

The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the very heart of representative government.

Reynolds v. Sims, 377 U.S. 533, 556 (1964)

The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.

Bush v. Gore, 531 U.S. 98, 104 (2000)

I. PRELIMINARY STATEMENT

1. This is a civil rights action brought to enforce the fundamental right to vote and to uphold the equal dignity owed by the State of Ohio to each voter and each vote. As described herein, the Defendants Secretary of State and Governor and their predecessors have, through a pattern of maladministration, wanton disregard of their duties under Ohio and federal law, and the creation and maintenance of a non-functioning voting system, deprived members of the Organizational Plaintiffs, Individual Plaintiffs, and thousands of others citizens of Ohio of their fundamental Constitutional right to vote and to equal protection of that right.

2. Plaintiffs allege that Defendants are continuing to promulgate and maintain a voting system in Ohio that denies the meaningful and equal exercise of the right to vote by using non-uniform standards, processes, and rules, and that employs untrained or improperly trained personnel, and that has wholly inadequate systems, procedures, and funding necessary to ensure the meaningful and equal exercise of the right to vote. As a direct result, for years the right of all eligible Ohio citizens to cast a meaningful ballot has been severely burdened and, in many cases, denied altogether. Moreover, the severity of the burdens and likelihood of total disenfranchisement that an Ohio voter faces also varies tremendously depending on where a

voter lives – *i.e.* county to county, city to city, and precinct to precinct – due to the maintenance of non-uniform rules, standards, and procedures among the counties and precincts in violation of equal protection. Ohio’s voting system promotes disorderly, confusing, and, ultimately, inequitable elections. The foreseeable result is massive disenfranchisement and unreasonable dilution of the vote, as well as a loss of confidence in the voting system, which, in turn, further disenfranchises by discouraging residents from registering or voting.

3. As the chief executive and election officers of Ohio, Defendants (and their predecessors and successors) are responsible under state law for the administration and oversight of Ohio’s voting system, including ensuring that that system complies with the Constitution and federal law both in design and in execution. Yet, acting under color of state law, Defendants have promulgated and maintained Ohio’s constitutionally and statutorily infirm, defective, and inequitable voting system. Through their repeated administration of elections marked by substantial breakdowns and failures in protecting the right to vote, Defendants have violated and, absent remedial action by this Court, will continue to violate, rights secured to the Plaintiffs and other Ohio citizens by the Fourteenth Amendment, the Help America Vote Act (42 U.S.C. §§ 15301, *et seq.*) (“HAVA”) and by other federal laws.

4. The failings of Ohio’s voting system are not new. They have been well-known to Defendants and their predecessors since at least the early 1970’s. A 1973 General Accounting Office report concluded that the election process in Hamilton County “broke down completely” in November, 1971, and that “thousands of electors were disenfranchised” in Cuyahoga County in May 1972 due to failure to deliver enough machines to the precincts, misprogramming of machines, and the lack of trained personnel. Similar breakdowns were seen in these and other counties throughout Ohio in the 1990’s and during the 2000 election.

5. Against this history, the breakdown and widespread disenfranchisement of thousands of Ohio voters in the November 2004 election was only the most recent, undeniable evidence that Ohio's voting system does not equally or adequately guarantee the fundamental right to vote to Ohio's citizens. In November 2004 alone, it has been estimated that the basic failure to provide sufficient numbers of voting machines (to say nothing of the unreliability of the machines that were provided) disenfranchised tens of thousands of Ohio voters and that approximately 28% of all Ohio voters experienced difficulties in voting.

6. The violations of Constitutional and federal law within Ohio's voting system are pervasive, severe, chronic, and persistent – and will continue absent the declaratory and injunctive relief sought here. The foreseeable, cumulative effects of the non-uniform, non-standard, and completely deficient voting standards, processes, and resources in Ohio has disenfranchised or severely burdened the right to vote of thousands of additional Ohio citizens. Thousands of voter complaints to public officials and voting rights organizations, as well as testimony at public hearings, confirm that this massive disenfranchisement and severe burden on the right to vote in November 2004 was not due to singular or isolated failures, but to widespread, serious, and deeply-rooted failings at the most basic levels in Ohio's voting system: incoherent, inadequate, and inequitably funded systems; non-uniform standards; and inadequate planning and training.

7. The widespread pattern of constitutional infractions across Ohio demonstrates that Defendants are failing to discharge their duties under Ohio and federal law, violating the constitutional rights of thousands of Ohio citizens. For example, a recent report documented “grave concerns” about failures that occurred at every level of the voting process in Lucas County and that affected thousands of eligible voters with respect to the November 2004 election

– all of which were allowed to occur while that county purportedly was subject to special oversight by the Defendant Secretary of State as a result of prior, documented failures to protect the right to vote in Lucas County.

8. This action does not seek to recount the votes or challenge the results of any past elections. This action instead is brought by individual Ohio residents and by non-partisan, voting rights organizations to require Defendants to put in place a competent and fair voting system as required by the Constitution and federal voting rights laws to ensure that every Ohio resident eligible to vote can do so on fair and equal terms and that each eligible vote is fairly and equally counted – no matter where or how it is cast.

II. PARTIES

A. ORGANIZATIONAL PLAINTIFFS

9. Plaintiff League of Women Voters of Ohio (“LWVO”) is a non-partisan organization operating within Ohio and affiliated with the League of Women Voters of the United States. LWVO has over 3,000 members in thirty-seven local branches in twenty-eight counties throughout Ohio. LWVO is dedicated to ensuring that all Ohio citizens have a role in making democracy work, including the free and equal exercise of the fundamental right to vote. In furtherance of this purpose, LWVO conducts non-partisan voter-registration and education efforts. LWVO conducted such efforts prior to the 2004 elections and expects to continue to do so in connection with future elections. LWVO and its members are aggrieved by Defendants’ actions and omissions described in this Complaint because they substantially impede LWVO’s ability to further its goals and institutional purpose of advancing voters’ full and meaningful participation in the electoral process by registering to vote, voting, and having their votes counted on a fair and equal basis and because LWVO’s resources are being diverted and drained by the need to address the voting inequities and irregularities that continue to occur throughout

Ohio. LWVO's members also have been specifically aggrieved by Defendants' actions, which have infringed their fundamental right to vote and to equal protection. It is reasonably anticipated that these or other individual members of LWVO will be similarly aggrieved by Defendants' actions in the future absent injunctive relief. The aggrieved individual members of the LWVO have standing in their individual capacity, but neither the claims asserted nor the relief requested herein requires the participation of LWVO's individual members to vindicate their individual rights.

10. Plaintiff League of Women Voters of Toledo-Lucas County ("Toledo League") is a non-partisan, membership organization operating and with members that reside in Lucas County. The Toledo League is affiliated with the LWVO and with the League of Women Voters of the United States. The Toledo League is dedicated to ensuring the right to the free and equal exercise of the fundamental right to vote. In furtherance of this purpose, the Toledo League conducts non-partisan voter-registration and education efforts. The Toledo League conducted such efforts prior to the 2004 elections and expects to continue to do so in connection with future elections. The Toledo League is aggrieved by Defendants' actions and omissions described in this Complaint because they substantially impede the Toledo League's ability to further its goals and institutional purpose of advancing voters' full and meaningful participation in the electoral process by registering to vote, voting, and having their votes counted on a fair and equal basis and because the Toledo League's resources are being diverted and drained by the need to address the voting inequities and irregularities that continue to occur in Lucas County. The Toledo League's members also have been specifically aggrieved by Defendants' actions, which have infringed their fundamental right to vote and to equal protection. It is reasonably anticipated that these or other individual members of the Toledo League will be similarly aggrieved by

Defendants' actions in the future absent injunctive relief. The aggrieved individual members of the LWVO have standing in their individual capacity, but neither the claims asserted nor the relief requested herein requires the participation of the Toledo League's individual members to vindicate their individual rights.

B. INDIVIDUAL PLAINTIFFS

11. The individual plaintiffs described below are Ohio residents from Lucas and several other Ohio counties who were disenfranchised entirely or severely burdened in attempting to exercise their right to vote in the November 2004 election as a result of Defendants' maintaining non-uniform and wholly inadequate voting rules, systems, and procedures in Ohio. The individual plaintiffs reasonably anticipate that, absent injunctive relief, they will similarly be deprived of or severely burdened in the exercise of the franchise in future elections. The prior and threatened future deprivations of Constitutional and statutory rights suffered by the individual plaintiffs flow from longstanding, systemic breakdowns in the Ohio voting system and are representative of the same or similar deprivations suffered by thousands of other Ohio citizens. Therefore, systemic relief is required, including to ensure promulgation and implementation of adequate, uniform rules and procedures to protect the fundamental right to vote in Ohio regardless of the county or precinct in which a voter lives. The actual and threatened injuries suffered by the individual plaintiffs here, and by the members of the organizational plaintiffs, have been and will continue to be suffered by thousands of other Ohio citizens absent injunctive relief.

12. Plaintiff Darla Stenson is a voter registered in Lucas County. Ms. Stenson has been a registered voter in Ohio for many years and was eligible to vote in the November 2004 election. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, she was disenfranchised in November 2004 through multiple, systemic failures, including with

respect to the maintenance of voter registration records and the provision of adequate and uniform poll worker training. First, even though she is registered to vote and went to her correct polling place in November 2004, Ms. Stenson was told she was not on the voter list. Second, although there were several precincts at her polling location, poll workers never checked to see if her name was on one of the other voter lists. Nor did they suggest that Ms. Stenson might be in the wrong line. Third, a poll worker offered Ms. Stenson a provisional ballot, but did not verify whether Ms. Stenson was in the correct precinct nor tell Ms. Stenson that her ballot would not be counted if cast in the wrong precinct – *i.e.* if she happened to be standing in the wrong line. The poll worker also insisted that Ms. Stenson not seal her provisional ballot. Ms. Stenson's provisional ballot ultimately was not counted because it allegedly was cast in the wrong precinct. As a result, despite being eligible to vote and taking all reasonable steps to exercise her fundamental right, Ms. Stenson was disenfranchised. On information and belief, significant numbers of voters in Lucas County and across Ohio were similarly disenfranchised and, due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel and the inequitable allocation of election personnel and facilities throughout Ohio, the burdens on voters and likelihood of being disenfranchised were substantially greater in Ms. Stenson's county and precinct than in certain others in Ohio. Ms. Stenson has a reasonable basis to believe that, absent injunctive relief, she will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

