

Secretary of State from (1) refusing to provide and count provisional ballots in the upcoming election and (2) requiring proof of identification by first time voters who registered by mail. A “provisional ballot” is a fail-safe ballot offered to voters whose eligibility cannot be determined at the polling place. Once election officials verify the voter’s eligibility and registration within a specified period after the election, the provisional ballot should be counted.

2. On February 20, 2004, Ohio’s Secretary of State issued a directive – Directive 2004-07 – that, among other things, instructs all of Ohio’s county election officials how to administer provisional ballots cast by a category of voters who are entitled by federal law to vote by provisional ballot: first-time voters who register by mail and who cannot provide identification on Election Day. Although Directive 2004-07 correctly provides that provisional ballots must be *issued* to voters who cannot provide “acceptable documentary proof” of their identities on Election Day, in a bizarre and illegal twist, it then dictates that those provisional ballots *may not be counted* unless those voters do, in fact, provide “acceptable” identification on Election Day.

3. On September 16, 2004, the Secretary of State issued yet another directive – Directive 2004-33 – concerning another category of voters entitled by federal law to vote by provisional ballot: voters who, as a result of either official or voter error, appear to vote in the wrong precinct. Despite the clear requirement of federal law that states allow such voters to vote by provisional ballot, Directive 2004-33 unlawfully states that “[u]nder no circumstances shall precinct pollworkers issue a provisional ballot to a person whose address is not located in the precinct, or a portion of the precinct, in which the person desires to vote.”

4. Directives 2004-07 and 2004-33 both violate the “fail-safe voting” provisions of the Help America Vote Act of 2002 (“HAVA”), 42 U.S.C. §§ 15301 *et seq.*, which were designed to prevent the disenfranchisement of eligible voters entitled to vote by provisional ballot. HAVA clearly requires that states allow both first-time voters who register by mail and cannot provide

identification on Election Day and voters who appear to vote in the wrong precinct to cast provisional ballots. HAVA then requires election officials to verify the provisional ballots after the election and to *count* the provisional ballots cast by all individuals who are eligible under state law to vote. By refusing to allow voters whose names do not appear on the list of eligible voters for the precinct to cast provisional ballots, Directive 2004-33 conflicts with a clear mandate of federal law. And by directing in advance that the state will not count any provisional ballots cast by first-time voters who register by mail and cannot provide identification on election day – a category of voters whom the Secretary of State concedes is entitled to vote by provisional ballot – Directive 2004-07 eviscerates the “fail-safe voting” protections that Congress has mandated, turning the provisional ballots into no more than scrap paper. The effect of these two directives would be to disenfranchise thousands of eligible, registered voters, in violation of federal law.

5. In addition to a declaration that Directives 2004-07 and 2004-33 violate federal law, Plaintiffs seek a preliminary and permanent injunction that will take effect before the November 2, 2004 election prohibiting Ohio elections officials from (1) refusing to provide voters a provisional ballot based on the ballot being requested or cast in a precinct different than the one to which the voter has been assigned, and (2) rejecting provisional ballots based on the fact that a first-time voter who registered by mail did not provide documentary proof of identity at the polling place on Election Day.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as a case arising under the laws of the United States; under 28 U.S.C. § 1343(a)(4), as a case seeking equitable and other relief pursuant to an Act of Congress providing for the protection of the right to vote; under 42 U.S.C. §§ 15301 *et seq.*, as a case seeking to enforce compliance with

the Help America Vote Act of 2002 (HAVA); and under 42 U.S.C. § 1983, as a case seeking to enforce rights and privileges secured by the laws of the United States.

7. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201(a) and 2202.

8. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b) and Local Civil Rule 3.8 because a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

9. Plaintiff the League of Women Voters of Ohio (LWVO) is an organization operating within the State of Ohio and is affiliated with the League of Women Voters of the United States (LWVUS). The LWVO maintains an office at 17 South High Street, Suite 650, Columbus, Ohio 43215. The LWVO promotes political responsibility through informed and active participation of citizens in government and acts on selected governmental issues. The LWVO does not support or oppose any political party or candidate. Nationally, the LWVUS has approximately 70,000 to 80,000 members. In the State of Ohio, the LWVO has 3100 members who meet the qualifications set forth by Ohio law for voting in the 2004 general election and who desire to cast votes and have those votes counted, including members residing within the Court's territorial jurisdiction.

10. Plaintiff the Ohio AFL-CIO is a labor federation operating within the State of Ohio and is affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). The Ohio AFL-CIO maintains its statewide headquarters office at 395 East Broad Street, Columbus, Ohio 43215. The Ohio AFL-CIO is composed of local unions, organized committees, state and local councils, joint boards, district councils and similar subordinate organizations; the Ohio Alliance for Retired Americans; and state chapters; all affiliated with, or

chartered by, the AFL-CIO and operating within the State of Ohio. Among the Ohio AFL-CIO's chartered local labor councils are the Toledo Area AFL-CIO, 2300 Ashland Avenue, Toledo, Ohio; Sandusky County AFL-CIO, 3058 S.R. 195, Clyde, Ohio; Hancock County AFL-CIO, 1130 Summit Drive, Findlay, Ohio; and, Lima AFL-CIO, 11th Avenue, Lima, Ohio. The Ohio AFL-CIO has a total membership of approximately 350,000 working men and women in the State of Ohio, approximately 100,000 of which reside in Northwestern Ohio. Further, the Ohio AFL-CIO has members, living in every county of the State, who meet the qualifications set forth by Ohio law for voting in the 2004 general election and who desire to cast votes and have their votes counted.

