

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

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

MOTION FOR A TEMPORARY RESTRAINING ORDER

Pursuant to Fed. R. Civ. P. 65(b), Plaintiffs move for a Temporary Restraining Order to protect their fundamental right to vote. A memorandum of law in support of this Motion is attached.

Respectfully submitted,

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MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR A TEMPORARY RESTRAINING ORDER

I. Introduction

Plaintiffs, who are incarcerated in the Mohican Juvenile Correctional Facility in Ashland County (“Mohican”), seek emergency relief to block the Ashland County Board of Elections (“Board”) from denying them the right to vote in the upcoming election on November 4, 2008.

Plaintiffs are eighteen years or older and are eligible to vote. Each resides at the Mohican Juvenile Correctional Facility in Ashland County, Ohio (“Mohican”). Each registered to vote by the October 6, 2008 deadline. Each will have resided there for more than 30 days before the November 4, 2008 election. None are scheduled to be released before the election. Accordingly, they are each entitled to vote in Ashland County.

On October 15, 2008, a local resident filed a challenge to Plaintiffs’ voter registrations, claiming that they should not be allowed to vote in Ashland County because they were only residing there temporarily. The Board of Elections scheduled a challenge hearing for October 24, 2008. Plaintiffs, however, did not receive notice of the hearing until October 23, 2008, the day before. Because they are incarcerated in a secure facility, Plaintiffs were unable to obtain court orders to allow them to attend the hearing, or to obtain the assistance of counsel to represent them at the hearing.

Despite the fact that not a single Plaintiff was in attendance, the Board proceeded to hold this hearing and determined that Plaintiffs were ineligible to vote pursuant to R.C. 3503.02, the default rule for determining residence. But, the Board failed to consider that all the Plaintiffs are eligible to vote pursuant to R.C. § 3503.04 which requires inmates of public institutions to register in the county in which the institution is located. Had plaintiffs been afforded an opportunity to attend the hearing, they would have informed the Board of their right to register in

Ashland County. Instead, the Board voted to remove the plaintiffs from the registration list and deprive them of their fundamental right to vote.

II. Statement of the Facts

A. Ohio Registration Laws

To vote in a general election in Ohio, an individual must register thirty days before the election and reside in the county in which he seeks to vote. R.C. § 3503.01. In order to qualify to register, an individual need only be a citizen, eighteen years old, “and who, if he continues to reside in the precinct until the next election, will at that time have fulfilled all the requirements as to length of residence to qualify him as an elector.” R.C. § 3505.07.

Ohio has three statutory provisions to determine the county of residence. The default rules for determining residence are found in R.C. § 3503.02. Additionally, Ohio has two exceptions to the default rule, one for inmates of soldiers’ homes and one for inmates of public or private institutions. R.C. § 3503.03; R.C. § 3503.04. These exceptions mandate that these inmates “shall have their lawful residence in the county, city, village and township in which said institution is located...,” provided the inmates are “qualified as to age and residence within the county....” R.C. § 3503.03; R.C. § 3503.04. Thus, inmates of soldiers’ homes, public, and private institutions who are eighteen years old and reside in the precinct at least thirty days prior to the election, shall register in the county where those institutions are located.

Ohio law allows a qualified voter to challenge the right to vote of any registered voter and seek a cancellation of his right to vote, but the challenge “shall be filed with the board on a form prescribed by the Secretary of State and shall be signed under penalty of election falsification.” R.C. § 3503.24. When a proper challenge is filed, a county board of elections is required to set a hearing and send notice to the challenged voter at least three days before the

hearing. *Id.* A challenge may be filed to question whether the voter has registered in the correct county.

B. The Plaintiffs.

Derek Hamilton

Plaintiff Derek Hamilton is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of Derek Hamilton at ¶1, attached hereto as Exhibit 1). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Hamilton registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Hamilton explains the importance of his voting rights as follows: “My voting rights are very important to me – especially now that I have a young son. There are a lot of issues that matter to me and my family and it is very important to me that I make my voice be heard by voting.” *Id.* at ¶6.

Xavier Brock

Plaintiff Xavier Brock is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of Xavier Brock at ¶1, attached hereto as Exhibit 2). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Brock registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Brock explains the importance of his voting rights as follows: “It is very important that I be able to vote. This is my first election and I am concerned about the future of the country. I want my future to be bright. Some day I hope to own a business. Who the president is could impact my life and whether I will be able to achieve my dreams.” *Id.* at ¶6.