13. Plaintiff Charlene Dyson is a voter registered in Franklin County. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, she was severely burdened in exercising the right to vote and ultimately disenfranchised in November 2004 through multiple, systemic failures, including with respect to uniform and adequate provision of

accommodations for disabled voters and adequate and uniform poll worker training. Ms. Dyson suffers from debilitating arthritis in both legs. On her physician's orders, she uses an electric wheelchair much of the time. On the morning of November 2, 2004, Ms. Dyson was concerned that she would not be able to walk into her polling place to cast her ballot. On calling the Franklin County Board of Elections, Ms. Dyson was assured that a ballot could be brought to her car so that she could cast her vote. Ms. Dyson was driven to the polling place, Dana Elementary, in a car bearing handicapped license plates. Election officials repeatedly refused Ms. Dyson's sister's requests to allow Ms. Dyson to vote at the curbside, insisted that they were not aware of their obligation to accommodate voters at the curbside (despite being told that the county had confirmed this obligation) and would not do so. Because she was denied access to the vote, Ms. Dyson left the polling place without voting. As a result, Ms. Dyson was disenfranchised. On information and belief, significant numbers of other voters across Ohio were similarly disenfranchised, and due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel throughout Ohio, the burdens on disabled voters and likelihood of their being disenfranchised were materially greater in Ms. Dyson's precinct and county than in certain others in Ohio. Ms. Dyson has a reasonable basis to believe that, absent injunctive relief, she will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

14. Plaintiff Anthony White is a voter registered in Cuyahoga County. Mr. White registered to vote in Cuyahoga County years ago, and was eligible to vote in the November 2004 election. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, Mr. White was disenfranchised in November 2004 through multiple, systemic failures, including with respect to voter registration records, poll worker training, and the casting and counting of

provisional ballots. Prior to the November 2004 election, Mr. White received a card from the Cuyahoga County Board of Elections indicating that he was registered to vote and informing him of his polling location. On election day, Mr. White went to the specified polling location. There were three separate lines at Mr. White's polling location. Mr. White waited in the appropriate line and, upon reaching the front of the line, was informed by poll workers that he was not on the voter list. When Mr. White then checked with poll workers at each of the other lines, he was told each time that his name was not on the voter list. While the poll workers did provide Mr. White with a provisional ballot, they did not call the board of elections to see whether he was registered to vote, inform him that his provisional ballot might not be counted, or provide him with information on how to check whether his provisional ballot was counted. Mr. White cast the provisional ballot that was provided to him. The Cuyahoga County Board of Elections did not count Mr. White's provisional ballot and has no record of Mr. White's efforts to vote in the November 2004 election. Thus, Mr. White was disenfranchised. On information and belief, significant numbers of other voters across Ohio were similarly disenfranchised, and due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel throughout Ohio, the burdens on voters and likelihood of being disenfranchised were materially greater in Mr. White's precinct and county than in certain others in Ohio. Mr. White has a reasonable basis to believe that, absent injunctive relief, he will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

15. Plaintiff Deborah Thomas is a voter registered in Cuyahoga County. Ms. Thomas was eligible to vote in the November 2004 election. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, she was disenfranchised in November 2004 through

multiple, systemic failures, including with respect to voter registration and the casting and counting of provisional ballots. Ms. Thomas has voted at the same location, Valley Forge High School, for almost two decades. When Ms. Thomas attempted to vote there in November 2004, she was told by the poll workers that her name was not on the voter list. The poll workers did not call the Cuyahoga County Board of Elections or take any further steps to check Ms. Thomas' registration status before giving Ms. Thomas a provisional ballot. Ms. Thomas cast the provisional ballot that was given to her. However, the Cuyahoga County Board of Elections did not count Ms. Thomas' ballot and, indeed, has no record of Ms. Thomas' attempt to vote. As a result, Ms. Thomas was disenfranchised. On information and belief, significant numbers of other voters across Ohio were similarly disenfranchised, and due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel throughout Ohio, the burdens on voters and likelihood of being disenfranchised were materially greater in Ms. Thomas' precinct and county than in certain others in Ohio. Ms. Thomas has a reasonable basis to believe that, absent injunctive relief, she will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

16. Plaintiff Leonard R. Jackson is a voter registered in Cuyahoga County. Mr. Jackson was eligible to vote in the November 2004 election. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, he was disenfranchised in November 2004 through multiple, systemic failures, including with respect to voter registration and the casting and counting of provisional ballots. In November 2004, Mr. Jackson attempted to vote at the same polling location where he had voted in past elections. However, Mr. Jackson was told by the poll workers that his name was not on the voter list. The poll workers did not call the Cuyahoga County Board of Elections or take any further steps to check Mr. Jackson's

registration status, but instead gave Mr. Jackson a provisional ballot. Mr. Jackson cast the provisional ballot provided to him. The Cuyahoga County Board of Elections did not count Mr. Jackson's ballot and has no record of Mr. Jackson's attempts to vote. As a result, Mr. Jackson was disenfranchised in November 2004. On information and belief, significant numbers of other voters across Ohio were similarly disenfranchised, and due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel throughout Ohio, the burdens on voters and likelihood of being disenfranchised were materially greater in Mr. Jackson's precinct and county than in certain others in Ohio. Mr. Jackson has a reasonable basis to believe that, absent injunctive relief, he will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

17. Plaintiff Deborah Barberio is a resident of Euclid in Cuyahoga County and was eligible to vote in the November 2004 election. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, she was disenfranchised in November 2004 through multiple, systemic failures, including with respect to voter registration, poll worker training, and the casting and counting of provisional ballots. Ms. Barberio's name appeared on the voter rolls as of August 2004 at the address where she and her husband live. When Ms. Barberio's husband received a voter information card for the November, 2004 election, but Ms. Barberio did not, Ms. Barberio contacted the Cuyahoga County Board of Elections to check whether there was any problem with her registration. She was told there was no problem. However, when Ms. Barberio then went to the precinct listed on her husband's voter registration card on November 2, 2004, she was told she was not on the registration list. At the suggestion of the poll workers, she completed a provisional ballot. Her provisional ballot was not counted because, according to the Board of Elections, she was not registered. Ms. Barberio was disenfranchised. On information

and belief, significant numbers of other voters across Ohio were similarly disenfranchised, and due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel throughout Ohio, the burdens on voters and likelihood of being disenfranchised were materially greater in Ms. Barberio's county than in certain others in Ohio. Ms. Barberio has a reasonable basis to believe that, absent injunctive relief, she will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

18. Plaintiff Mildred Casas is a voter registered in Franklin County. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, she was severely burdened in exercising her fundamental right to vote in November 2004 through multiple, systemic failures, including with respect to poll worker training and the casting and counting of provisional ballots. On November 2, 2004, Ms. Casas went to vote at the Ohio State University Student Union, which was the proper polling location for her address. However, a poll worker told her that the King Avenue United Methodist Church was her proper polling location. Following the poll worker's representation, Ms. Casas went to the King Avenue United Methodist Church, where she asked a poll worker if she was in the proper location. The poll worker there told her that she was not and directed Ms. Casas to yet a third polling location, the Newman Center. Ms. Casas diligently followed that direction. But, when Ms. Casas went to the Newman Center, she found that she was not on the voter rolls there either. The poll workers there offered her a provisional ballot, which Ms. Casas cast. All told, Ms. Casas had to travel to three locations, spend six hours attempting to vote, and was wrongfully denied the right to vote by regular ballot. Although Ms. Casas persevered and did cast a provisional ballot ? albeit in the wrong precinct ? she was severely burdened in the exercise of her right to vote. On

information and belief, significant numbers of other voters across Ohio were similarly burdened, and due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel throughout Ohio, the burdens on voters and likelihood of being disenfranchised were materially greater in Ms. Casas' county than in certain others in Ohio. Ms. Casas has a reasonable basis to believe that, absent injunctive relief, she will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

19. Plaintiff Sadie Rubin is a registered voter and resident of Knox County. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, she was severely burdened in the exercise of her fundamental right to vote in November 2004 through multiple systemic failures, including the inadequate and inequitable allocation of funds, facilities, and election personnel. On November 2, 2004, Ms. Rubin went to vote at her assigned polling place on the campus of Kenyon College. The precinct had two machines for approximately 1,300 voters. During the course of the day, one of those two machines broke down. Ms. Rubin spent over nine hours in line before she was able to vote. Indeed, the last voter at the Kenyon College precinct did not vote until almost 4:00 a.m. on November 3. Ms. Rubin was severely burdened in the exercise of her fundamental right to vote and, but for her extraordinary perseverance and diligence, Ms. Rubin would have been disenfranchised entirely. On information and belief, significant numbers of other voters across Ohio were similarly burdened, and the burdens on voters and likelihood of being disenfranchised were materially greater in Ms. Rubin's precinct and county than in certain others in Ohio. Ms. Rubin has a reasonable basis to believe that, absent injunctive relief, she will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

20. Plaintiff Lena Boswell resides in Cleveland in Cuyahoga County. Ms. Boswell has been living, and registered to vote, at the same address for most of her life, including in November 2000. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, she was severely burdened in exercising her right to vote, and ultimately disenfranchised, in November 2004 through multiple, systemic failures, including with respect to voter registration, poll worker training, and the casting and counting of provisional ballots. In November 2004, Ms. Boswell went to her usual polling place, but was told she was not on the voter list. Ms. Boswell was offered a provisional ballot, which she filled out and cast. She was not told that her provisional ballot might not be counted. Later the same day, Ms. Boswell contacted the Board of Elections and was alternatively informed that she either had been purged from the voting rolls as of 1996 – even though she voted in 2000 – or that her registration information may have been removed when the Board of Elections switched computer systems. The Board of Elections representative told Ms. Boswell that the County was reinstating her registration information. Ms. Boswell was made to understand that her November 2004 provisional ballot would, therefore, be counted. On information and belief, however, according to documents dated November 22, 2004, Ms. Boswell's provisional ballot was not counted as of that date. On information and belief, significant numbers of other voters across Ohio were similarly disenfranchised, and due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel throughout Ohio, the burdens on voters and likelihood of being disenfranchised were materially greater in Ms. Boswell's county than in certain others in Ohio. Ms. Boswell has a reasonable basis to believe that, absent injunctive relief, she will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

21. Plaintiff Chardell Russell is a registered voter residing in Lucas County. Ms. Russell was eligible to vote in the November 2004 election. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, she was severely burdened in exercising her right to vote in November 2004 through multiple, systemic failures, including with respect to poll worker training and the failure to provide adequate voting facilities. On election day, Ms. Russell went to the Iron Workers' Union Hall in Toledo to cast her ballot. Ms. Russell was given a paper ballot, and was directed to fill out her ballot at a table with screens that could be seen over by people walking by and without adequate privacy. After she completed her ballot, Ms. Russell was told that the voting machine was not working, and was told to leave her ballot and that the ballot would be counted later. Ms. Russell was not provided any instructions on how to determine whether her vote had been counted. On information and belief, significant numbers of other voters across Ohio were similarly burdened, and, due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel throughout Ohio, the burdens on voters and likelihood of being disenfranchised were materially greater in Ms. Russell's precinct and county than in certain others in Ohio. Ms. Russell has a reasonable basis to believe that, absent injunctive relief, she will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