11. Plaintiff Ohio ACORN is affiliated with and part of the Association of Community Organizations for Reform Now (ACORN). Ohio ACORN maintains an office at 379 North 20th, Lower Level, Columbus, Ohio 43215. ACORN is the nation's largest community organization of low- and moderate-income families, with over 150,000 member families organized into 800 neighborhood chapters in 65 cities across the country. In Ohio, ACORN has focused its grass-roots organizing efforts in low-income communities through direct action, negotiation, legislation and voter participation from its offices in Ohio. ACORN has over 1500 members in the State of Ohio, 150 of which are located in Northwestern Ohio. The socioeconomic conditions of ACORN's members often require them to make frequent changes of residence. Given their unstable residence situation, many of ACORN's members will be severely impacted by Defendant's Directive 2004-33 instruction that provisional ballots will not be provided or counted if the voter seeks to vote in any precinct except the one assigned by the county board of elections, regardless of the circumstances. Additionally, many of ACORN's members do not have photo identification and do not have documentary proof of residence. Many of these members, who are first-time voters who registered by mail, will be disenfranchised by the

enforcement of the order in Directive 2004-07 that elections officials are not to provide to, or count a provisional ballot of, such voters if they do not provide satisfactory documentary proof of identity and residency. Due to the disenfranchisement of its members resulting from the Defendant's Directives, Ohio ACORN will also suffer harm to its organizational purposes.

12. Plaintiff Project Vote/Voting for America, Inc. (Project Vote) is a non-profit, non-partisan organization, whose mission is to increase civic participation among low-income and minority citizens through voter education, registration and mobilization efforts. Since November 2003, Project Vote has opened offices in Ohio and has hired personnel to work on voter education and registration in low-income and minority communities in the state. Project Vote maintains an office at 3615 Superior Avenue, Cleveland, Ohio 44114. As a result of Directive 2004-07, Project Vote was forced to devote substantial funds and resources educating voters that they should bring identification to the polls. In addition, Project Vote was forced to spend substantial funds and resources instructing voters to contact their county boards of elections if they are confused about the location of their polling place. Due to the diversion of the funds and resources resulting from Defendant's Directive 2004-07, Project Vote fell short in its voter registration goals in the State of Ohio.

13. Plaintiff, People for the American Way Foundation (PFAWF) is a national organization founded to meet the challenges of discord and fragmentation among citizens with an affirmation of "the American Way", meaning freedom of thought, expression and religion, a sense of community, and tolerance and compassion for others. PFAWF reaches out to all Americans to affirm that in our society, the individual still matters. One of the ways PFAWF accomplishes its mission is through the education and registration of voters. PFAWF has organized extensive voter registration drives, issued voter intimidation reports, conducted workshops to educate local members in their rights as voters and promotes civil participation by urging its members to

exercise their rights to vote. PFAWF maintains an office in Ohio located at 432 East 109th Street, Cleveland, Ohio 44108. In Ohio, PFAWF has engaged in an extensive voter registration effort in minority communities that historically have been underrepresented in the electoral process. PFAWF has registered hundreds of first-time voters in Ohio whose right to vote will be disenfranchised by the enforcement of Directives 2004-7 and 2004-33. Nationally, PFAWF represents over 600,000 activists and members. In Ohio, PFAWF represents over 15,000 members, nearly 500 of which reside in the Toledo/Northwest Ohio Council 8 area.

14. Plaintiff the Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO is a labor organization representing over 38,000 employees of public schools, public libraries, Head Start agencies, and Boards of Mental Retardation and Developmental Disabilities across the State of Ohio. OAPSE/AFSCME Local 4, AFL-CIO has six offices across Ohio, including one located at 420 South Reynolds Road, Toledo, Ohio. OAPSE/AFSCME Local 4, AFL-CIO employs over ninety people in the State of Ohio. OAPSE/AFSCME Local 4, AFL-CIO has over 4500 members in Northwest Ohio. OAPSE/AFSCME Local 4, AFL-CIO has engaged in a statewide effort to register its members to vote. Over the past several months, over 1250 members of OAPSE/AFSCME Local 4, AFL-CIO have registered to vote for the first time. Many of these members are first-time voters who registered by mail and who will be disenfranchised by the enforcement of the Directive 2004-07. OAPSE/AFSCME Local 4, AFL-CIO will also suffer harm to its organizational purposes from enforcement of Defendant's Directives.

15. Plaintiff Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO is a labor organization that represents public and not-for-profit workers across the state of Ohio. Members of Ohio Council 8 are employed by cities, counties, hospitals, universities and boards of education. Ohio Council 8, AFSCME, AFL-CIO has over 43,000

members statewide and 7300 members in Northwest Ohio. Ohio Council 8 has eight regional offices, including an office located at 420 South Reynolds Road, Toledo, Ohio and employs over 80 people statewide. Ohio Council 8 has engaged in a statewide effort to register its members to vote. Over the past several months, over 1900 members of Ohio Council 8, AFSCME, AFL-CIO have registered to vote for the first time. Many of these members are first-time voters who registered by mail and who will be disenfranchised by the enforcement of the Directives 2004-07 and 2004-33. Ohio Council 8, AFSCME, AFL-CIO will also suffer harm to its organizational purposes from enforcement of Defendant's Directives.

16. Plaintiff Coalition of Black Trade Unionists (CBTU) is an organization of black trade unionists. CBTU consists of members from seventy-seven (77) international and national labor organizations with forty-two (42) chapters across the United States. CBTU has eight (8) chapters in Ohio, including chapters in Toledo, Cleveland, Dayton, Lorain, Columbus, Cincinnati, Akron and Warren/Youngstown. CBTU represents approximately 1500 members across the State of Ohio. The basic objectives of CBTU include improving economic development and employment opportunities for black workers; working with the framework of the trade union movement to provide a voice and vehicle for greater black and minority participation; and increasing union involvement in voter registration, voter education and voter turnout projects.

17. Plaintiff A Philip Randolph Institute (APRI) is a national organization of black trade unionists. APRI consists of members from 150 affiliates in 36 states and the District of Columbia. APRI has eight (8) chapters in Ohio, including chapters in Toledo, Columbus, Cleveland, Cincinnati, Dayton, Akron, Trumbull County and Youngstown. APRI represents approximately 500 members across the State of Ohio. APRI's members actively promote civil rights and strong anti-discrimination measures. APRI has registered and brought to the polls millions of black voters across the United States.