David Lee Sweazy

Plaintiff David Lee Sweazy is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of David Lee Sweazy at ¶1, attached hereto as Exhibit 3). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Sweazy registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Sweazy explains the importance of his voting rights as follows: “I really want to vote. I am worried about gas prices and high food costs. I am worried about my family. I want my voice to be heard.” *Id.* at ¶6.

Chevin Joseph Rought

Plaintiff Chevin Joseph Rought is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of Chevin Joseph Rought at ¶1, attached hereto as Exhibit 4). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Rought registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Rought explains the importance of his voting rights as follows: “I want to vote for a couple of important reasons. First, I want to make my voice heard. Second, I just recently had a son. When my boy is old enough to understand, I want to tell him that I voted in my first election. I want to set an example for him to follow when he is old enough to vote.” *Id.* at ¶6.

Javon D. Patton

Plaintiff Javon D. Patton is a nineteen-year-old United States citizen who resides at Mohican. (Declaration of Javon D. Patton at ¶1, attached hereto as Exhibit 5). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election.

Id. He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Patton registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Patton explains the importance of his voting rights as follows: “Voting is a big part of being an American. I want to vote so that I can make my voice heard on how the country should be run.” *Id.* at ¶7.

Jeremiah M. Ramos

Plaintiff Jeremiah M. Ramos is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of Jeremiah M. Ramos at ¶1, attached hereto as Exhibit 6). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Ramos registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Ramos explains the importance of his voting rights as follows: “I want to vote because this is an important election. I keep hearing that the presidential election could come down to Ohio and that it could be close. I believe that every vote matters. I want to vote and have my voice heard.” *Id.* at ¶6.

Jabrail A. Wofford

Plaintiff Jabrail A. Wofford is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of Jabrail A. Wofford at ¶1, attached hereto as Exhibit 7). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Wofford registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Wofford explains the importance of his voting rights as follows: “People I respect tell me that every vote matters and that I shouldn’t let my opportunity to vote go to waste. That’s why I want to vote.” *Id.* at ¶6.

Rameon J. Sumlin

Plaintiff Rameon J. Sumlin is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of Rameon J. Sumlin at ¶1, attached hereto as Exhibit 8). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Sumlin registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Sumlin explains the importance of his voting rights as follows: “Voting is important to me because there are not too many people in my family who take the opportunity to vote. I feel that because I am of age I should vote. Voting gives me the chance to express my views about who should run the country. Voting is an important responsibility.” *Id.* at ¶6.

James Mack

Plaintiff James Mack is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of James Mack at ¶1, attached hereto as Exhibit 9). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Mack registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Mack explains the importance of his voting rights as follows: “I really want to vote to make a difference and to have my voice heard. Voting is my right.” *Id.* at ¶7.

Markus H. Barrett

Plaintiff Markus H. Barrett is over eighteen years old and is a United States citizen. (Declaration of Markus H. Barrett at ¶1, attached hereto as Exhibit 10). He resides at Mohican. *Id.* He will have resided at Mohican in excess of thirty days immediately before the November, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Barrett registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* ¶2.

Plaintiff Barrett explains the importance of his voting rights as follows: “It is very important to me that I vote on November 4, 2008 because I want to make a difference.” *Id.* at ¶7.

Raymond L. Welcher

Plaintiff Raymond L. Welcher is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of Raymond L. Welcher at ¶1, attached hereto as Exhibit 11). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Welcher registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Welcher explained the importance of his voting rights as follows: “I really want to vote to have my say in how society should change.” *Id.* at ¶6.

Nicholas M. Seefong

Plaintiff Nicholas M. Seefong is a twenty-year-old United States citizen who resides at Mohican. (Declaration of Nicholas M. Seefong at ¶1, attached hereto as Exhibit 12). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Seefong registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Seefong explains the importance of his voting rights as follows: “I want to vote because I will be released and I would like to have a voice and opinion about who leads this country since I will be impacted by his decisions and policies.” *Id.* at ¶6.