22. Plaintiff Dorothy Cooley is a registered voter who resides in Montville Township in Medina County. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, her fundamental right to vote was severely burdened in November 2004 through multiple, systemic failures, including with respect to poll worker training. In the afternoon on November 2, 2004, Ms. Cooley went to vote at the Montville Township Hall. Ms. Cooley was

accompanied by her eight year old son. She and her son were wearing Bush/Cheney 2004 T-shirts. One of the poll workers refused to let her vote unless she either took off or covered her T-shirt. When Ms. Cooley asked the poll worker what legal authority he had to prevent her from voting, the poll worker told her that she could check with the police, who are housed in the same building as the polling place. When the poll worker improperly directed Ms. Cooley to the police, Ms. Cooley became fearful of being arrested, particularly in front of her son. To avoid any potential confrontation with the police, Ms. Cooley reluctantly took off her Bush/Cheney 2004 T-shirt (which was worn over another shirt) and voted. On information and belief, due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel throughout Ohio, the burdens on voters and likelihood of being disenfranchised were materially greater in Ms. Cooley's precinct and county than in certain others in Ohio. Ms. Cooley has a reasonable basis to believe that, absent injunctive relief, she will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

23. Plaintiff Lula Johnson-Ham is a registered voter residing in Toledo, Ohio. Ms. Johnson-Ham registered to vote in Lucas County approximately twenty years ago and was eligible to vote in the November 2004 Election. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, she was severely burdened in exercising her right to vote in November 2004 through multiple, systemic failures, including with respect to poll worker training and the failure to provide adequate voting facilities. When Ms. Johnson-Ham attempted to vote at Keyser Elementary School, she was told that the voting machine was not functioning properly. She was required to place her ballot into a slot on the side of the voting machine and was told by poll workers that her vote would be processed when the machines began functioning

properly. The poll workers did not provide Ms. Johnson-Ham with any information or instructions on how to determine whether her vote was counted. On information and belief, due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel throughout Ohio, the burdens on voters and likelihood of being disenfranchised were materially greater in Ms. Johnson-Ham's precinct and county than in certain others in Ohio. Ms. Johnson-Ham has a reasonable basis to believe that, absent injunctive relief, she will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

23A. Plaintiff Jeanne White is a registered voter residing in Youngstown, Ohio. Ms. White was eligible to vote in the November 2004 election. Due to Defendants' maintenance of Ohio's constitutionally defective voting system, she believes that she may have been disenfranchised in November 2004 through systemic failures involving direct recording electronic (DRE) voting machines. Ms. White cast a vote for president in the November 2, 2004 election at her appropriate polling precinct in Mahoning County, Ohio. White cast her vote on a DRE voting machine, sometimes referred to as a touchscreen voting machine. When she attempted to make her selection, the wrong candidate's name appeared on the screen; the machine "jumped" from her candidate of choice to another. This problem occurred several times. The vote cast by Ms. White may have counted for the wrong candidate. She has not been able to verify her vote or correct the error. On information and belief, significant numbers of voters in Mahoning County and elsewhere in Ohio were disenfranchised by the "jumping" voting machines, and due to the promulgation and maintenance of non-uniform rules, standards, procedures, and training of election personnel throughout Ohio, and the inadequate and inequitable allocation of funds, facilities, and election personnel, the burdens on voters and

likelihood of such voters being disenfranchised were materially greater for voters in Ms. White's county than in certain others in Ohio. Ms. White has a reasonable basis to believe that, absent injunctive relief, she will be disenfranchised or severely burdened in exercising her fundamental right to vote in future elections.

C. DEFENDANTS

24. Defendant J. Kenneth Blackwell is the Secretary of State for the State of Ohio ("the Secretary") and is the Chief Elections Officer for Ohio. Ohio Rev. Code Ann. § 3501.04. The Secretary is sued in his official capacity for actions taken under color of law.

25. As Ohio's chief election officer, the Secretary is responsible for the entirety of the voting process in each of Ohio's 88 counties and is empowered with broad authority to carry out that responsibility.

26. The county boards of elections are the designees of the Secretary of State, act under the direction of the Secretary of State, must obey the lawful orders of the Secretary, and may not issue rules or instructions that are inconsistent with direction from the Secretary. Ohio R. C. § 3501.11.

27. Directives issued by the Secretary have the same weight as law when applied in election-related matters and issues. 1930 Ohio Atty. Gen. Ops. No. 1423.

28. The Secretary has responsibility for and authority over virtually every aspect of Ohio's voting system. Specifically:

a. The Secretary is responsible for ensuring that the county boards of elections observe and implement the requirements imposed by state and federal election law. Ohio R. C. § 3501.05.

b. The Secretary has the affirmative duty to “investigate the administration of election laws, frauds, and irregularities in elections in any county, and report violations of election laws” for prosecution. *Id.*

c. The Secretary must maintain “a master file of all registered voters” in Ohio and is required to “prescribe by directive the schedule and format by which boards of elections must submit accurate and current lists of all registered voters in their counties”. Ohio R.C. § 3503.27. Boards of election must maintain voter registration records in accordance with the directives and rules of the Secretary; and

d. The Secretary must provide each board of elections with rules, instructions, directives, and advisories regarding:

- ?? the examination, testing, and use of the voting machine and tabulating equipment,
- ?? the assignment of duties of booth officials,
- ?? the procedure for casting a vote on the machine,
- ?? how the vote must be tallied and reported to the board, and
- ?? other rules, instructions, directives, and advisories the Secretary of State finds necessary to ensure the adequate care and custody of voting equipment, and the accurate registering, counting, and canvassing of the votes. Ohio R.C. § 3506.15.

29. The Secretary is responsible for ensuring that state government social service offices and agencies are complying with the requirements of the National Voter Registration Act of 1993, which was passed to provide voters with greater access to opportunities to register to vote.

30. The Secretary is responsible for ensuring that Ohio establishes a centralized statewide database of registered voters pursuant to the Help America Vote Act of 2002 (HAVA).

31. The Secretary has broad powers to carry out his duties, including authority:

- ?? to prepare rules and instructions for the conduct of elections. Ohio R. C. § 3501.05(C);

- ?? to prepare and implement programs to register eligible voters. Ohio R. C. § 3501.05(R) & (T);
- ?? to appoint the members of boards of election. Ohio R. C. § 3501.05(A);
- ?? to issue instructions and directives to the boards of election for the conduct of elections. Ohio R. C. § 3501.05(B);
- ?? to require the boards of election to provide reports to the Secretary. Ohio R. C. § 3501.05(L);
- ?? to remove and replace any county election official for any good cause. Ohio R. C. § 3501.16.

32. The Secretary has exercised his broad authority to regulate the election process in Ohio by, among other things, issuing numerous, detailed directives to the state and county election officials on nearly every aspect of that process and by assuming administrative oversight over and removing (or recommending the removal of) boards of elections members in at least six Ohio counties (Auglaize, Ashtabula, Butler, Lucas, Miami, and Summit) since 2000.

33. Defendant Bob Taft is, and at all times relevant hereto was, Governor of the State of Ohio (the “Governor”), and as such, the principal executive officer of the state. The Governor is sued in his official capacity for actions taken under color of law.

34. The Governor is the chief executive officer of the state, in whom ultimate executive authority is vested. He has final responsibility for the proper execution of all laws, and may require subordinate executive officials to report to him regarding the proper discharge of their respective duties under state law. OHIO CONST. ART III §§ 5-6.

III. JURISDICTION AND VENUE

35. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343, 2201, and 2202.

36. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b) because jurisdiction is not founded on diversity of citizenship and a substantial part of the events or omissions giving rise to the Plaintiffs’ claims occurred in this judicial district.

IV. FACTUAL ALLEGATIONS

37. Ohio residents meeting the “qualifications of an elector” under Ohio Cons. Art. V, Sec. 1 have the individual right to vote in “all elections,” both state and federal. Ohio R.C. §§ 3505.10, 3505.39, 3505.40. As such, the individual right to vote in Ohio must be provided in a manner consistent with federal law, including the Fourteenth Amendment to the U.S. Constitution.

38. The core of Plaintiffs’ complaint is that Ohio maintains, and for years has maintained, a system for the conduct of elections in violation of the Fourteenth Amendment. The Constitutional violations in that system are persistent, systemic and severe.

39. For years, Defendants and their predecessors have recognized the need for massive systemic reform. Notwithstanding this recognition, Defendants and their predecessors have maintained Ohio’s inequitable and arbitrary system from election to election, without exercising adequate oversight, providing sufficient funding, or taking the remedial measures necessary to address pervasive and well-known deficiencies that have caused the disenfranchisement of thousands of Ohio citizens.

40. Defendants, through their repeated administration of elections marked by massive breakdowns and failures to protect the right to vote, have violated and, absent remedial action by this Court will continue to violate, rights secured to the plaintiffs both by the Fourteenth Amendment and by applicable federal statutory law.

41. Defendant Secretary has promulgated and promoted, through action and inaction, non-uniform and wholly inadequate standards and processes among the counties with respect to, inter alia, voter registration, absentee ballots, provisional ballots, disabled voters, and poll worker hiring and training.

42. Likewise, Defendant Governor has failed to provide adequate, equitable funding and resources to the county boards of elections to ensure that the boards timely and responsibly carry out their duties, including providing adequate numbers of properly functioning voting machines, adequately trained workers, and other facilities in each voting precinct.

A. THE RECENT EXAMPLE OF THE NOVEMBER 2004 ELECTION CONFIRMS THE FUNDAMENTAL, SYSTEMIC INEQUITY, BURDENS, AND UNFAIRNESS IN OHIO'S VOTING SYSTEM

43. The November 2004 election provided overwhelming evidence that Ohio's voting system routinely disenfranchises Ohio residents and otherwise severely burdens the right of Ohio residents to vote.

44. As detailed below, the failings of the Ohio voting system – for which Defendants bear responsibility – were manifest in numerous ways in November 2004, including voter registration, the allocation of voting machines, provisional balloting, and poll worker training. Instead of a reasonable, orderly and democratic process, the process for hundreds of thousands of Ohio voters was akin to running a gauntlet. Thousands of potential voters (and perhaps far more) did not make it through the ordeal at all. Others did so, but only at significant cost – enduring lines ranging from two to twelve hours long, often placing their jobs and, for elderly voters, their very health at risk. The Ohio voting system is so riddled with incompetence and inequity that many of those who did persevere and cast a ballot were disenfranchised nonetheless by machines that simply did not work and by poll workers who routinely gave voters erroneous instructions that invalidated the voters' ballots altogether.