18. Plaintiff Coalition on Homelessness and Housing in Ohio (COHHIO) is a coalition of 600 organizations and individuals across Ohio committed to ending homelessness and promoting decent, safe, fair and affordable housing for all, with a focus on assisting low-income people and those with special needs. COHHIO maintains an office at 35 East Gay Street, Columbus, Ohio 43215. COHHIO's affiliated organizations include 115 organizations in Toledo, Ohio including the Aurora Project, Inc., 1035 North Superior Street, Toledo, Ohio and Beach House Family Shelter, 915 North Erie Street, Toledo, Ohio. The socio-economic condition of the population COHHIO and its affiliated organizations serve and of its members often require them to make frequent changes of residence. Given their unstable residence situation, many of COHHIO's members will be severely impacted by Directive 2004-33. COHHIO and its affiliated organizations have engaged in extensive voter registration efforts across Ohio, registering thousands of new voters. Many of the members of COHHIO are first-time voters who registered by mail, will be disenfranchised by the enforcement of Directive 2004-07.

19. The rights this suit seeks to vindicate are germane to the purposes of the Plaintiff organizations, and the claims alleged herein do not require the participation of individual members in the lawsuit. In addition, without the relief requested herein, the Plaintiff organizations will suffer injury through substantial diversion of resources and frustration of their organizational purposes.

20. Defendant J. Kenneth Blackwell (Blackwell) is sued in his official capacity as the Secretary of State of Ohio. In his capacity as Secretary of State, Defendant Blackwell is the chief elections officer of the state and has supervisory control over local election officials. Ohio Rev. Code Ann. § 3501.05. He is responsible for administering all statewide elections, including for federal office; for appointing all members of the county boards of elections; for issuing instructions and promulgating rules for the conduct of elections; for publishing manuals of

instructions on election administration for use at polling places; for prescribing uniform forms and notices for use in the conduct of elections; for instructing county elections officials with respect to election administration and compelling observance; for prescribing training of polling place officials; and for certifying statewide election results, among other things. *Id.* He is also responsible for coordinating the requirements of Ohio election law and federal law, including the Help America Vote Act of 2002. *Id.* In addition, he is charged with establishing and maintaining a statewide qualified voter file, as well as a computer system that allows each county board of elections access to that file. *Id.*

FACTS

I. The Statutory Framework

A. The Enactment of the Help America Vote Act of 2002

21. In the 2000 presidential election, in every State – including Ohio – thousands of voters were turned away from the polls without having cast a ballot because the poll workers could not find their names on the official list of eligible voters for the polling place. In many cases, these rejected voters were eligible and properly registered voters. The National Commission on Election Reform, chaired by former Presidents Gerald Ford and Jimmy Carter, found that in the 2000 election, administrative errors effectively disenfranchised thousands of eligible registered voters. National Commission on Election Reform, *To Assure Pride and Confidence in the Electoral Process* at 47 (2001) (Ford-Carter Report).

22. The administrative problems in the 2000 election had a disproportionate impact on voters who were members of racial minority groups and on low-income voters. A General Accounting Office report on the 2000 elections found that a potential voter's race was a significant factor in determining whether or not his or her vote would be counted. General Accounting Office, *Elections: Statistical Analysis of Factors That Affected Uncounted Votes in the 2000 Presidential*

Election at 5 (2001) (“[C]ounties with higher percentages of minority residents tended to have higher percentages of uncounted presidential votes, while counties with higher percentages of younger and more educated residents tended to have lower percentages of uncounted presidential votes.”). A House Committee on Government Reform study of the 2000 presidential election found that the percentage of uncounted votes in 20 congressional districts with low-income/high minority populations were higher, regardless of the type of voting equipment used, than in congressional districts with high-income/low minority populations. House Committee on Government Reform, Minority Staff, Special Investigations Division, *Income and Racial Disparities in the Undercount in the 2000 Presidential Election* at 8 (July 9, 2001).

23. To prevent future disenfranchisement of eligible voters, the Ford-Carter Commission recommended that the following two-part procedure be adopted nationwide. First, every State should replace local voter rolls with a system of statewide voter registration, with one computerized voter file accessible to local election officials throughout the State. Second, every State should permit “provisional voting” by any voter who claims to be qualified to vote in that State. The Commission explained that, in recommending the adoption of provisional balloting, “we are motivated by a consistent goal: No American qualified to vote anywhere in her or his state should be turned away from a polling place in that state.” Ford-Carter Report at 34.

24. The Caltech/MIT Voting Technology Project estimated that 1.5 million rejected votes of eligible voters could have been saved in the 2000 presidential election by use of “provisional ballots.” Caltech/MIT Voting Technology Project, *Voting: What Is, What Could Be* at 30 (2001).

25. A provisional ballot is “a ‘fail safe’ method that can be used when a potential voter’s registration status is challenged at the precinct.” *Id.* at 29-30. Provisional voting allows a voter whose information does not appear on a polling place’s list of registered voters to cast a special ballot that will be segregated from the regular ballots and will be counted later, after election

officials verify the voter's eligibility. Ordinarily, the voter places his or her provisional ballot in an envelope bearing his/her signature and information about the circumstances of the provisional vote. After the election, officials use the information on the outside of the provisional ballot envelope to research the voter's eligibility. If election officials verify that the voter was eligible to vote, the envelope is opened, and the election officials count the votes the voter cast for the offices for which he was qualified to vote. If the election officials determine that the voter was not eligible to vote in the election, the envelope remains sealed, and the ballot goes uncounted.

26. In order to revive confidence in the voting system after widespread criticism of the administration of the 2000 Presidential election, Congress passed HAVA, which was signed into law on October 29, 2002.

27. In enacting HAVA, Congress adopted many of the recommendations of the Ford-Carter Commission, including the recommendation that a provisional balloting system be adopted nationwide. As set forth below, HAVA requires every State to implement a system of provisional balloting so that no qualified voter will be turned away from the polls without being able to cast a meaningful vote by provisional ballot.

28. Congress found that provisional balloting was needed to guarantee that eligible voters would not be disenfranchised in future elections as they were in the 2000 election. As Representative Cummings said,

Hundreds, maybe thousands of voters were improperly turned away from the polls in the last election, their votes effectively robbed through a careless bureaucracy at best, and mal-intent at worst. We may never know for sure, but we do know that we need provisional voting to prevent this travesty from ever occurring again.