Taronn L. Allen

Plaintiff Taronn L. Allen is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of Taronn L. Allen at ¶1, attached hereto as Exhibit 13). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Allen registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Allen explains the importance of his voting rights as follows: “I really want to vote. Now that I am old enough, I realize how important voting is. I’ve been paying attention to the election and want to vote.” *Id.* at ¶6.

Troy Tomlin

Plaintiff Troy Tomlin is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of Troy Tomlin at ¶1, attached hereto as Exhibit 14). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Tomlin registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Tomlin explains the importance of his voting rights as follows: “Because I am 18, I have the right to vote. Voting is something that is very important to me.” *Id.* at ¶7.

Nick S. Mallison

Plaintiff Nick S. Mallison is an eighteen-year-old United States citizen, who resides at Mohican. (Declaration of Nick S. Mallison at ¶1, attached hereto as Exhibit 15). He will have

resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Mallison registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Mallison explains the importance of his voting rights as follows: “I want to vote because one vote can make a difference. I want to be a part of deciding who runs the country. Now that I’ve turned eighteen, I want to make my voice heard by voting.” *Id.* at ¶6.

Roget Carr

Plaintiff Roget Carr is an eighteen-year-old United States citizen who resides at Mohican. (Declaration of Roget Carr at ¶1, attached hereto as Exhibit 16). He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. *Id.* He is not scheduled to be released before November 4, 2008. *Id.* Plaintiff Carr registered to vote in Ashland County before the October 6, 2008 deadline. *Id.* at ¶2.

Plaintiff Carr explains the importance of his voting rights as follows: “I want to vote because my opinion is just as important as anyone else’s. Now that I am eighteen, I want to help choose who runs the country.” *Id.* at ¶6.

C. The Deprivation of Plaintiffs’ Voting Rights.

Shortly before the voting registration deadline, The Ohio Justice and Policy Center (“OJPC”) organized a lawful voter registration drive within DYS facilities. (Slagle Declaration at ¶7). OJPC staff and volunteers registered youth at the following facilities: Indian River Juvenile Correctional Facility in Stark County; Marion Juvenile Correctional Facility in Marion County; Ohio River Valley Correctional Facility in Scioto County; Circleville Juvenile Correctional Facility in Pickaway County; Scioto Juvenile Correctional Facility in Delaware County; and Mohican Juvenile Correctional Facility in Ashland County. *Id.* To the knowledge

of Plaintiffs' counsel, only the youth from Mohican have had their registrations cancelled on the alleged basis that they reside within the county only temporarily. *Id.*

On October 15, Michael Barrett, an alleged registered voter in Ashland County, filed a Challenge to Registered Voters as Unqualified Electors with the Board questioning whether the Plaintiffs' were residents of Ashland County. (Barrett Challenge, attached as Exhibit A to the Declaration of Margie Slagle, attached hereto as Exhibit 17). Specifically, the Challenge alleged that Plaintiffs were not residents of Ashland County pursuant to R.C. § 3503.02 (A) and (C) because they entered Ashland County on a temporary basis and had no intention of making Ashland County their permanent residence. *Id.*

Pursuant to R.C. § 3503.24, the Board scheduled a hearing for October 24, 2008, to determine whether Barrett's challenge should be granted. (Hamilton Declaration at ¶3). However, Plaintiffs, all of whom received the notice on October 23, 2008, were not provided sufficient notice to enable them to seek attorneys and a court order allowing them to leave the facility. *See* Plaintiffs' Declarations (Hamilton Declaration at ¶¶3-4; Brock Declaration at ¶¶3-4; Sweazy Declaration at ¶¶3-4; Rought Declaration at ¶¶3-4; Patton Declaration at ¶¶4-5; Ramos Declaration at ¶¶3-4; Wofford Declaration at ¶¶3-4; Sumlin Declaration at ¶¶3-4; Mack Declaration at ¶¶4-5; Barrett Declaration at ¶¶4-5; Welcher Declaration at ¶¶3-4; Seefong Declaration at ¶¶3-4; Allen Declaration at ¶¶3-4; Tomlin Declaration at ¶¶4-5; Mallison Declaration at ¶¶3-4; Carr Declaration at ¶¶3-4). Moreover, the Board did not issue subpoenas compelling Plaintiffs' attendance. (Slagle Declaration at ¶6). Consequently, Plaintiffs were unable to attend the hearing.