45. The 2004 election thus confirmed what had been evident to Defendants, their predecessors, and others for years: that the Ohio voting system is utterly lacking in adequate oversight, uniform standards, and sufficient resources to reasonably and equitably protect the individual right to vote.

1. REGISTRATION

46. Ohio citizens are routinely disenfranchised and severely burdened by a registration process that is, and is known by Defendants to be, deeply flawed and wholly inadequate. Nonetheless, Defendants have knowingly failed to carry out their duties to promulgate and enforce uniform standards and processes for voter registration and to ensure that counties have adequate funds and systems to timely and accurately process voter registrations and maintain accurate rolls of voters.

47. Ohio residents who register to vote at least thirty days in advance of an election are to be registered and have the right to vote in the election if they otherwise are eligible to vote. Ohio R.C. § 3503.06.

48. On information and belief, however, voters in numerous counties (including certain Individual Plaintiffs here) registered well in advance of election day, only to find that they did not appear on voting rolls in their respective precincts when they reported to vote.

49. Indeed, the registration systems in some counties are so deficient that many voters who had registered and had received confirmation of their registration and voting location were told, upon reporting to vote at the specified location, that they were not listed as registered on voting rolls on election day.

50. As shown below, because of concomitant failures in the provisional balloting process (and because of specific directives issued by Defendant Blackwell), substantial numbers of these registered voters were not permitted even to vote by provisional ballot or were improperly instructed on how to vote provisionally such that their ballots would not have been lawfully counted.

51. The failings and inequities in the voter registration process are the result of Defendants' maintenance of a non-uniform, disorganized, and inadequately funded voter

registration system. Defendants understood that substantial numbers of otherwise eligible voters would not be timely and properly registered to vote, yet have permitted this inadequate process to continue.

52. In numerous counties in November 2004, registered voters who had regularly voted for years (and, in some cases, for decades) found when they arrived at their polling place that they had been erroneously purged from the voting rolls or placed on “inactive” lists.

53. Others who were former felons were barred from voting by county officials and workers who wrongly believed that such individuals were ineligible to register or vote.

54. Still others found that they were not listed in their correct precincts or were erroneously listed as having voted already by absentee ballot or as having requested and received an absentee ballot that had not been returned.

55. Even those voters whose names remained on the rolls were not immune. Just days before the November 2004 election, thousands of registered voters were sent letters from local election officials informing them that their eligibility to vote had been challenged and their right to vote could be taken away in a hearing with no meaningful notice or right to be heard.

56. Although a federal court eventually stepped in to stop this massive violation of due process and voting rights, the resulting confusion and doubt among the threatened voters could not be undone.

57. On information and belief, substantial numbers of these threatened voters were prevented from voting either because they were intimidated or because they believed they were no longer eligible to vote.

58. Defendant Secretary compounded the problems in the registration process in November 2004 by issuing an eleventh hour directive that arbitrarily and unfairly changed the

most basic rules just for processing voter registrations – thereby exacerbating the lack of uniform standards and fundamental unfairness that already plagued the registration process.

59. Less than one month before the October 4, 2004 deadline for registration, the Secretary issued Directive 2004-31 erroneously instructing county election officials that they were not to accept voter registration forms unless printed on paper of a specified color, weight and type. The directive instructed that forms of any other type were to be treated as mere “requests” for registration forms of the specified type, which counties were directed to mail back to voters in response to such “requests”. Directive No. 2004-31.

60. Defendant Secretary knew that the directive was inconsistent with the rules and processes that counties had in place for voter registration and that the counties, voters, and voter registration organizations were relying on. Indeed, even the Secretary’s own office had been using forms purportedly barred by the new directive.

61. The “request” and response procedure predictably imposed a severe burden on counties already struggling with an inadequate system and limited resources, and confused voters who reasonably could assume (under existing law and practice) that their initial registration was appropriate and timely.

62. The directive created immediate confusion and delay as county officials tried to understand and react to the directive. Some ignored it altogether. Others tried to comply, with resulting delay.

63. A subsequent directive from the Secretary only added to the confusion by purporting to reverse the prior directive, but not actually withdrawing it. At least one county, Delaware County, responded by posting a notice on its website that it could not accept the Voter Registration Forms it had sent out previously, and that voters had to call to request a new form.

64. The impact of these multiple, unjustifiable failures in Ohio's voter registration system cannot be underestimated. In Cuyahoga County alone, it has been estimated that more than 10,000 people likely were disenfranchised in November 2004 due to failures to timely and properly process their registrations. On information and belief, potentially thousands more were disenfranchised in November 2004 as a result of Defendant Secretary's illegitimate, arbitrary, and changing rules and standards for voter registration.

2. ABSENTEE BALLOTS

65. Ohio voters who tried to vote by absentee ballot in November 2004 also faced substantial hurdles. Hundreds of affected voters (including individual plaintiffs here) registered complaints that (1) despite timely (and, often, repeated) requests, no absentee ballot was received, (2) despite timely requests, the absentee ballot was received on or so near to election day that it was impossible to timely return the ballot to the board of elections; (3) voters who never received an absentee ballot were listed as having requested such a ballot and precluded from voting on election day by regular or provisional ballot; and (4) voters who never requested an absentee ballot were erroneously listed as having requested such a ballot and precluded from voting on election day by regular or provisional ballot.

66. Based on the sheer volume of complaints, it is evident that the reports reflect an even larger, systemic breakdown in the processing of absentee ballot requests that presumably impacted many more people than even the hundreds who registered complaints and testified at public hearings.

67. This systemic breakdown again results from Defendants' maintenance of non-uniform standards and processes and inadequate funding, training, and oversight of the processing of absentee ballots in Ohio.

68. At least one witness has testified to facts indicating that county-level officials in Franklin County were so overwhelmed and inadequately supported in the processing of absentee ballot requests that they were rejecting requests on wholly arbitrary, patently unfair, and unjustified bases. Harvey Wasserman, a voter from Franklin County, testified compellingly at a public hearing in November 2004 that election workers initially rejected his application for an absentee ballot, claiming that he had filled in the wrong address. The claim was plainly false, however, since the rejection letter telling him he had the wrong address was sent to his correct address, where he had lived and been registered for at least ten years. It was only after repeated, lengthy calls that Mr. Wasserman finally received his absentee ballot – and only after an election official told Mr. Wasserman that her office was “really swamped because we have been rejecting a lot of these applications.”

69. On information and belief, many other absentee requests were rejected for entirely illegitimate and arbitrary reasons due to the lack of and failure to enforce uniform standards and processes, and the failure to provide adequate funding to county election boards to process such applications. Many voters lost their right to vote because they lacked the time and wherewithal to make repeated, lengthy efforts to try to correct the unlawful actions of election officials.

70. Many voters who validly requested but did not receive an absentee ballot were disenfranchised entirely because they were not in Ohio on election day to try to vote through regular or provisional ballots. Even the sub-set of would-be absentee voters who were able to get to the polls on election day still were largely disenfranchised due to further actions of Defendants.

71. Under federal law, voters that request, but do not use, absentee ballots (including those who do not receive a requested absentee ballot) are eligible to cast a provisional ballot on election day.

72. Yet, Defendant Secretary issued a last-minute directive erroneously instructing local election officials not to provide provisional ballots on election day to anyone who had requested an absentee ballot.

73. That directive was overturned by court order only late in the afternoon on election day. By then, many otherwise eligible voters who never received a validly requested absentee ballot ? and even those who were erroneously listed as having requested an absentee ballot ? had been prevented from casting a provisional ballot on election day and, therefore, were precluded from voting altogether.

74. On information and belief, Defendants took no steps to contact these voters to timely permit them to return and cast a provisional ballot.

3. POLLING PLACE ISSUES

75. Thousands of Ohio voters encountered severe burdens in trying to locate or cast ballots at the polling place. One recent study found that twenty six percent (26%) of Ohio voters experienced polling place problems on election day.

76. Ohio election officials failed to discharge some of the most basic responsibilities in administering elections: providing voters correct voting location information and ensuring access to the polling location.

77. On information and belief, Ohio election officials frequently provided inaccurate and inadequate notice of changes in voting precincts and polling places. Thus, many voters were not advised of the correct polling place.

78. Due to Defendants' failure to fund and ensure adequate, uniform minimal training of poll workers, voters often could not reliably seek assistance from poll workers in finding the correct polling place.

79. Voters (including individual plaintiffs here) thus were severely burdened in trying to exercise their right to vote as they were required to travel to two or more different polling places – taking two or more hours – just to try to find what the voter registration books indicated as the “correct” precinct (which may not actually have been correct based on where the voter was then residing). Other voters who were unable to travel to another polling place were simply unable to vote.

80. On information and belief, the burden of having to track down the “correct” voting place was too severe for many voters to bear (especially the elderly, disabled, those who could not take more time off from work, and those with children to care for) and they were thus disenfranchised.

81. Those who did arrive at the correct location often found that the polls were not open and ready for voting.

82. By law, voters have the right to vote at their designated polling places from 6:30 a.m. to 7:30 p.m. on election day.

83. Yet, due to wholly inadequate planning, oversight, and funding, many polling places were not operational at 6:30 a.m.

84. Many voters were turned away during those critical morning hours before the beginning of the work day and may not have been able to return later.

85. One witness from Franklin County testified that the failure to timely open one polling place disenfranchised hundreds of voters who were “forced to leave because they needed to be at work, needed to be at school, or they needed to take their children to school.”

86. Voters also frequently encountered polling places that were open, but that lacked the legally required number of precinct judges, working voting machines, or the necessary materials and supplies for voters to begin voting. This too disenfranchised many voters who were unable to wait and severely burdened others forced to wait or to return to try to vote later in the day.

a. Machine Allocation

87. Defendants were aware well in advance of the election of the anticipated number of new and returning voters and, indeed, accurately predicted the actual voter turnout level. Yet at polling places throughout the state, voters suffered the consequences of the basic failure to provide an adequate number of working voting machines to reasonably accommodate the registered voters in each precinct, resulting in unreasonably long lines and waiting times to vote.

88. The deficiencies in Ohio’s voting system also were manifested in the glaring disparities in the allocations of voting machines from county to county, as well as from precinct to precinct within counties.

89. These deficiencies and inequities resulted from the Defendants’ maintenance of non-uniform standards – or no standards at all ? which failed to ensure that the counties have and equitably deploy sufficient machines and other necessary materials and tools for voters to cast their votes in each precinct without undue delay and burden.

90. For example, prior to election day, over 102,000 new voters were registered in Franklin County. Franklin County conducted an analysis to determine the number of voting

machines required, but then provided hundreds fewer machines than its own analysis showed were needed. As witnessed by hundreds of voters, including Individual Plaintiffs here, this resulted in lines several hours long.