150 Cong. Rec. H7227 (daily ed. Sept. 15, 2004) (statement of Rep. Cummings). Representative Ney, the House sponsor of the bill, explained on the night of the final vote in the House that the goal of HAVA's provisional balloting provisions is to prevent the disenfranchisement of registered voters:

When this legislation goes into effect, the voting citizens of this country will have the right to a provisional ballot, so no voter will be turned away from a polling place, no voter will be disenfranchised, just because their name does not appear on a registration list.

148 Cong. Rec. H7837 (daily ed. Oct. 10, 2002) (statement of Rep. Ney).

29. The purpose of HAVA's provisional ballot provisions is "to ensure that every eligible American who goes to vote gets to vote and that every vote cast counts." 148 Cong. Rec. S726 (daily ed. Feb. 13, 2002) (statement of Sen. Schumer); *see also* 148 Cong. Rec. S711 (daily ed. Feb. 13, 2002) (statement of Sen. Dodd) ("By passing this bipartisan election reform bill, the Senate will help ensure that every single eligible American has the equal opportunity to both cast a vote and, of course, to have their vote counted.").

B. The Provisions of the Help America Vote Act

30. HAVA contains a number of provisions to ensure voting and election administration systems will "be the most convenient, accessible, and easy to use for voters" and will "be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote and to have that vote counted." 42 U.S.C. §§ 15381(a)(1), (3) (goals to be promoted by the Election Assistance Commission). Among those provisions are HAVA's provisional ballot requirements.

31. HAVA requires each state to permit an individual whose name does not appear on the "official list of eligible voters for the polling place" or whom a state official claims is not eligible to vote for any reason "to cast a provisional ballot" if the individual declares that he or she is registered to vote in the jurisdiction and is eligible to vote in an election for federal office. 42 U.S.C. § 15482(a). HAVA therefore requires each State to allow an individual who appears to vote in the incorrect polling place to cast a provisional ballot.

32. Although HAVA imposes certain identification requirements on first-time voters who register by mail, HAVA explicitly includes a "fail-safe voting" provision to ensure that voters who cannot meet those requirements are not thereby disenfranchised. HAVA specifically

requires states to permit a first-time voter who registers by mail but cannot provide the specified identification to “cast a provisional ballot.” *Id.* § 15483(b)(2)(B). The procedures for issuing and counting provisional ballots cast by first-time voters who register by mail and do not provide identification are the same as those for other provisional ballots. *Id.*

33. The procedure for issuing provisional ballots is as follows. HAVA requires election officials at the polling place to “notify” an eligible individual that “the individual may cast a provisional ballot in that election.” *Id.* § 15842(a)(1). HAVA then provides that the individual may “cast a provisional ballot at the polling place upon the execution of a written affirmation” that the individual is a “registered voter in the jurisdiction” and is “eligible to vote in that election.” *Id.* § 15842(a)(2).

34. While HAVA does not define “jurisdiction,” Congress directed that HAVA be construed in harmony with the National Voter Registration Act of 1993 (NVRA), which does define jurisdiction. *See* 42 U.S.C. § 15545(a)(4). NVRA uses the term “registrar’s jurisdiction” to refer to the geographic scope of the unit of government that maintains the voter-registration rolls. *See* 42 U.S.C. § 1973gg-6(j). Under this definition, in Ohio, where voter registration is maintained by each county board of elections; *see* Ohio Rev. Code §§ 3501.11(T), (U); “jurisdiction” necessarily refers to “county.”

35. Once a voter casts a provisional ballot, HAVA requires election officials at the polling places to “transmit” the ballot or the voter information contained in the accompanying written affirmation “to an appropriate State or local election official for prompt verification.” *Id.* § 15482(a)(3). If the election official verifying the provisional ballot determines that “the individual is eligible under State law to vote,” HAVA mandates that the individual’s provisional ballot “*shall be counted as a vote* in that election.” *Id.* § 15482(a)(4) (emphasis added).

Eligibility to vote under state law is the *only* permissible requirement for a provisional ballot to be counted.

36. These provisions specifically address the Election Day problem of voters whose eligibility is questioned. To avoid unnecessary delays and other deterrents to those voters on Election Day, HAVA requires States to collect provisional ballots merely upon the voters' assertions of their eligibility. *See* 42 U.S.C. § 15482(a)(2). Prompt verification of the voters' eligibility occurs *after* the polls close, once the proper election officials receive the provisional ballots from the polling places. *Id.* §§ 15482(a)(3), (4).

37. HAVA's new identification requirements for first-time voters who register by mail are as follows: A first-time voter who registers by mail is required to present either photo identification, a copy of a current utility bill, bank statement, government check, paycheck, or other government document showing the voter's name and address either when registering or at the polls if that voter is not subject to an exception in the statute. *Id.* § 15483(b)(2)(A). A first-time voter who registers by mail is *not* required to show any identification if that individual submits either (a) a driver's license number, or (b) the last four digits of the individual's social security number, and a state or local election official is able to match either of those numbers with "an existing State identification record bearing the same number, name and date of birth as provided" on the voter's registration form. *Id.* § 15483(b)(3). A first-time voter who registers by mail and is subject to the identification requirement is further protected by the "fail-safe voting" provision, referenced above, allowing that individual to vote by provisional ballot. *Id.* § 15483(b)(2)(B).

C. Eligibility to Vote Under Ohio Law

38. As set forth above, HAVA mandates that states count provisional ballots cast by individuals who are eligible to vote under state law. In Ohio, an individual is eligible to vote if

he or she is a citizen of the United States, is eighteen or more years of age, is a resident of the State of Ohio for the thirty days prior to the election in which he or she seeks to vote, and is registered to vote anywhere in the State for the thirty days prior to the election.

39. Article V, Section 1, of the Ohio Constitution provides: “Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote in all elections.”

40. As authorized by Article V, Section 1, of the Constitution, the Ohio General Assembly has provided in Section 3503.01 of the Ohio Revised Code that a person must be resident of the State for thirty days immediately preceding the election at which he or she offers to vote. The Ohio General Assembly has not provided for by law any length of residency in a county, township or ward for a citizen to be a qualified elector.

41. No other provision in Ohio’s Code, including the provisions relating to the administration of elections, affects the *eligibility* of an Ohio citizen to vote.

