January 26, 2006, Plaintiff Strickland filed his Declaration of Candidacy stating his desire to be a candidate for nomination to the office of Governor as a member of the Democratic Party. Plaintiff stated that he was a qualified elector and that his voting residence was 320 Market Street North, Lisbon, Ohio 44432. A copy of Plaintiff's Declaration of Candidacy is attached as Exhibit "B".

15. Just 34 days before the general election for governor, on October 4, 2006, an alleged elector from Columbiana County, Ohio filed a Challenge of Right to Vote and Correction of Registration List, pursuant to O.R.C. § 3503.24 challenging Plaintiff Strickland's right to vote in the Lisbon Village North precinct in Columbiana County, Ohio. A copy of the Challenge is attached as Exhibit "C".

16. Defendant Bowersock, chairman of the Defendant Columbiana County, Ohio Board of Elections, on Tuesday October 10, 2006 scheduled a meeting of the Defendant Board of Elections and a hearing for Saturday, October 14, 2006. The

Saturday date was chosen in order to provide the challenger, Plaintiff Strickland, and the public the requisite three days notice prescribed by O.R.C. § 3503.24, and to insure that the hearing was scheduled within the ten (10) day period prescribed by Ohio law.

17. Upon learning from Defendant Fricano, that Defendant Fricano could not attend the October 14, 2006 meeting and hearing due to his vacation plans, Defendant Bowersock rescheduled the meeting for October 12, 2006 but did not reschedule the October 14, 2006 hearing of the Defendant Board of Elections because O.R.C. §3503.24 mandates that the hearing be held within 10 days of receipt of the challenge.

18. Pursuant to O.R.C. § 3503.24, the Defendant Board was authorized to determine at the October 12, 2006 meeting whether to accept the challenge, deny the challenge, or whether a further hearing on the merits was necessary.

19. The Defendant Columbiana County Board of Elections convened in special session on Thursday, October 12, 2006 at 2:00 p.m. in the Board's office located at 41 North Park Avenue in Lisbon, Ohio. All four of the Defendant Board members were present as were the Director, Deputy Director, and an Assistant Columbiana County Prosecutor, Nicholas Barborak. A copy of the minutes of the meeting are attached as Exhibit "D".

20. Myke Clarett, an employee of the Ohio Secretary of State's office, was also present at the meeting "as an observer". Defendant Chairperson Bowersock did not request nor invite Mr. Clarett to attend.

21. Upon information and belief, no employees of the Ohio Secretary of State's office had previously attended meetings of the Defendant Board of Elections.

22. During the meeting Defendant Fricano made a motion to deviate from Ohio election law, Chapter 35 of the Ohio Revised Code, so that the Board could consider Ohio tax law in resolving the question of Plaintiff's residency for voting purposes.

23. Assistant Prosecutor Barborak advised the Defendant Board that it should adhere to the statutes contained in Chapter 35 of the Ohio Revised Code, and that it would be improper to consider statutes that do not pertain to matters related to elections and voting requirements.

24. Despite the advice of Assistant Prosecutor Barborak, the Defendant Board decided to take a vote on the motion described in paragraph 21 above. The vote was tied, and therefore there was no resolution of the motion.

25. The Defendant Board also considered a motion to admit *pro hac vice* out-of-state counsel for the complaining elector. Once again, Assistant Prosecutor Barborak advised the Board that he was not aware of any authority allowing the Board to make a decision related to regulating the practice of law in the state of Ohio because that is a function reserved to the courts.

26. Despite the advice of Assistant Prosecutor Barborak, the Defendant Board decided to take a vote on the motion described in paragraph 24 above. The vote was tied, and therefore there was no resolution of the motion.

27. During the October 12, 2006 meeting, Defendant Johnson made a motion to dismiss the challenge regarding Plaintiff Strickland's registration filed by Ms.

Long based upon a review of the Defendant Board's records, a procedure and disposition specifically provided by O.R.C. § 3503.24.

28. While the minutes are unclear, during the meeting, Defendant Fricano claimed that he had a motion pending to proceed to hold a hearing on the merits of the challenge. The minutes do not reflect that Defendant Fricano's *motion* ever received a seconding vote.

29. During the October 12, 2006 meeting, since all previous motions were tied, deadlocked, and therefore unresolved, Defendant Ward stated that the Board should call the Secretary of State. Mr. Clarett stated, without being requested to do so, that he would call the Secretary of State for advice on how to proceed.