91. Similarly, officials in Knox County acknowledged that far greater numbers of voters were expected in November 2004 than in recent prior elections. Yet, county officials supplied the same number of machines as in past elections. As discussed below, and as experienced by Individual Plaintiff Rubin, voters at certain precincts in Knox County were required to wait almost ten hours to cast ballots.

92. Voters, poll workers, and election observers also reported that the machines that were available were not allocated in a reasonable or equitable manner. Indeed, some precincts reported having only half as many machines available in November 2004 as in prior elections, leaving them with far too few machines to permit the expected numbers of voters to vote without extraordinary delay and burden. By contrast, other precincts within the same county were allocated many more machines than in the past, resulting from the reallocation of machines from one precinct to another.

93. The predictable result of both the failure to provide a sufficient number of machines and the failure to reasonably allocate machines among precincts was that, in many precincts, there was an unreasonably high ratio of voters to available machines.

94. Witnesses ? including a presiding judge, poll workers, poll monitors and voters ? reported ratios ranging as high as 200 to 500 voters per machine on election day, and perhaps more.

95. At the polling place at Kenyon College in Knox County, it was estimated that more than 1,000 voters cast their ballots on just two machines.

96. Other precincts reached similarly high levels at various points in the day as one or more machines broke down.

97. The ratios of voters to machines that existed in many polling places in November 2004 far exceeded any reasonable standard.

98. For example, Ohio law assumes that each voter may have up to five minutes to vote. Even taking that as a reasonable estimate of adequate voting time (which, in many cases in November 2004, it was not), that translates into approximately 156 voters per machine in the thirteen hours that polls are scheduled to be open.

99. A more realistic and reasonable ratio would be even lower. Indeed, for many years, the ratio in Ohio was set at 100 voters per machine. The ratios in many precincts in November 2004 far exceeded any reasonable standard.

100. Because there were too few machines to reasonably accommodate the turnout, thousands of voters (including several Individual Plaintiffs here) were forced to wait in lines that were anywhere from two to twelve hours long and that stretched far outside of polling places.

101. In some parts of Ohio, this resulted in thousands of voters literally standing for one or more hours in the rain before even getting into the building, where they waited for hours more.

102. The insufficient allocation of voting machines in dozens of precincts is evident from the sheer lengths of the lines that voters faced throughout election day.

103. Ohio law assumes that a thirteen-hour polling day is sufficient for all of the voters in a precinct to vote.

104. In November 2004, however, thousands of voters waited a full quarter to one-half of the entire polling day to cast their vote. In some cases voters waited nearly the entire length of

a polling day – from ten to twelve hours – before they were able to cast their vote. In some precincts, voters were still casting ballots close to and beyond midnight – well past the scheduled poll closings and, indeed, past the end of election day itself. For example:

??Voters at the Gambier Community Center in Knox County were told to expect nine hour waits, and in many cases did experience such waits or more to vote.

??Voters at various locations in Oberlin, Lorain County, waited five and six hours to cast ballots.

??At the South Side Settlement House in Columbus, Franklin County, voters waited in three hour lines to cast ballots, and some elderly voters were sufficiently discouraged by the wait to leave the polls without voting at all.

??Lines at the Lawton Community Center in Akron were reported as being, at times, four hours long.

105. A voting process that does not permit all eligible voters to cast their vote in the allotted polling hours, or in some cases on election day itself, is patently defective, severely burdensome, and disenfranchising.

106. The ratio of voters to machine – and, consequently, the average length of time a voter had to wait before voting – varied widely from county to county, as well as from precinct to precinct within individual counties.

107. For example, the average county ratio ranged from approximately 70 voters per machine (in Cuyahoga and Summit Counties) to more than twice that amount, approximately 170 voters per machine, in Franklin County.

108. The ratios for individual precincts within counties varied even further, from as little as roughly 56 voters per machine in some precincts to nearly ten times as many in others that had ratios of approximately 500 voters or more per machine.

109. As a result, the burden on a voter's rights, and the likelihood of being disenfranchised, was substantially ? and arbitrarily ? determined by where a voter happened to live.

110. The unreasonably long lines that voters were forced to endure in November 2004 are symptomatic of graver underlying deficiencies in Ohio's voting system. But long lines also are a means by which voters are disenfranchised or otherwise severely burdened in the exercise of the franchise. Long lines impose a particular and severe burden on the elderly and disabled, as well as on those with jobs requiring them to return within an allocated amount of time – generally two hours – or who have young children requiring care.

111. Reports and testimony from voters, poll workers, and election observers confirm that vast numbers of Ohio voters were disenfranchised by the long lines in November 2004, including many who physically were unable to wait in lines that were hours long. For example, Dorothy Stewart had to go home without voting because she is 69 years old and suffers from degenerative arthritis and, therefore, could not physically endure the long wait to vote that she faced at her polling place. A steady voter for decades, she was understandably upset by the complete breakdown of the voting system in her precinct. Expressing the shared sentiment of thousands of her fellow voters, she was quoted as saying "I was cut out. It really hurt me not to vote."

112. More than 10,000 voters in Columbus alone were reportedly disenfranchised by the failure to provide adequate facilities to vote.

113. The severity of the burden on voters posed by excessively long lines cannot be overstated:

- ?? At least one voter reportedly was forced to leave after literally fainting while waiting in line.
- ?? Another witness observed two Franklin County voters who were forced to leave “because they were ill and couldn’t wait”.
- ?? A voter from Franklin County, Jerry Doyle, testified that, despite the fact that he uses a cane and has a breathing condition, he was forced to stand in the rain for two hours and then waited inside for another two hours before he voted. He was offered no assistance despite his condition and witnessed many others in similar or worse condition who similarly were offered no assistance.
- ?? While he was in line, Mr. Doyle also witnessed one woman who, despite pleading with her employer to give her more time, was forced to leave “to protect her job”. Another woman was forced to leave to care for her children. Mr. Doyle saw many others who were discouraged or forced to leave by four-hour long lines that made it “impossible” for them to stay.
- ?? At least one voter in Franklin County paid an unimaginable price to cast her vote when her husband died alone while she waited for four hours to cast her vote. The woman’s friend testified that “Perhaps had she not stood so long in line, she may have been able to save her husband.”
- ?? A federal court found that the long lines posed such a serious threat of disenfranchisement in Franklin and Knox Counties that, late in the day, it ordered the distribution of paper ballots to voters waiting in the long lines. Ohio

Democratic Party v. Blackwell, No. C2 04 1055 (S.D. Ohio 2004). On information and belief, many voters had left without voting before poll workers informed anyone of the court order or the right to vote by paper ballot.

114. The burden imposed by the failure to provide enough machines to accommodate the expected turnout was often exacerbated by local officials and poll workers' failure to adequately and correctly inform voters of "local rules" and processes, which varied substantially from polling place to polling place. In some places, separate lines were set up to check in with poll workers and to vote. In others, more than one precinct's voters were voting in the same physical location but without proper signage to inform voters which line was correct for their particular precinct. Many voters reported that their waiting time to vote was doubled when they waited in one line for hours only to find out that it was the "wrong" line – and had to start all over again.

115. Many voters who were willing and able to wait even in hours-long lines were unlawfully prevented from voting based on the erroneous statements by poll workers that the polls had closed.

116. Under Ohio law, polls must remain open until 7:30 p.m. and any voter in line to vote as of that time has the right to vote. Ohio R.C. § 3501.32.

117. In some cases, however, poll workers erroneously told voters that the polls closed at 6:30. In other cases, poll workers unlawfully refused to permit all voters in line as of 7:30 to vote. Some arbitrarily (and unlawfully) drew the line of who could or could not vote at the door to the polling place: those who had happened to find themselves inside by 7:30 could vote, while those still in the portion of the line outside the door could not.

118. No uniform standard had been applied because none was established. Moreover, Defendants failed to take adequate steps early in the day (when it was clear that many voters likely would not reach the voting booths until after 7:30 p.m.) to instruct local officials and poll workers on the applicable law and to provide guidance on how to administer the process once 7:30 p.m. arrived – let alone take any steps to try to alleviate the severe burdens being placed on voters that day.

b. Technical Problems With Voting

119. Once voters got to the voting booth, they often faced broken or malfunctioning machines, a lack of basic supplies, or incorrect instructions from poll workers. For example:

?? In Mahoning County, many voters observed that electronic machines were transferring votes from the candidate they selected to another candidate – *i.e.* they saw the vote “jump” when they pushed the button to vote for their candidate of choice. While some voters noted the “jump” and were permitted to vote again, it is likely that many more failed to note that their intended vote had not been accurately recorded.

?? Also in Mahoning County, voters reported machines going blank or resetting when the voter tried to vote. One voter explained that “it took five times” to enter her vote because “the machine went blank” the first four times. It is virtually certain that other voters did not understand that the machines were not accurately registering their intended vote and, as result, that the voter was disenfranchised.

?? In Cuyahoga County, an entire polling location had to shut down when it had no working machines and another polling place reportedly ran out of ballots and was never resupplied.

?? In Franklin County, one witness saw her polling place even run out of pencils for voting. Yet, no election official or poll worker would get more pencils.

Volunteer citizens working as voting monitors eventually bought pencils for the precinct.

4. Poll Worker Problems

120. On election day, poll workers are critical to the fair and orderly exercise of the franchise. Adequate hiring, training, and supervision of election and poll workers are, therefore, necessary prerequisites to a reasonable, equitable system of voting.

121. In the November 2004 election (as in numerous past elections) voters faced poll workers who were manifestly unfamiliar with even the most basic rules for voting, as well as with the machines and processes used to record votes. The evident lack of training, and resulting incompetency, of the poll workers in many counties and precincts exacerbated the substantial burdens already facing Ohio voters as a result of other deficiencies in the voting system. As a foreseeable consequence, voters and their votes were subjected to non-uniform and frequently erroneous directions and purported applications of Ohio and federal voting laws by untrained or improperly trained workers and, thus, tens of thousands of voters (including the individual plaintiffs) were disenfranchised altogether or unreasonably burdened in exercising their right to vote. That these results would occur was either known or should have been reasonably foreseeable to the Defendants. For example:

?? Poll workers in a number of counties unlawfully demanded that every voter present identification before being allowed to vote, even though only certain newly registered voters are legally required to present identification (and those voters are still allowed to vote provisionally if they do not present identification). On information and belief,

- this unlawful practice disenfranchised voters and intimidated others in violation of their constitutional rights;
- ?? Poll workers in some precincts erroneously instructed voters on how to cast their ballots, resulting in an untold, substantial number of lost or inaccurate votes;
 - ?? Poll workers unable to correctly read precinct voting rolls erroneously told registered voters that they were not registered and refused to permit the voters to vote;
 - ?? In polling places housing more than one voting precinct, poll workers directed voters to the wrong precinct (such that the voters' ballot was not properly cast or counted or the voter was further burdened by having to stand in line all over again once it was determined that he or she had waited in line for the wrong precinct).
 - ?? Poll workers in some precincts unlawfully limited voters to as little as three minutes to vote although Ohio law allows a voter at least five minutes to vote even if others are waiting to vote;
 - ?? Poll workers in some precincts refused or were unable to assist voters with voting machines as required under Ohio law.
 - ?? Although polling places lacking wheelchair access are required, by law, to provide "curbside" or polling-door voting for those in wheelchairs (Ohio R.C. § 3501.29), disabled voters were frequently denied this right because of poll worker shortage or ignorance of the voter's rights.
 - ?? In Cuyahoga County, poll workers incorrectly instructed voters in certain precincts that they could cast their punch card ballot at any open machine in polling places that housed more than one voting precinct. Because the different machines were

calibrated for ballots from the different precincts, ballots from one precinct cast at a machine for another precinct would not accurately record the voter's intended vote.