II. Provisional Voting in Ohio Prior to Directives 2004-07 and 2004-33

42. Notwithstanding the broad provisional voting rights guaranteed by HAVA, Ohio has never amended its statutory scheme to meet HAVA’s mandate.

43. Under the Ohio elections code, which for all relevant purposes has remained the same since well before the enactment of HAVA, qualified and registered voters are permitted to cast provisional ballots only in a very narrow set of circumstances. *See* Ohio Rev. Code Ann. § 3503.16. The Ohio statutory scheme covers only those voters who have moved within the State and allows such voters to cast provisional ballots at their new polling places only after they have fulfilled certain conditions. *Id.*

44. Specifically, before casting a provisional ballot under the Ohio system, a voter who has moved between precincts within a county must sign a notice of change of residence and attest that he or she will not attempt to vote at any other location in that election. *Id.* § 3503.16(B). A voter who has moved between counties must first appear at the county board of elections or another location designated by the board prior to or on the day of the election. *Id.* § 3503.16(C).

45. Prior to the implementation of HAVA, Ohio did not require identification from any class of voters, including first-time voters who register by mail, as a condition of voting or having their votes counted

46. Well before the enactment of HAVA and up to 2004, at least some Ohio counties counted provisional ballots cast by voters in the wrong precincts. Montgomery County, for example, used the following procedure when a voter cast a ballot in the wrong precinct: County election officials would first determine the voter's eligibility by checking the voter's registration form. If the voter was registered to vote in Ohio, was a U.S. citizen and was eighteen years of age on Election Day, County election officials would determine the voter to be eligible to vote in all federal, state and countywide races and would count the votes cast by provisional ballot in those races. If the voter also cast a vote in a local race which impacted an area of the county in which the voter did not reside, election officials would determine the voter to be ineligible to vote in that race and would not count the vote for that race.

47. After Congress passed HAVA in 2002, significant changes were needed to bring Ohio's provisional-balloting system into compliance with federal law.

48. In 2003, Defendant Blackwell submitted to the Federal Election Assistance Commission "A State Plan to implement the Help America Vote Act of 2002 in accordance with Public Law 107-252, § 253(b)," which was published in the Federal Register on March 24, 2004. *See* 69 Fed. Reg. 14879, 2004 WL 578763. The State Plan was submitted to comply with Sections 253

and 254 of HAVA, as a condition for Ohio's receipt of federal funds. *See* 42 U.S.C. §§ 15403, 15404. Among other things, HAVA required each state plan to outline how the state would use federal funds to comply with the requirements of Title III of HAVA, the title containing the new provisional ballot requirements. *See, e.g., id.* § 15404(a)(1).

49. The Ohio State Plan recognized that HAVA requires election reform in Ohio to meet “the more encompassing aim of the Act,” namely, “to invite more voters into the process to exercise their rights and responsibilities as qualified voters.” State Plan at 17, 69 Fed. Reg. at 14002-02, Image 263 *et seq.* In furtherance of this overriding goal, the State Plan discussed “[t]he critical role of provisional voting in election reform,” and called provisional voting “a way to ensure every eligible voter who shows up at the polls on Election Day can cast a ballot.” State Plan at 33, 69 Fed. Reg. at 14895.

50. Recognizing that the extant Ohio system already “protects those who changed their residence,” the State Plan promised that Ohio would be “sensitive” to other voters whose names do not appear on the voter rolls, such as voters who show up to vote having been “incorrectly purged from the voter registration list.” *Id.* The document further promised that “the Secretary of State is committed to making sure every voter and every vote counts.” *Id.* The document continued:

Ohio and the Secretary of State, as a matter of public policy, embraces the concept that every effort should be made at every board of elections in the state to accommodate every voter who, for whatever reason, does not appear on the certified list of registered voters in any jurisdiction of the state. Provisional voting is a valuable fail-safe mechanism that is an essential component of election reform in Ohio.

State Plan at 34, 69 Fed. Reg. at 14002-02, Image 263 *et seq.* As a result, the State Plan promised to ensure “provisional voting policies that are weighted more toward inclusion in the voting process than challenges and exclusion in the ballot process.” *Id.*

51. With respect to provisional ballots for those who cannot meet the new identification requirements, the State Plan said: “As no voter should be denied an opportunity to cast a provisional ballot in those circumstances where their name might not appear on the voter rolls, neither should a voter be denied an opportunity to vote because of arbitrary and restrictive identification requirements.” State Plan at 36, 69 Fed. Reg. at 14002-02, Image 263 *et seq.*

52. On Friday, August 27, 2004, a spokesman for Defendant Blackwell committed the Secretary of State’s office to a policy of accepting provisional ballots from most voters who appear on Election Day at the wrong polling places but in the right county. *See* Scott Hiassen, *Blackwell Backs Down on Ballot Ruling*, Cleveland Plain Dealer, Aug. 28, 2004. The spokesman promised that sometime during the week of September 1, 2004, election officials could expect orders to accept these provisional ballots in the coming election. *See id.* Referring to Ohio’s obligations under HAVA, the spokesman stated, “The intent of the federal law is not only to provide provisional ballots, but that those ballots be counted regardless of any error.” *Id.* The Secretary of State, however, issue no new directive during the week of September 1, 2004. Rather, as set forth below in section IV, on September 16, 2004, the Secretary of State issued a directive that denies provisional ballots to the very voters whose rights he previously committed to protect.

III. Directive 2004-07 Concerning Documentary Proof of Identity

53. On February 20, 2004, Defendant Blackwell issued Directive 2004-07 (attached hereto as Exhibit A) to all County Boards of Elections, including members, directors, and deputy directors. Among other things, Directive 2004-07 includes instructions for handling provisional ballots, including provisional ballots cast by individuals who registered to vote by mail after January 1, 2003.

54. Purporting to implement the requirements of Section 303 of HAVA, Directive 2004-07 provides that a first-time voter who registered by mail and did not provide a driver's license number, the last four digits of his or her social security number, or "acceptable documentary proof of the applicant's identity" when "*both* (1) registering to vote *and* (2) voting for the first time in person in a federal election," may cast a provisional ballot after completing a written affirmation. Directive 2004-07, at 3 (emphasis in original).