At the hearing, the Board heard only from Barrett, who testified that Plaintiffs were ineligible to register in Ashland County under the rules for determining residence contained in

R.C. § 3503.02 (A) and (C).¹ (Transcript of Hearing at 4-5, attached to Slagle Declaration as Exhibit B). Specifically, he presumed that Plaintiffs were in the county on a temporary basis only and had no intention to make Ashland County their permanent home. *Id.* Barrett testified: “I would put forth, once they are released from state custody, they will not stay in the area of Mohican Youth Center, or in the county for that matter.” *Id.* at 4. He then dismissively claimed: “they likely don’t even know what county they’re in; and they surely don’t know what part of the county they are in if they do. So, I’m fairly certain that upon questioning, they will tell us that they will not plan on residing in Ashland County once the state releases them from custody.” *Id.* at 5-6.

The Board then sought testimony from the Plaintiffs, presumably to inquire whether they intended to make Ashland County their permanent home. *Id.* at 7-8. When the Board learned that none of the Plaintiffs were present, they proceeded to make their decision without hearing from the Plaintiffs and unanimously voted² that the Plaintiffs were not residents of Ashland County. *Id.* at 9.

III. Argument

A. Plaintiffs Can Demonstrate a Substantial Likelihood of Success.

1. Canceling Plaintiffs Registration without Adequate Notice and a Meaningful Hearing Violates the Due Process Clause of the Fourteenth Amendment.

The Supreme Court has held that “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we

¹ R.C. § 3503.02 (A) states: “That place shall be considered the residence of a person in which the person’s habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.” R.C. § 3503.02 (C) states: “A person shall not be considered to have gained a residence in any county of this state into which the person comes for temporary purposes only, without the intention of making such county the permanent place of abode.”

² Mr. David Samsel was not present for the hearing.

must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S.Ct. 526, (1964). Cancelling an individual’s right to vote, implicates a liberty interest protected by the Due Process Clause of the Fourteenth Amendment. *Bell v. Marinko*, 235 F.Supp.2d 772, 777 (N.D.Ohio 2002). The Due Process Clause requires notice that is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Dusenbery v. United States*, 534 U.S. 161, 168, 122 S.Ct. 694, 151 L.Ed.2d 597 (2002).

The notice that Defendants sent was not calculated to afford the Plaintiffs an opportunity to attend the hearing and present their objections. First, the Plaintiffs received the notice on October 23, only one day before the scheduled hearing. As the Defendants well knew, Plaintiffs are confined to a juvenile facility and cannot freely leave to attend a hearing. Had the Plaintiffs had more time, they could have sought a court order allowing them to attend the hearing. But, a 24 hour notice is not enough time to find attorneys and seek the requisite court orders. The Defendants could have notified Plaintiffs sooner since they received the challenge on October 15. Or the Defendants could have issued subpoenas compelling the Plaintiffs to attend. Instead, the Board sent a late notice that they should have known would not provide adequate time for the Plaintiffs to attend and participate in the hearing in a meaningful way.

Despite the fact that Plaintiffs were not in attendance, the Board proceeded with the hearing. The only substantive testimony the Board considered was from the challenger, Michael Barrett. Barrett alleged that the juveniles were not eligible to vote in Ashland County based on R.C. § 3503.02, the default rule to determine residency. To support this conclusion, he testified that the plaintiffs were temporary residents who had no intention of making Ashland County

their permanent home. He then questioned whether they even realized they were in Ashland County and claimed that: “So, I’m fairly certain that upon questioning, they will tell us that they will not plan on residing in Ashland County once the state releases them from custody.” But no one questioned the plaintiffs regarding their intentions. Instead, the board voted to disenfranchise the Plaintiffs based solely on the musings of Michael Barrett.

To add insult to injury, the Board completely failed to realize that Michael Barrett had applied the wrong residency statute to the Plaintiffs. Plaintiffs are not governed by the default statute. Rather, they are governed by one of the exceptions to the general rule that determines where inmates of a public institution shall register. R.C. § 3503.04 mandates that inmates “shall have their lawful residence in the county, city, village and township in which said institution is located...,” provided the inmates are “qualified as to age and residence within the county....” Plaintiffs meet both of the qualifications as to age and residence within the county. All of the plaintiffs are citizens, eighteen or older, who will have resided in the precinct at least thirty days prior to the election. *See* Section 1, Article V of the Ohio Constitution and R.C. § 3503.07.