122. As explained below, the problem of untrained and unprepared poll workers is widespread and has persisted, with the knowledge of Defendants and their predecessors, for years. This illustrates Defendants' willingness to repeatedly subject Ohio voters to a wholly inadequate and patently unfair, inequitable, and unreliable system of voting.

123. County officials are perennially short of poll workers. As a result, polling places routinely are staffed by workers hired at the last minute and who have not completed, nor even had time to receive, training necessary to acquaint them with state election law in a manner sufficient to ensure the proper discharge of their duties.

124. These obvious breakdowns in the voting system nonetheless are unjustifiably permitted to continue from year to year, guaranteeing that substantial numbers of voters will be disenfranchised and/or burdened by entirely preventable and foreseeable errors.

5. Provisional Balloting

125. The constitutional failings in Ohio's voting system also were manifest in the maladministration of provisional balloting in 2004. Although Ohio (like every other state) is now subject to the provisional balloting requirements of HAVA, Ohio has had one form or another of provisional balloting for many years.

126. Provisional balloting is meant to prevent otherwise eligible voters from being disenfranchised by governmental error. In November 2004, however, the provisional balloting process became yet another burden on the vote and yet another means of disenfranchisement.

127. Voters and poll monitors across the state reported widespread confusion and errors among elections officials, poll workers, and voters as to the provisional balloting process.

128. Some poll workers refused to provide provisional ballots or failed to offer them when appropriate. One Franklin County observer testified that, after voters waited hours to vote, poll workers told them that they could not vote, did not offer any provisional ballots, and did not tell them their correct precincts in which to cast a provisional ballot. Other precincts appeared either to have run out of provisional ballots or never had any at all.

129. Equally troubling, poll workers in some overcrowded precincts reportedly encouraged voters to cast provisional ballots to avoid waiting in line, without checking whether the voters were at the correct precinct or advising voters that if they were not in the correct precinct, their provisional ballot would not count.

130. Countless voters also were caught in a Catch-22 indicative of the patent unfairness in Ohio's voting system: unless they cast their provisional ballot in the "correct" precinct (*i.e.* where they lived) the ballot would be thrown out; but election officials were unable to make sure people knew their "correct" precinct before election day, poll workers were unable to direct voters to the "correct" precinct on election day, and, in likely thousands of cases if not more, voters actually were misdirected to what the "correct" precinct was or told (incorrectly) that they could cast their provisional ballot in any precinct.

131. In some polling places housing multiple precincts, provisional ballots were thrown out simply because the voter turned the ballot in to the wrong precinct table in the correct polling place – even though there were no adequate processes in place to tell people which table was the "correct" one and, in many cases, poll workers directed voters to the wrong tables.

132. In at least one county (Greene), voters casting provisional ballots in the correct precincts apparently were disenfranchised when poll workers ran out of envelopes for their precinct and instructed voters to use envelopes borrowed from other precincts. On information

and belief, the ballots cast in the “wrong” envelopes apparently were not counted even though poll workers had noted the correct precinct number on the borrowed envelopes.

133. In various locations, presiding judges failed to require voters casting provisional ballots to sign the affirmation of eligibility to vote required by HAVA and/or failed to countersign the provisional ballots submitted by voters. These failures to understand or follow basic procedures for provisional balloting may have led to the flawed ballots not being counted.

134. The myriad problems that voters encountered in the provisional balloting process were due, in large part, to Defendant Secretary’s failure to carry out his duty to ensure compliance with federal law, including the provisional balloting provisions of HAVA.

135. HAVA was enacted in 2002. Defendant Secretary failed to timely promulgate lawful directives to implement HAVA, failed to ensure that local election officials understood the mandates of HAVA and had adequate resources to carry out those mandates, and failed to ensure that local election officials hired and trained sufficient poll workers to implement HAVA.

136. When Defendant Secretary finally did issue a directive concerning provisional balloting, he did so far too close to the election, predictably causing confusion among election officials more accustomed to Ohio’s prior procedures and unfamiliar with HAVA’s requirements.

137. That confusion was compounded by the fact that, as later found by the Court of Appeals for the Sixth Circuit, the Secretary’s directive failed to correctly interpret and apply HAVA by directing poll workers to make “on the spot” determinations of whether the voter was in the “correct” precinct to cast the provisional ballot. *Sandusky*, 387 F.3d 565 (6th Cir. 2004).

138. On information and belief, the mismanagement of the provisional balloting process unfairly and unlawfully burdened and disenfranchised thousands of voters across the state.

139. For example, on information and belief, Cleveland officials alone disqualified approximately one-third of the provisional ballots – a rate that is extremely high and indicative of otherwise eligible provisional votes being thrown out because of errors in the balloting process, not because of voter ineligibility.

140. The unfairness of the process was compounded by inequity. Statewide, approximately 78% of provisional ballots were determined to be valid and were counted. However, the percentage of provisional ballots counted varied widely from county to county, from a low of 60.5% to a high of 98.5%.

6. Disabled Voters

141. Disabled voters also face additional, severe burdens and disenfranchisement under Ohio's voting system.

142. Since at least 1982, Ohio has mandated that polling places be fully accessible to disabled voters or provide "curbside" voting to voters unable to access the polling place. Ohio R.C. § 3501.29.

143. Yet, more than twenty years later, in November 2004, disabled voters throughout the state reported undue burdens with voting or the inability to vote at all due to inaccessible facilities, a lack of curbside voting, and the failure to train or erroneous training of poll workers with respect to the rights of disabled voters. For example:

?? Disabled voters requested and were refused curbside voting in locations where that is required by Ohio law;

?? Blind or otherwise disabled voters were not permitted to be assisted in the voting booth by neighbors or friends;

- ?? Long lines in polling places without seating made it difficult, and in some cases impossible, for elderly or disabled voters to vote, because they simply lacked the stamina or physical capacity to wait in line for the period required before voting;
- ?? Some polling places were simply not accessible to disabled voters.

B. THE DEFECTS IN OHIO'S VOTING SYSTEM ARE LONGSTANDING

144. Although the systemic failings of Ohio's voting system were manifest in the November 2004 election (both because of the visible results of those failures – *e.g.* hours-long lines and polls closing after midnight – and because the failures in the November 2004 election were more thoroughly documented than in prior elections), the events of November 2004 were not an anomaly. Rather, they were the predictable result of longstanding inadequacies in Ohio's voting system that have disenfranchised and severely burdened countless Ohio voters over the years.

145. As was the case in November 2004, past elections in Ohio have been permeated with systemic flaws that arise from basic, underlying failures by Defendants to plan, coordinate, direct, and fund a voting system sufficient to reasonably protect the rights of Ohio voters.

Among the most glaring recent examples are:

- ?? In Franklin County, thousands of legitimate votes were counted for the wrong candidates in November 1998 because the electronic voting machines were misprogrammed.
- ?? In the November 2000 election, 3,556 votes in Cuyahoga County were processed twice, causing a computer to throw them out. In another Cuyahoga County precinct, 317 votes went undiscovered and uncounted until after the election was certified.
- ?? In the Cincinnati area during the 2000 election, thousands of voters arrived at their regular polling place only to find that it was no longer a polling place, or no longer theirs. Franklin County experienced similar problems.

?? Also in Franklin County in 2000, registered voters were not allowed to vote because their names had been improperly purged from voting lists, or because the Bureau of Motor Vehicles had failed to process their registration cards.

?? In the March 2000 primary election, more than a dozen precincts in Cuyahoga County ran out of Republican ballots and were forced to turn registered voters away.

?? In the November 2001 election, more than one third of the precincts in Miami County ran out of ballots.

146. The foregoing are only the most recently documented examples of the breakdowns in Ohio's voting system. In 1973, the Office of Federal Elections of the U.S. General Accounting Office published a report of its study that found nearly identical breakdowns in elections in Hamilton, Cuyahoga, and Summit Counties in 1971 and 1972, including:

?? The disenfranchisement of thousands of voters in Cuyahoga County alone because dozens of precincts never opened or opened only very late in the election day.

?? Failure to deliver adequate numbers of voting machines to precincts.

?? Misprogramming of vote counting machines.

?? Distribution of incorrect ballots.

?? Lack of adequate staffing to administer the process.

?? Failure to train poll workers, resulting in confusion and delay at the polls.

147. The GAO Report concluded that, in Cuyahoga County, "the election process broke down completely". Critically, the report further concluded that the pervasive nature of the breakdowns in Ohio's voting system were symptomatic of an underlying failure to promulgate uniform standards, rules, and procedures and the failure to provide adequate funding, staffing, and training. These exact same problems continue to plague Ohio's voting system to this day

such that, in 2004 as in the early 1970's, thousands of Ohio citizens were disenfranchised and thousands more are threatened with future disenfranchisement.

148. The voter registration system in Ohio likewise has been plagued for years by a wholly inadequate infrastructure, egregious mismanagement, and the lack of uniform, adequate standards and procedures.

149. In two of the most blatant recent examples, in 1996 and 1998, the voter registration rolls in Cuyahoga County alone were found to contain tens of thousands of duplicate and inaccurate entries.

150. Similarly, in 1999, it was discovered that Franklin County's registration rolls contained tens of thousands of erroneous entries.

151. These problems are symptomatic of a voter registration system based on non-uniform standards and procedures, inadequate funding, and insufficient oversight from the Defendants and their predecessors.

152. Likewise, the fundamental failure to adequately hire and train election workers has been known in Ohio since at least 1994, when then-Secretary of State (now Defendant Governor) Taft investigated alleged corruption of a vote by poll workers in Franklin County.