55. Directive 2004-07 then provides that the provisional ballot cast by such a voter will only "be included in the official canvass" if the voter in fact does provide "acceptable proof of identity either to the board office or to the precinct election officials by the time the polls close" on Election Day. *Id.* If the voter does not provide identification on Election Day, the Directive mandates that "the ballot cannot be counted." *Id.*

56. Directive 2004-07, if implemented, would effectively nullify the provisional ballot provisions of HAVA with respect to a category of voters who are entitled by federal law to vote by provisional ballot: first-time voters who registered by mail and who cannot provide identification at the polling place on Election Day. By allowing those voters to cast provisional ballots while determining in advance that none of those ballots will be counted, Directive 2004-07 would transform the provisional balloting scheme into a meaningless sham, presenting the voter with a decoy ballot while effectively disenfranchising him or her.

IV. Directive 2004-33 Concerning Precinct Requirements

57. On September 16, 2004, Defendant Blackwell issued Directive 2004-33 (attached hereto as Exhibit B), entitled "Issuing and Processing Provisional Ballots", to all Ohio county boards of elections. Directive 2004-33 does not even purport to comply with HAVA. Rather, under the guise of an effort to enforce election administration provisions of Ohio law regarding voting precincts, Directive 2004-33 effectively disenfranchises another category of voters entitled by

federal law to vote by provisional ballot: eligible voters who appear to vote in precincts other than those (correctly or incorrectly) assigned to them by election officials.

58. Like the preexisting statutory scheme, Directive 2004-33 limits the right to cast a provisional ballot to Ohio voters who have moved from one precinct to another. Under the subheading, “State Law: Provisional voting eligibility based on elector moving from one Ohio precinct to another,” the directive provides that a voter who moves from one precinct to another before an election may update her registration information and cast a provisional ballot in the new precinct. The directive continues, “[t]he provisional ballot will be counted in the official canvass if the county board of elections confirms that the person was timely registered to vote in another Ohio precinct, and that the person did not vote or attempt to vote in that election using the person’s former voting residence address.” Directive 2004-33, at 1. The directive further provides that voters will receive provisional ballots only if they are residents of the precinct in which they seek to vote: “pollworkers in a precinct must confirm before issuing a provisional ballot that the person to whom the provisional ballot will be issued is a resident of the precinct, or a portion of the precinct, in which the person desires to vote.” *Id.*

59. If, however, a voter has not moved from one Ohio precinct to another and does not appear to vote at the polling place assigned by election officials, Directive 2004-33 provides that the voter may *not* be given a provisional ballot:

Before issuing a provisional ballot as provided for under state or federal law, the pollworkers must confirm that the voting residence address claimed by the voter is located within the area shown on the precinct map and listed on the street listing.

Only after the precinct pollworkers have confirmed that the person is eligible to vote in that precinct shall the pollworkers issue a provisional ballot to that person. Under no circumstances shall precinct pollworkers issue a provisional ballot to a person whose address is not located in the precinct, or portion of the precinct, in which the person desires to vote. . . .

Id. In other words, Directive 2004-33 permits the issuance of a provisional ballot “[o]nly after

the precinct pollworkers have confirmed that the person is eligible to vote in that precinct.” *Id.* Thus, under the Directive, unless a voter has moved from one precinct to another and appears to vote in the correct precinct for the new address, that voter may not even cast a provisional ballot, let alone have the ballot counted.

60. If a pollworker determines that the voter is not in the correct precinct, the pollworker is instructed to contact the board of elections, and the board, in turn, is instructed to advise the voter of the location of the correct polling place. *Id.* at 2. Even if a voter is a properly registered and eligible voter who cannot travel to the correct polling place or who disputes the board’s determination as to the correct polling place, the pollworker may not allow that voter to cast a provisional ballot.

61. By denying outright provisional ballots to voters whom election officials maintain appear to vote in the wrong precincts, Directive 2004-33 violates HAVA’s clear requirement that any voter who claims to be eligible to vote in the jurisdiction is entitled to cast a provisional ballot. And by preventing many of those voters from voting at all, Directive 2004-33 further contravenes HAVA’s rules for counting provisional ballots.

V. The Widespread Disenfranchisement Threatened by Defendants’ Directives and the Impact on Minority and Low Income Voters

62. By refusing to all voters who appear in precincts not assigned by the county board of elections to cast provisional ballots, Directive 2004-33 will disenfranchise a significant number of eligible voters.

63. In past elections in Ohio, many individuals eligible to vote have appeared to vote in the wrong precincts, in some cases due to last-minute polling place closures and reassignments by state elections officials. For many individuals eligible to vote in Ohio, it would be a serious burden and hardship for them to have to travel to more than one polling place in order to cast a vote.

64. In 2001, Ohio engaged in a statewide redistricting, redrawing all state and federal legislative district lines. As a result, county boards of elections were required to alter many of their precinct boundary lines in order to accommodate the new legislative districts. Thus, a substantial number of voters have been assigned to different precincts than they were in the 2000 elections

65. On information and belief, a large number of Ohio voters are likely to have been reassigned to different precincts since the 2000 elections. Many Ohio voters who seek to cast a vote at the polling place to which they were assigned in the 2000 election will arrive at a polling place other than their newly assigned one.

66. Directive 2004-07's prohibition against counting votes cast by first-time voters who registered by mail but do not provide identification on Election Day will also disenfranchise many eligible voters. Many individuals eligible to vote in Ohio do not possess or carry the required identification.

67. In Ohio, the cost of a driver's license as of 2004 is as follows: \$23.00 for a first driver's license for a person aged 21 or older; \$19.25 for a person aged 20; \$20.50 for a person aged 19; and \$21.75 for a person aged 18; \$24.00 for a renewal license; and \$19.50 for a replacement license. The cost of a state identification card is \$8.50 for a new or renewal card and \$7.50 for a replacement card.

68. Many individuals eligible to vote in Ohio are not aware of the new identification requirements. On information and belief, election officials currently are not informing voters that they should bring acceptable identification to the polls.