30. Following a recess, the Defendant Board decided to vote on both the motion to deny the challenge and the motion to continue the meeting in order to hold the hearing. Both motions resulted in the same tie vote. Mr. Clarett informed the Defendant Board that the Defendant Ohio Secretary of State's office advised that the tie votes should be submitted to the Ohio Secretary of State in accordance with the standard procedure. That procedure, contained in a directive of the Defendant Ohio Secretary of State and in the Board of Elections Manual for the board members, provides that the members are to submit written arguments in support of their votes within fourteen (14) days of the tie vote.

31. The Board voted to adjourn and send the results of the motion votes to the Defendant Ohio Secretary of State with a request to break the ties pursuant to O.R.C. § 3501.11. At the Defendant Ohio Secretary of State's subsequent request, the October 12, 2006 meeting minutes were also forwarded to his office.

32. On the morning of Friday, October 13, 2006, Mr. Clarett called Defendant Bowersock, and for unexplained reasons, informed the Defendant Board to cancel the hearing that was scheduled for October 14, 2006.

33. As a direct result of the telephone call received by the Defendant Board from Mr. Clarett, the Defendant Board cancelled the hearing, and therefore failed to conduct the hearing within the ten day period mandated by O.R.C. § 3501.11. Summary of call attached as Exhibit "E".

34. Upon receipt of the request to "break" the tie votes of the Defendant Columbiana County Board of Elections, Defendant Blackwell stated and admitted that he had a conflict of interest since he was Plaintiff Strickland's Republican opponent.

35. Despite Defendant Blackwell's recognition of the obvious conflict of interest, he instructed another high ranking member of his office to exercise the "tie-breaking" votes, thereby intentionally failing to cure and perpetuating the conflict of interest.

36. Upon information and belief, and unknown to Defendants Bowersock and Johnson, Defendants Ward and Fricano, the Republican members of the Defendant Board of Elections submitted written arguments in support of their positions to the Ohio Secretary of State.

37. Defendants Bowersock and Johnson intended to submit their written arguments in support of their votes to the Defendant Ohio Secretary of State in accordance with the Ohio Secretary of State's directive.

38. Three days after the mandatory deadline for holding the O.R.C. § 3503.24 hearing, on October 17, 2006, without waiting for Defendants Bowersock and Johnson to submit their written arguments as permitted by Defendant Ohio

Secretary of State's directive, Defendant Blackwell's office sent a letter to the Defendant Columbiana County Board of Elections purporting to "break" the tie votes. Attached as Exhibit "F".

39. Without citing any authority conferring upon the Ohio Secretary of State the ability to regulate the practice of law in the state of Ohio, a matter within the province of the Ohio Supreme Court, Defendant Blackwell's office determined that the Defendant Columbiana Board of Elections should have admitted *pro hac vice*, the complaining elector's out-of-state attorney.

40. Ignoring the law applicable to representatives of Congress, and the law requiring that the O.R.C. § 3503.24 hearing must be held within ten days of the date of the complaint being filed, Defendant Blackwell's office overruled the motion to dismiss the complaint and ruled that the hearing was to go forward, even though it was no longer timely, and consequently the Defendant Board lacked jurisdiction to proceed.

41. The Defendant Secretary of State's office totally ignored the provisions of O.R.C. §3503(G) which provides that: "[I]f a person removes from this state to engage in the services of the United States government, the person shall not be considered to have lost the person's residence in this state during the period of such service, and likewise should the person enter the employment of the state, the place where such person resided at the time of the person's removal shall be considered to be the person's place of residence". Likewise, a 1939 Ohio Attorney General Opinion interpreting the nearly identical predecessor statute opining that a person who has removed to the District of Columbia to engage in

government service shall be permitted to vote at the place where he resided at the time of such removal, was ignored by the Defendant Secretary of State's office.

42. The October 17, 2006, "tie-breaking" letter from the Defendant Secretary of State's office, despite acknowledging and admitting that the Defendant Columbiana County Board of Elections' action was defective because the entire challenge process including the hearing on the merits of the challenge must be completed within ten days, the Defendant Blackwell's office nevertheless instructed the Defendant Board to proceed even though the Board now lacks jurisdiction to take action because the time for holding the hearing has lapsed.