153. As a result of that investigation, the Secretary's office learned that election officials in at least Ohio's three largest counties – Cuyahoga, Franklin, and Hamilton – chronically failed to timely hire and adequately train poll workers. Poll workers in Franklin County testified that they had had no training at all or had not been trained for years. Election officials in Cuyahoga and Hamilton counties said they faced a chronic shortage of poll workers resulting in untrained, first-time workers at polling places, as well as unfilled positions.

154. In July 1996, Secretary of State Taft acknowledged the obvious – that properly trained poll workers are essential to a fair and orderly election. Indeed, he conceded that the need was greatest where (as in November 2004) large numbers of new voters and a high turnout are expected. Yet, in 1996 and again in 1998, the same problems persisted because no adequate system or funding was put in place to ensure that enough workers were hired and hired sufficiently in advance to provide meaningful training – and, in many cases, any training at all.

155. For example, on information and belief, in November 1998, one in five Franklin County poll workers were on the job for the first time because the Board of Elections had failed to set up any reasonable, orderly system of recruitment and had relied instead on haphazard “word of mouth” recruitment by ward committees that left the county more than 200 workers short only days before the election.

156. When poll worker inadequacies again disenfranchised Ohio voters and otherwise undermined elections in 2001, a panel convened by Defendant Secretary concluded that better training of poll workers was necessary to improve the accuracy of elections and increase voter turnout.

157. Yet, as shown above and in the conduct of the 2004 elections, Defendants still failed to take adequate steps or provide adequate resources to even begin to remedy the persistent, widespread, and serious failings relating to poll workers.

158. The lack of adequate planning, hiring, training, and oversight with respect to poll workers deprives Ohio voters of their constitutional rights.

159. The lack of adequate funding and the failure to allocate adequate resources for the proper conduct of elections too is neither a new phenomenon nor one unknown to state election officials.

160. Indeed, in June 2001, Defendant Secretary testified on the need for election reform before the Committee on Rules and Administration In Support of Election Reform of the United States Senate, and admitted that “Ohio’s elections process has been under-funded for far too long.”

161. Defendants have, nonetheless, failed to provide counties with adequate funding, on an equitable basis, to conduct a fair and orderly voting process.

162. Defendant Secretary has long been aware of the chronic and demonstrable maladministration of elections in Ohio.

163. Indeed, alleged election law violations, corruption, and the utter lack of processes for carrying out fair, orderly elections at the county level have led Defendant Secretary to assume oversight of numerous Ohio counties and, in many cases, to replace all or part of county boards of elections.

164. The following examples demonstrate that Defendant Secretary has the authority and ability to take action to address the fundamental problems that exist in Ohio’s current voting process, but has failed to take sufficient action thus far:

?? In April 2005, the Secretary commenced proceedings to remove the entire Board of Elections of Lucas County after investigators acting on behalf of the Secretary concluded that “members of the Lucas County board of elections, at the time of the November, 2004, election, were directly responsible for the inefficient and unorganized management of the election process in their county.”

?? Similarly, in early April 2005, the Secretary ordered the removal of the director of the Auglaize County Board of Elections – and has recommended reprimand for the other members of the Auglaize board – after another investigation by his

office led his staff to conclude that the director's "violations of or noncompliance with the laws governing petitions, public records, office administration, and the voting process [were] inexplicable and inexcusable," and that the Auglaize County Board had failed to follow legal requirements governing the preparation and security of ballots and lacked basic knowledge about election law.

?? In 2002, the Secretary assumed oversight of the Miami county board after Miami county officials utterly mismanaged the November 2001 election (in which more than 1/3 of the precincts literally ran out of ballots).

?? In August 2002, the Secretary placed the Summit County Board of Elections under oversight by his office and assigned an interim director due to the Board's continuing failure to fill vacancies in critical election administration positions before the November election.

?? In 2000, the Secretary removed two members of the Board of Elections of Butler County. He removed an Ashtabula County Board member in 2001.

165. These examples demonstrate that the Secretary can exercise direct power over Ohio's voting system, including at the county level. Yet, in the exercise of that power, he has failed to act to correct the manifest problems with that system, and instead has maintained a system that disenfranchises and severely burdens the right to vote and that uses non-uniform, disparate standards, rules, and processes that result in the disparate, unequal treatment of voters and of their votes.

C. THE SYSTEMIC UNFAIRNESS AND INEQUITIES IN OHIO'S VOTING SYSTEM ARE DUE TO OHIO'S UNDERLYING ADMINISTRATION OF THE VOTING PROCESS IN AN IRRESPONSIBLE AND UNREASONABLE MANNER

166. Defendants are responsible for the conduct, oversight, and funding of Ohio's voting system, as well as for ensuring that elections (and election officials) comply with state and federal law, including the Fourteenth Amendment to the U.S. Constitution.

167. The persistent, systematic unfairness and patent inequities in the Ohio voting system described herein are the result of a fundamental failure of administration, funding, and oversight for which Defendants are responsible.

168. For example, the failure to timely and accurately register tens of thousands of new voters, and the erroneous purging from the rolls of thousands more eligible voters, were not the result of run-of-the-mill errors or a few substandard employees. Rather, these problems were the entirely foreseeable and proximate result of Defendants' failure to exercise their authority to fund, create and maintain a modern voter registration system capable of adequately processing the actual, expected volume of registration data in Ohio; to promulgate adequate, uniform standards and processes to timely and reliably process registrations; and to exercise reasonable oversight and precautions to ensure that officials and workers processing the data have adequate planning, staffing, financing, facilities and training to do so in a reasonably reliable and equitable manner. Defendants have been derelict in, among other things, failing to ensure adequate and equitable funding to administer the voting process throughout Ohio, including failing to ensure that sufficient funding is provided to the county boards of elections.

169. Defendants were well aware that substantial numbers of voters desiring to vote in the November 2004 election would be registering to vote in the fall of 2004. Among other things, for example, Defendants were well aware that numerous community, civil rights, and voters' rights organizations were conducting large-scale voter registration efforts throughout

Ohio in 2004. Yet, Defendants failed to provide adequate direction to, oversight of, and, where needed, funding, to county registration processes that Defendants knew would be severely taxed by the influx of the new registrations.

170. Indeed, Defendant Secretary recently directed an investigation of the Lucas County election process that revealed thirteen areas of “grave concern” including that the county officials there had failed to “prepare and develop a plan for the processing of the voluminous amount of voter registration forms received” such that thousands and thousands of registration forms were being rushed through a haphazard and incompetently supervised system days before the November 2004 election.

171. That report concluded that “the entire episode never should have occurred” and was so severe that it put the entire election in Lucas County at risk as election officials and staff nearly were unable to perform other necessary tasks.

172. Importantly, “the entire episode” in Lucas County occurred while the Lucas County Board of Elections was under special “administrative oversight” by Defendant Secretary’s office as a result of prior, incompetent administration of elections.

173. The report given to the Defendant Secretary offers no explanation for why his office permitted such complete mismanagement of the Lucas County voter registration process even after concluding that local officials were unable or unwilling to fulfill their duties.

174. Similarly, the disenfranchisement of and severe burdens imposed on tens of thousands of voters by the failure to provide a reasonably sufficient number of machines were not caused by a few negligent miscalculations or planning errors.

175. Nor was it caused by unexpected circumstances: Defendants, like election officials throughout the state, accurately predicted a high (although not unprecedented) voter turnout of about 72%.

176. The fundamental failure to provide adequate physical facilities to accommodate the expected turnout was the result of Defendants' failure to provide election officials with adequate resources to respond to the expected turnout – by, for example, renting additional machines, as one county did – and the even more basic failure to adequately supervise local election officials to ensure that machines were allocated reasonably and equitably and that counties had in place sufficient plans, staffing, and training to manage a relatively high volume turnout.

177. Likewise, the confusion and lack of uniform, correct standards that reigned throughout the state with respect to provisional balloting did not arise from isolated errors by a few poll workers. Rather, it was the entirely predictable result of Defendants' failure to timely issue valid, uniform rules and guidance on provisional balloting, failure to take even minimal steps to ensure that local officials were providing timely, sufficient, and accurate training of staff and poll workers on the requirements of provisional balloting.

178. Indeed, the November 2004 election provided conclusive evidence of Defendants' complete failure to ensure that local officials take minimal reasonable steps to timely hire and adequately train sufficient numbers of poll workers for elections.

179. Even with an adequate registration system, adequate voting facilities, and reliable voting machines, poorly trained or unreliable poll workers and officials will still disenfranchise voters or unduly burden the voting process by, for example, erroneously turning away otherwise eligible voters based on a misunderstanding of the applicable rules; giving voters erroneous

instructions on how to use the machines; or incorrectly processing ballots such that validly cast ballots are thrown out or never processed.

180. In short, the myriad problems catalogued above are symptomatic of an electoral machinery that is so lacking in the most basic elements – *e.g.* reasonably adequate, uniform standards, planning, oversight, communication, funding, facilities, and training – as to deprive Ohio voters of their fundamental right to vote, and to severely burden that right, in violation of the Fourteenth Amendment.

181. As the November 2004 experience also demonstrated, Ohio’s voting system is so lacking in adequate, reasonably uniform standards, policies, and processes that the difficulties of casting a vote and the likelihood of having one’s vote counted varied widely from county to county, and even from precinct to precinct.

182. The result is a system that is patently unfair, irrational, and that substantially dilutes the potential weight of votes in one county or precinct in comparison with others in the state.

D. THE FAILINGS OF OHIO’S VOTING SYSTEM HAVE RESULTED IN MASSIVE DISENFRANCHISEMENT AND SEVERELY BURDENED THE RIGHT TO VOTE

183. The failings in Ohio’s voting system have disenfranchised and severely burdened the fundamental right to vote of countless Ohio voters.

184. After the November 2004 election, for example, public officials and civil rights organizations received tens of thousands of reports from across the state complaining of all-manner of voting irregularities.

185. These reports constitute credible evidence of systemic failures in Ohio’s voting system, and the repeated, widespread reports from voters and observers have prompted at least two Congressional investigations and numerous public hearings. On information and belief, the

tens of thousands of complaints by voters and observers are representative of an even larger population of voters and potential voters throughout Ohio.

186. The basic, systemic deficiencies in the Ohio voting system are severely undermining and, in many cases, eliminating the individual right to vote in Ohio.

187. The severity of the impact on the right to vote is clear whether considered (1) quantitatively: hundreds of thousands of voters are burdened statewide; (2) qualitatively: thousands are disenfranchised entirely, while others are forced to suffer unreasonable personal and financial hardship to vote; (3) by the pervasiveness of the problems: the underlying failures of direction, administration, and funding manifest themselves in nearly every aspect of the system across the state; or (4) by the persistency of the problems: the underlying failures are not isolated or transient, but continue from election to election, creating the greatest degree of unfairness in high-profile, high turnout elections when a fair, orderly and reliable process is perhaps **most** needed.