69. The identification rule is also likely to have a disparate impact on minority and low-income voters.

70. Both the Ford-Carter Commission and a 2001 Task Force on the Federal Election found that identification requirements would disproportionately burden low-income voters. *Ford-Carter Report* at 32 (“5-7% of adults do not possess a driver’s license or other photo identification, and are disproportionately poor and urban”); John Mark Hansen, *Verification of Identity, Task Force on the Federal Election System* at 4 (July 2001) (“[T]o require [photo identification] for voting would be to impose an additional expense on the exercise of the franchise, a burden that would fall disproportionately on people who are poorer and urban.”).

71. In the debates over the passage of HAVA’s identification requirements, a number of members of Congress expressed concern that requiring identification would disproportionately burden minority or low-income voters. *See, e.g.*, 148 Cong. Rec. S1227 (daily ed. Feb. 27, 2002) (statement of Sen. Landrieu) (“History has shown that requiring photo identification or certain other documents most significantly impacts minority voters.”); 148 Cong. Rec. S1224 (daily ed. Feb. 27, 2002) (statement of Sen. Schumer) (“The intent of this legislation is to take people, particularly those who live in the corners of America who do not fly airplanes and use their credit cards all the time but rather people who may not have a driver's license, who may not have a utility bill, and allow them to vote, our most sacred right.”); 148 Cong. Rec. S10498 (daily ed. Oct. 16, 2002) (statement of Sen. Wellstone) (“As a disproportionate number of racial and ethnic minorities, the homeless, as well as voters with disabilities and certain religious objectors, do not have photo identification nor the financial means to acquire it, the burden of this requirement would fall disproportionately and unfairly on them.”). Senator Wellstone noted in the Senate debates that, given the costs involved in obtaining identification or documentation of residence, an inflexible identification requirement would amount to a *de facto* poll tax. *Id.*

72. In part as a result of concerns over this disparate impact, Congress specifically added a provisional ballot requirement to HAVA’s new identification provision to prevent the new

identification requirements from becoming an absolute barrier to voting, “thereby avoiding the potential disenfranchisement of minority voters.” 148 Cong. Rec. S10504 (daily ed. Oct. 16, 2002) (statement of Sen. Dodd).

VI. Protection Against Fraud

73. Ohio election law has numerous statutory provisions to protect the integrity of the election process and to protect against voter fraud, including safeguards against dual voting, criminal penalties against voters who submit false statements in voter registrations, requirements for the investigation of suspected fraudulent voting, mandatory removal of the names of improperly registered voters from the voters rolls, and signature matching of Election Day voter signatures against signatures on voter registration cards, among others

74. On information and belief, there is no problem or history of fraud by individual voters in Ohio.

CLAIMS

**Count I
(Violation of the Help America Vote Act)**

75. Plaintiffs incorporate paragraphs 1 through 71 as if fully set forth herein.

76. To the extent that Directive 2004-07 instructs election officials not to count provisional ballots cast by first-time voters who register by mail and cannot provide identification at the polls on Election Day, the Directive violates HAVA and interferes with federal rights secured by HAVA.

77. Specifically, by refusing to provide provisional ballots or count the ballots of voters subject to HAVA’s identification requirements, if such voters fail to present identification and documentary proof of residence in the precinct on Election Day, the Directive flatly violates HAVA’s mandate that a provisional ballot must be counted if the individual casting a provisional

ballot is “eligible under state law to vote” in the election. *See* 42 U.S.C. §§ 15483(b)(2)(B), 15482(a)(4).

78. The requirement that a first-time voter who registers by mail provide certain forms of identification is not a condition of eligibility to vote under Ohio law, which has never sanctioned an identification requirement for voting.

79. An otherwise eligible and properly registered voter who does not provide identification either on or before Election Day is “eligible to vote” in Ohio.

80. Therefore, Directive 2004-07 conflicts with HAVA, a federal statute, and is preempted.

81. Absent this Court’s intervention, Plaintiffs and their members will suffer irreparable injury through Directive 2004-07’s interference with their federal rights to vote.

82. Defendant’s conduct must be preliminarily and permanently enjoined to prevent his actions in enforcing Directive 2004-07 from interfering with federal rights and thereby causing irreparable injury to Plaintiffs and their members.

Count II
(Violation of the Help America Vote Act)

83. Plaintiffs incorporate paragraphs 1 through 70 as if fully set forth herein.

84. Because it instructs election officials not allow individuals who seek to vote at precincts other than those assigned to them by election officials, even if they are eligible and registered to vote under Ohio law, Directive 2004-33 violates HAVA and interferes with federal rights secured under HAVA.

85. Specifically, HAVA requires that all States permit individuals to cast provisional ballots, including any individual whose name does not appear on the official list of eligible voters for the polling place but who declares that he or she is “a registered voter in the jurisdiction in which the individual desires to vote” and is “eligible to vote in an election for Federal office.” 42 U.S.C. § 15482(a). Any individual who so declares “shall be permitted to cast a provisional ballot.” *Id.*

HAVA requires election officials at the polling place to notify individuals of their right to cast a provisional ballot. *Id.* § 15482(a)(1). HAVA also mandates that all provisional ballots be counted if cast by persons eligible under state law to vote. *Id.* § 15482(a)(4).

86. As described above, Directive 2004-33 violates HAVA in at least five fundamental ways. First, Directive 2004-33 unlawfully limits the right to cast a provisional ballot to those Ohio voters who have moved from one Ohio precinct to another, leaving no opportunity to cast a provisional ballot and to have that ballot counted if a non-moving voter's name is erroneously omitted from a precinct's voter-registration list.

87. Second, Directive 2004-33 violates HAVA by depriving a voter who arrives at the "wrong" precinct within the county of his residence the right to cast a provisional ballot and to have that ballot counted.

88. Third, Directive 2004-33 violates HAVA's mandate that poll workers notify voters of their right to cast a provisional ballot if they satisfy HAVA's affirmation requirement.

89. Fourth, Directive 2004-33 unlawfully prevents the counting of provisional ballots cast by individuals who first attempt to vote at the "wrong" polling place but then cast a provisional ballot at the "proper" polling place.

90. Fifth, Directive 2004-33 violates HAVA by requiring poll workers, as a precondition to issuing a provisional ballot to an individual who satisfies HAVA's written-affirmation requirement, to confirm the individual's eligibility to vote.