43. Upon information and belief, on October 19, 2006, agents of the Defendant Blackwell's office instructed the Defendant Board of Elections to proceed with the hearing on the merits of the challenge even though it lacks authority to do so, and to further ignore the three day notice provision which must be given before the hearing can proceed.

44. Plaintiff has now been informed that the hearing on the merits of the challenge will be held on Tuesday, October 24, 2006 before the Defendant Board of Elections. Neither Plaintiff nor his counsel, who have entered an appearance, have received official notice of this hearing.

45. In connection with the hearing and despite having no relevance, Defendants, at the request of the challenger, have attempted to subpoena confidential municipal tax returns filed with the Village of Lisbon by Plaintiff and his spouse. Letter from Village Solicitor attached as Exhibit "G".

46. On October 20, 2006, Plaintiff presented himself at the Respondent Board of Elections and requested the opportunity to vote. Plaintiff was provided with an absentee ballot on which he voted. In addition, he provided all necessary information to be written on the outside of the absentee ballot.

47. Pursuant to O.R.C. § 3503.24 if a challenge is upheld, the elector's registration "shall be cancelled" without providing an opportunity to file a change of address to another residence.

48. A registered elector whose registration is not cancelled pursuant to O.R.C. § 3503.24 may lawfully file a change of address to another residence in the same county or another county prior to and on election day and vote in the election.

49. The actions of the Defendants are willful, wanton, and malicious, and taken in bad faith, and without any rational reason or justification.

50. The actions of the Defendants, unless enjoined, will cause the Plaintiff irreparable harm for which Plaintiff lacks an adequate remedy at law.

First Claim for Relief

51. Paragraphs 1 through 50 are realleged and incorporated herein as if fully rewritten herein.

52. The actions of the Defendants constitute a violation of Plaintiff's rights to freedom of speech, freedom of association, and are in retaliation for Plaintiffs protected political activities in violation of the First Amendment to the United States Constitution and/or 42 U.S.C. § 1983.

Second Claim for Relief

53. Paragraphs 1 through 52 are realleged and incorporated herein as if fully rewritten herein.

54. The actions of the Defendants have treated the Plaintiff differently than similarly situated individual electors of Columbiana County and similarly situated candidates for elective office because his opponent is the current Secretary of State in violation of his rights to equal protection guaranteed by the equal protection clause contained in the Fifth and Fourteenth Amendments to the United States Constitution and/or 42 U.S.C. § 1983.

Third Claim for Relief

55. Paragraphs 1 through 54 are realleged and incorporated herein as if fully rewritten herein.

56. The actions of the Defendants constitute an unlawful deprivation of Plaintiff's protected interests without due process in violation of Plaintiff's rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and/or 42 U.S.C. § 1983.

Fifth Claim for Relief

57. Paragraphs 1 through 56 are realleged and incorporated herein as if fully rewritten herein.

58. Cancellation of Plaintiff's registration under O.R.C. § 3503.24 without providing Plaintiff an opportunity to file a change of address to another residence violates Plaintiff's rights guaranteed by the First, Fifth and Fourteenth Amendments to the United States Constitution and/or 42 U.S.C. § 1983.

Sixth Claim (State Law) for Relief

59. Paragraphs 1 through 58 are realleged and incorporated herein as if fully rewritten herein.

60. The actions of the Defendants constitute an unlawful deprivation without due process in violation of Plaintiff's rights protected by Article I, Section 16 of the Ohio Constitution.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

a) A Temporary Restraining Order, preliminary, and permanent injunction enjoining Defendants from violating Plaintiff's constitutional rights by proceeding with the O.R.C. §3503.24 hearing on the merits of the challenge;

b) An award of Plaintiff's reasonable attorneys' fees and costs;

c) Any other relief which this Court deems just and equitable.

Respectfully submitted,

THE BRUNNER FIRM CO., L.P.A.

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VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF NOBLE)

Ted Strickland, being first duly cautioned and sworn, deposes and states that he is familiar with and has personal knowledge of the facts referred to in this Complaint; that he read the foregoing Complaint; and that said facts and allegations are true to the best of his knowledge, information, observation, and belief.

Ted Strickland

Ted Strickland

Sworn to before me and subscribed in my presence this 23rd day of October 2006.

Notary Public
MICHAEL S. KOLMAN
LIFETIME COMMISSION