188. On information and belief, these chronic and systemic exclusions from and severe burdens on the right to vote reflect Defendants' reckless and deliberate indifference and/or willful blindness to the constitutional rights of voters in Ohio.

E. OHIO'S COMPUTERIZED STATEWIDE VOTER REGISTRATION SYSTEM VIOLATES THE HELP AMERICA VOTE ACT

189. HAVA requires a State, "acting through the chief State election official," to institute a computerized statewide voter registration list pursuant to Section 303(a) of HAVA by January 1, 2004. (HAVA § 303(a)(1)(A) & (d)(1)(A)).

190. Under HAVA and the National Voter Registration Act (the "NVRA"), 42 U.S.C. § 1973gg, before a voter on a registration list can be purged for a "duplicate registration" the voter must receive notice from an election official. Furthermore, under HAVA, "a uniform,

official, centralized, interactive computerized statewide voter registration list” shall be “defined, maintained, and administered at the State level.” (HAVA § 303(a)(1)(A)).

191. A State may seek a waiver with the Election Assistance Commission to postpone the deadline for fully implementing the computerized statewide voter registration list until January 1, 2006. (HAVA § 303(d)(1)(B)). The State of Ohio has requested an extension of the deadline to January 1, 2006.

192. The Ohio Secretary of State has begun implementing and administering the computerized statewide voter registration list in Ohio. In testimony before the Congress of the United States dated March 21, 2005, a representative from the Ohio Secretary of State’s office stated that Ohio had “built the statewide database and put the infrastructure in place.” He further stated that 71 of 88 Ohio counties were on the statewide system at the time of the November 2004 election and that 81 counties were on the system as of March 21, 2005.

193. On information and belief, the Secretary of State’s office notifies counties when there are two registrations that the Secretary of State believes may have been submitted by the same person. The Secretary of State permits the counties to have broad discretion to independently resolve the allegedly duplicate registration status with no concrete state-level guidance. The Secretary of State allows county election offices to apply varying standards to determine whether a (exact or partial) match in voter registration information is an actual duplicate. Furthermore, the Secretary of State does not require that notices be sent to voters who county election officials determine should be purged for an allegedly “duplicate registration.”

194. Upon information and belief, Defendants' implementation of the computerized statewide voter registration database is not uniform and permits counties to remove eligible voters from the statewide voter registration database without providing notice to the voter to be

removed. As a result, Defendants have implemented their computerized statewide voter registration database in violation of the Help America Vote Act.

V. INJUNCTIVE AND DECLARATORY RELIEF IS NEEDED

195. Plaintiffs have been disenfranchised or otherwise severely burdened in their right to vote as a direct and proximate result of Defendants' actions and inactions in maintaining Ohio's constitutionally defective voting system. Plaintiffs reasonably anticipate that, absent injunctive relief, they may be disenfranchised or severely burdened in the exercise of their fundamental right to vote in the future. Defendants' conduct also has a chilling effect on the future exercise of the fundamental right to vote.

196. There exists an actual and justiciable controversy as to which the Plaintiffs require a declaration of their rights.

197. Unless the requested injunctive relief issues, the Constitutional and statutory rights of Plaintiffs (and other eligible voters) will continue to be infringed.

198. Plaintiffs have no adequate remedy at law for Defendants' violations of their rights.

VI. COUNT ONE:
VIOLATION OF EQUAL PROTECTION
14TH AM. TO THE U.S. CONSTITUTION AND 42 U.S.C. § 1983
(On Behalf of All Plaintiffs)

199. Plaintiffs restate as if fully set forth here each and every claim, assertion, and allegation set forth in the foregoing Paragraphs 1 through 201 of this Complaint.

200. Defendants, acting under color of state law, have maintained an unequal system of voting that lacks uniform standards and processes, severely burdens and denies equal access to the right to vote, and results in arbitrary and disparate treatment of voters from county to county, precinct to precinct, and ward to ward.

201. As a result, Ohio citizens eligible and desiring to vote do not have equal access to the franchise nor is each legitimate vote counted equally.

202. Defendants, acting under color of state law, have deprived and severely burdened and threaten to deprive and severely burden Individual Plaintiffs of their fundamental right to vote.

203. The current unequal system of voting in Ohio serves no compelling state interest, lacks any substantial relationship to any important state interest, and is not rationally related to any legitimate state interest.

VII. COUNT TWO:
VIOLATION OF FUNDAMENTAL RIGHT TO VOTE UNDER THE DUE PROCESS
CLAUSE OF THE 14TH AM. TO THE U.S. CONSTITUTION AND 42 U.S.C. § 1983
(On Behalf of All Plaintiffs)

204. Plaintiffs restate as if fully set forth here each and every claim, assertion, and allegation set forth in the foregoing Paragraphs 1 through 206 of this Complaint.

205. Defendants, acting under color of state law, are maintaining an election process in Ohio that is permeated with broad-gauged, patent, and fundamental unfairness that denies and severely burdens the fundamental right to vote and that violates substantive Due Process under the Fourteenth Amendment to the U.S. Constitution.

VII. COUNT THREE:
VIOLATION OF DUE PROCESS CLAUSE OF THE 14TH AM. TO THE U.S.
CONSTITUTION AND 42 U.S.C. § 1983
(On Behalf of Plaintiffs LWVO, Toledo League,
Stenson, White, Thomas, Jackson, and Barberio)

206. Plaintiffs restate as if fully set forth here each and every claim, assertion, and allegation set forth in the foregoing Paragraphs 1 through 208 of this Complaint.

207. Defendants, acting under color of state law, are administering an election process in Ohio that deprives eligible Ohio citizens, including individual plaintiffs here, of their liberty

interest in voting and does so without adequate pre- or post-deprivation process. The Ohio election process fails to provide sufficient and meaningful notice of actions and decisions affecting registration status, casting, and counting of ballots and fails to provide adequate or timely process for Ohio citizens to challenge such actions and decisions. This failure creates an unreasonably high risk that Plaintiffs and others will be erroneously denied the right to vote. The lack of an adequate process of notification and problem resolution resulted in the disenfranchisement of Plaintiffs Stenson, White, Thomas, Jackson, and Barberio in the November 2004 election, has frustrated the purposes of the Organizational Plaintiffs in ensuring that registered voters are able to register to vote, cast a ballot, and have their vote counted, and violates procedural Due Process under the Fourteenth Amendment to the U.S. Constitution.

VIII. COUNT FOUR:
VIOLATION OF THE HELP AMERICA VOTE ACT
(On Behalf of Plaintiffs LWVO and Toledo League)

208. Plaintiffs restate as if fully set forth here each and every claim, assertion, and allegation set forth in the foregoing Paragraphs 1 through 210 of this Complaint.

209. Defendants, acting under of color of state law, have implemented a computerized statewide voter registration list that violates the Help America Vote Act.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

1. Declaring that Ohio's voting system violates Plaintiffs' right to Equal Protection under the Fourteenth Amendment to the U.S. Constitution;
2. Declaring that Ohio's voting system violates Plaintiffs' substantive Due Process rights under the Fourteenth Amendment to the U.S. Constitution;
3. Declaring that Ohio's voting system violates Plaintiffs' procedural Due Process rights under the Fourteenth Amendment to the U.S. Constitution;

4. Declaring that defendants are administering Ohio's statewide voter registration list in violation of the Help America Vote Act.

5. Preliminarily and permanently enjoining Defendants prior to future statewide general elections including, but not limited to, the November 2006 election:

- a) To promulgate, adopt, and enforce uniform standards and processes to ensure the accurate and timely processing by the counties of all voter registration and absentee ballot requests in Ohio consistent with applicable Ohio and federal law with respect to voter registration and absentee ballot requests;
- b) To promulgate, adopt, and enforce uniform standards and processes to ensure that each county has and deploys to each precinct on election day an adequate and reasonable number of accurately calibrated and functioning voting machines, including but not limited to requiring pre-election and parallel (election day) testing, independent access to computer programs used in the election process, and backup technology plans in the event of equipment or software failure, and ballots, signage and all other materials or tools necessary for voting;
- c) To promulgate, adopt, and enforce uniform standards and processes to ensure that all registered voters in a precinct are able to vote without unreasonable delay or hardship on election day;
- d) To promulgate, adopt and enforce a uniform and comprehensive set of requirements to ensure that each county timely recruits and hires poll workers in advance of each election in numbers adequate to ensure proper staffing on election day, including but not limited to requirements that poll workers be

adequately trained to independently address all matters regarding voting equipment;

- e) To promulgate, adopt and enforce a uniform and comprehensive set of requirements for the timely and systematic training of poll workers prior to every election, including a comprehensive statewide curriculum to be used in such training;
- f) To promulgate, adopt and enforce uniform standards and processes to ensure that each polling place has sufficient and clearly marked means for disabled voters to vote (whether in the polling place or curb-side) and a sufficient number of trained, designated poll workers available to assist disabled voters in voting without undue delay;
- g) To promulgate, adopt and enforce uniform standards and requirements to ensure that polling places that have multiple precincts are able to adequately service the number of voters assigned to that polling place;
- h) To promulgate, adopt and enforce a uniform and comprehensive set of requirements to ensure that each county has adequate materials, training, and support for all elections officials and poll workers to fairly and reasonably administer elections in accordance with federal law;
- i) To establish and maintain requirements and processes for periodic reports from and audits of county boards of elections activities to ensure that the foregoing standards, processes, and requirements are adhered to and that the individual counties have in place good and sufficient procedures, policies, and staff to ensure the efficient, just and fair conduct of elections, such periodic reports and audits to

be made public at or about the same time that they are received by the Defendants;

- j) To promulgate, adopt and enforce standards and processes to ensure timely, adequate, and meaningful process before Ohio residents are deprived of the right to vote and timely, adequate, and meaningful processes for Ohio residents to remedy erroneous deprivations of the right to vote, including with respect to voter registration, eligibility to vote, and the casting of provisional ballots;
 - k) To promulgate, adopt and enforce standards to ensure that Ohio's statewide voter registration list is administered in accordance with the Help America Vote Act;
 - l) To ensure that each county within Ohio conducts efficient, just and fair conduct of elections; and
 - m) To promulgate, adopt, and enforce uniform standards and processes to ensure the transparency of post-election procedures, including but not limited to requiring mandatory audits, equipment audit logs and redundant system data, and requiring each of them to be made promptly publicly available.
6. Awarding Plaintiffs their reasonable attorneys' fees and costs in bringing this action; and

7. Providing such other and further relief as the Court may deem just and proper.

Dated: December 8, 2005

Respectfully submitted,

/s/ Richard M. Kerger

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Plaintiff-Intervenor

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was electronically filed this 8th day of December, 2005. 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/ Richard M. Kerger