

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

DEREK HAMILTON, et al, :  
 :  
 Plaintiffs/Appellants, : Case No. 1:08-CV-02546  
 :  
 v. :  
 :  
 ASHLAND COUNTY BD. OF :  
 ELECTIONS, et al. :  
 :  
 Defendants/Appellees :

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO MOTION TO STAY  
DISMISSAL OF PLAINTIFFS' COMPLAINT AND TO ORDER DELIVERY OF  
PROVISIONAL BALLOTS TO PLAINTIFFS**

Defendants, by and through counsel, now oppose Plaintiffs' Motion to Stay Dismissal of Plaintiffs' Complaint and to Order Delivery of Provisional Ballots to Plaintiffs. (Doc. 17). This Court, after a full evidentiary hearing, determined that Plaintiffs were not properly registered to vote since they are not residents of Ashland County, as they failed to demonstrate any intent to remain in Ashland County, Ohio after they are released from Mohican. A memorandum in support which sets forth the reasons for denying the Plaintiffs' Motion is attached.

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## MEMORANDUM IN SUPPORT

The factors to be considered in determining whether an order should be stayed are the same factors considered in determining whether to issue a temporary restraining order or a preliminary injunction. *Summit Co. Democratic Central and Executive Committee v. Blackwell*, 388 F.3d 547, 550 (6th Cir. 2004). These factors are (1) whether the movant has a “strong” likelihood of success on the merits, (2) whether the movant would otherwise suffer irreparable injury, (3) whether the issuance of a preliminary injunction would cause substantial harm to others, and (4) whether the public interest would be served by issuance of a preliminary injunction. *Id.* The standard of review that the Sixth Circuit would apply in reviewing such a stay order is one of abuse of discretion. *Haman v. J.C. Penny Co.*, Nos. 89-5329, 89-5458, 1990 U.S. App. LEXIS 9979, at \* 19 (6th Cir. June 19, 1990); see also *Hawaii Housing Auth. v. Midkiff*, 463 U.S. 1323, 1324 (1983).

The application of these four factors is in Defendants’ favor. Since the Plaintiffs have *still failed* to submit any evidence whatsoever concerning their intent to remain in Ashland County, Ohio after they are released from Mohican, they have not demonstrated a strong likelihood of success on the merits. As Plaintiffs indicated, they intend to appeal the Sixth Circuit’s decision today at 11:00 a.m. That will leave the Sixth Circuit with until the polls close at 7:00 p.m. on Tuesday, November 4, 2008 to reverse this Court’s decision if it sees fit to do so. Thus, Plaintiffs will not suffer irreparable harm. Should this Court grant the Plaintiffs’ Motion, irreparable harm would be caused to the Ashland County BOE, which would be forced to expend precious staff resources the day before this Presidential election (which is projected to have a record voter turnout) assisting Plaintiffs who the OJPC registered in the wrong county *instead* of assisting the voters in

Ashland County who were properly registered. For this same reason, the public interest would not be served by the issuance of the requested order.

Accordingly, Defendants respectfully request that this Court deny the Plaintiffs' Motion to Stay Dismissal of Plaintiffs' Complaint and to Order Delivery of Provisional Ballots to Plaintiffs. (Doc. 17).

Respectfully submitted,

/s/ Jeffrey A. Stankunas

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#### CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2008, a copy of the foregoing was filed in the Northern District of Ohio, Eastern Division. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Jeffrey A. Stankunas

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