Had the plaintiffs been afforded adequate time to seek counsel and participate in the hearing, the Plaintiffs would have informed the Board they were duly registered pursuant to R.C. § 3505.07. But the unconstitutional deprivation of their Due Process Rights has resulted in an erroneous decision by the Board that has unlawfully disenfranchised the Plaintiffs.

2. Canceling Plaintiffs Registration without Violates the Equal Protection Clause of the Fourteenth Amendment.

Plaintiffs are being treated differently than other DYS residents who registered to vote in their county of confinement. To the knowledge of Plaintiffs’ counsel, DYS residents who registered to vote in other counties – specifically, Marion, Scioto, Delaware, Stark County, and

Pickaway Counties – have not had their registrations cancelled. The right of these young voters to vote should not depend on the county where they live.

The Equal Protection Clause of the United States Constitution forbids such a result. Like state poll taxes that have been struck down on equal protection grounds, *see Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 667-668 (1966), Ohio’s unequal application of voter registration requirements for youth incarcerated in DYS facilities wrongfully excludes from the polls those who live in Ashland County. In *Reynolds v. Sims*, the Supreme Court stated, “the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State.” *Reynolds*, 377 U.S. at 561-562.

Thus, Plaintiffs’ are likely to prevail on their Equal Protection claim.

B. Plaintiffs will Suffer Irreparable Harm if Disenfranchised

Plaintiffs seek to protect their right to vote, a right that ranks among the most fundamental in our society. *See, e. g. Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 626 (1969). The Plaintiffs lawfully registered to vote and looked forward to voting for the very first time, yet they will be denied their right to vote on November 4 without court intervention.

As the Sixth Circuit has long recognized, when it comes to infringements of fundamental constitutional rights, courts may find irreparable injury “stem[ming] from... ‘the fear that, if these rights are not jealously safeguarded, persons will be deterred, even if imperceptibly, from exercising those rights in the future.’” *United Food & Commercial Workers Union, Local 1099v. Southwest Ohio Regional Transit Authority*, 163 F.3d 341, 363 (6th Cir. 1998) (holding that infringing upon the union’s First Amendment rights constituted irreparable harm); *see also*

Miller v. Blackwell, 348 F.Supp.2d 916, 922, (S.D.Ohio 2004), *aff'd per curiam*, 388 F.3d 546 (6th Cir. 2004) (finding that because “the Defendants' challenged actions threaten or impair both Plaintiffs' constitutional right to due process and constitutional right to vote, the Court must find that Plaintiffs will suffer an irreparable injury if the temporary restraining order does not issue.”); *Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F.3d 566, 578 (6th Cir.2002) (“[c]ourts have also held that a plaintiff can demonstrate that a denial of an injunction will cause irreparable harm if the claim is based upon a violation of the plaintiff's constitutional rights.”).

For these reasons, tampering with the Plaintiffs right to vote immediately before an election threatens a quintessential form of harm, one courts regularly address through the issuance of injunctive relief.

C. The Injury Plaintiffs Will Suffer Greatly Outweighs any Harm to a Third Party

As discussed above, Plaintiffs will suffer irreparable harm if this order is not granted. Meanwhile, there is no cognizable injury that any third party would suffer if injunctive relief is granted. Any harm to a third party is speculative and unfounded, and therefore outweighed by the irreparable harms Plaintiffs face absent injunctive relief.

D. The Public Interest Favors the Granting of this Order

In the National Voters Registration Act, Congress declared that:

- (1) the right of citizens of the United States to vote is a fundamental right;
- (2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and
- (3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) Purposes

The purposes of this subchapter are--

- (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- (2) to make it possible for Federal, State, and local governments to implement this subchapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- (3) to protect the integrity of the electoral process; and
- (4) to ensure that accurate and current voter registration rolls are maintained.

42 USC § 1873gg.

The public interest is furthered when all citizens are guaranteed the fundamental right to vote.

IV. CONCLUSION

For the reasons discussed above, the Court should grant Plaintiffs' request for a preliminary injunction.

Respectfully submitted,

/s/David A. Singleton

David A. Singleton (#0074556)

Trial Attorney for Plaintiffs

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* Seeking admission pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Temporary Restraining Order* was filed electronically on October 27, 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