

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

Derek Hamilton et al., : Case No. 1:08-cv-02546
Plaintiffs, :
vs. : Judge Donald Nugent
Ashland County Board of Elections, et al., :
Defendants. :

**Motion to Stay Dismissal of Plaintiffs' Complaint
and to Order Delivery of Provisional Ballots to Plaintiffs**

Pursuant to Fed. R. Civ. P. 62(c), Plaintiffs move to stay this Court's Order dismissing Plaintiffs' Complaint in order to protect their fundamental right to vote. Plaintiffs also move this Court to order the Ashland County Board of Elections to supply Plaintiffs with provisional ballots before 5:00 p.m. on Monday, November 3, 2008, so that each Plaintiff's vote will be lawfully preserved while the appeal process is underway in this matter. Due to the obvious time constraints inherent in this issue, Plaintiffs hereby request a ruling by 11:00 a.m. Monday, November 3, 2008. A Memorandum of Law in support of this Motion is attached. A proposed Order is also attached as Exhibit A.

Respectfully submitted,

/s/David A. Singleton
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**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION TO STAY AND TO ORDER
DELIVERY OF PROVISIONAL BALLOTS**

Plaintiffs, who remain incarcerated in the Mohican Juvenile Correctional Facility in Ashland County, move to stay this Court's Order dismissing the Complaint and effectively denying their right to vote in the upcoming election on November 4, 2008. Plaintiffs will appeal the court's decision at 11:00 a.m. on Monday, November 3, 2008. Because the dismissal of this matter implicates the fundamental right to vote, ensuring that Plaintiffs' votes are preserved during the appeal process is particularly crucial. By staying the dismissal of the Complaint pursuant Fed. R. Civ. P. 62(c), and ordering the Ashland County Board of Elections to promptly provide provisional ballots for each Plaintiff, the Court will ensure that Plaintiffs' sacred right to vote is protected during the appeal process.

Ohio law allows individuals who are challenged at the polls to cast provisional ballots. See R.C. § 3505.181(A)(7). Once the individual casts a provisional ballot, there are safeguards in place pursuant to R.C. §§ 3505.181(B)(4), 3505.181(B)(7), and 3505.181(B)(8)(b), to ensure that this ballot is only counted after the individual is determined to be eligible within a ten day window. In this case, the statutory ten-day period will provide the Sixth Circuit ample time to determine whether Plaintiffs' vote will lawfully count.

Providing Plaintiffs with provisional ballots pending the outcome of this appeal presents no risk of diluting the voting pool or other harm to the electoral process because there are stringent procedural safeguards in place that will prevent the provisional ballots from being counted until this matter is resolved on appeal. Not only will these provisional ballots protect the votes of Plaintiffs, permitting these young men to vote, even

provisionally, will make certain that each knows that his right to vote is being protected and will instill in each the pride that comes with casting a ballot in this historic election.

CONCLUSION

The public interest is furthered when all citizens are guaranteed the fundamental right to vote. The Court should grant Plaintiffs' request for a stay of the dismissal of the Complaint and should promptly order that the Ashland County Board of Elections deliver provisional ballots to Plaintiffs no later than 5:00 pm on Monday, November 3, 2008.

Respectfully submitted,

/s/David A. Singleton
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Stay Dismissal of Plaintiffs' Complaint and to Order Delivery of Provisional Ballots to Plaintiffs* and the attached proposed order were filed electronically on November 2, 2008. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/DAVID A. SINGLETON
David A. Singleton