91. Therefore, Directive 2004-33 conflicts with HAVA, a federal statute, and is preempted.

92. Directive 2004-33 creates a real and imminent threat that Plaintiffs' members will be deprived of their federal rights to cast provisional ballots and to have those ballots counted. Plaintiffs and their members are being deprived of federal rights guaranteed under HAVA and 42 U.S.C. § 1983.

93. Moreover, Directive 2004-33 threatens Plaintiffs' interests in assuring that their members' rights to cast ballots in the November 2, 2004 election for President, Vice President and all other federal, state, and local offices and initiatives and to have their votes counted are fully realized.

94. Absent this Court's intervention, Plaintiffs and their members will suffer irreparable injury through the Directive's interference with their federal rights to vote.

95. Defendant's conduct must be preliminarily and permanently enjoined to prevent his enforcing Directive 2004-33 from interfering with federal rights and thereby causing irreparable injury to Plaintiffs and their members.

Count III
(Violation of the First and Fourteenth Amendments)

96. Plaintiffs repeat and reallege paragraphs 1 through 80, as if fully set forth herein.

97. The First and Fourteenth Amendments of the United States Constitution protect the right to vote as a fundamental right. The First Amendment's guarantees of freedom of speech and association protect the right to vote and to participate in the political process.

98. As detailed above, by directing election officials not to count the votes of first-time voters who register by mail and do not provide identification, Directive 2004-07 imposes a severe burden on the Plaintiffs' and their members' fundamental right to vote by depriving thousands of voters of their right to have their votes counted. If it is not enjoined, the Defendants' refusal to count provisional ballots based on an inflexible identification requirements will continue to impose such severe burdens on the voters' right to vote.

By reason of the foregoing, Defendants, acting under color of state law, have deprived and will deprive Plaintiffs and their members of the rights, privileges, and immunities secured to them by the First and Fourteenth Amendments to the United States Constitution and protected under 42 U.S.C. § 1983.

99. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights, privileges, and immunities.

100. Defendants have no compelling or important interest that justifies this severe and unequal burden upon Plaintiffs' and their members' fundamental right to vote and to participate in the political process.

Count IV
(Violation of the First and Fourteenth Amendments)

101. Plaintiffs repeat and reallege paragraphs 1 through 85, as if fully set forth herein.

102. As detailed above, by turning away from the polls registered voters who seek to cast provisional ballots in the "wrong" precincts, Directive 2004-33 imposes a severe burden on Plaintiffs' and their members' fundamental right to vote and to participate in the political process by depriving thousands of voters of their right to cast their votes and have their votes counted. If it is not enjoined, the Defendants' refusal to count provisional ballots of voters who appear in the wrong precincts will continue to impose such severe burdens on Plaintiffs' and their members' right to vote and to participate in the political process.

103. By reason of the foregoing, Defendants, acting under color of state law, have deprived and will deprive Plaintiffs and their members of the rights, privileges, and immunities secured to them by the First and Fourteenth Amendments to the United States Constitution and protected under 42 U.S.C. § 1983.

104. Plaintiffs and their members have no adequate remedy at law for such deprivation of their rights, privileges, and immunities.

105. Defendants have no compelling or important interest that justifies this severe and unequal burden upon Plaintiffs' and their members' fundamental right to vote and to participate in the political process.

Count V
(Violation of the Equal Protection Clause)

106. Plaintiffs repeat and reallege paragraphs 1 through 90, as if fully set forth herein.

107. Directive 2004-07's instructions to local officials not to count ballots cast by first-time voters who registered by mail and who do not present identification at the polling place on Election Day burdens the fundamental right to vote by disenfranchising eligible registered voters.

108. If the Defendants are permitted to enforce the provisions set forth in Directive 2004-07, the individual Plaintiffs and other voters like them are likely not to have their votes counted based on the arbitrary distinction that they cast their provisional ballot without showing certain forms of identification.

109. Low-income, homeless, and minority voters such as Plaintiffs' members are likely to suffer a disparate impact as a direct result of Defendants' directive, depriving them of the equal protection of HAVA and the laws of the United States.

110. Defendants have no compelling or important interest that justifies this severe and unequal burden upon Plaintiffs' and their members' fundamental rights.

111. Absent this Court's intervention, Plaintiffs' members and similarly situated voters will suffer irreparable injury through deprivation of the fundamental right to vote.

112. The enforcement of the Directive 2004-07's instruction not to count provisional ballots of first-time voters who registered by mail and who do not provide photo identification or proof of residence at the polls must be preliminarily and permanently enjoined to protect Plaintiffs and their members from this real and imminent threat.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court to enter an Order:

- (1) Declaring that the provisions of Ohio Secretary of State Directive 2004-33 prohibiting elections officials from providing a provisional ballot to, and from counting a provisional ballot from, an otherwise eligible voter based on that voter's seeking to vote in any precinct other than the one assigned by the county board of elections violate rights granted to Plaintiffs and their members by the Help America Vote Act of 2002, 42 U.S.C. §§ 15301 *et seq.*;
- (2) Declaring that the provisions of Ohio Secretary of State Directive 2004-33 prohibiting Defendant from collecting and counting provisional ballots merely because the individual voters attempt to vote at the "incorrect" or "wrong" polling place within the jurisdiction in which they reside and are registered to vote violate rights granted to Plaintiffs and their members by the Help America Vote Act of 2002, 42 U.S.C. §§ 15301 *et seq.*;
- (3) Declaring that the provisions of Ohio Secretary of State Directive 2004-33 requiring poll workers, as a precondition to issuing a provisional ballot to an individual voter who satisfies HAVA's written-affirmation requirement, to confirm the individual's eligibility to vote violate rights granted to Plaintiffs and their members by the Help America Vote Act of 2002, 42 U.S.C. §§ 15301 *et seq.*;
- (4) Declaring that the provisions of Ohio Secretary of State Directive 2004-07 requiring a first-time voter in a federal election who registered by mail after January 1, 2003, to produce acceptable documentary proof of identity and

residency, rather than providing only the same verbal affirmation provided by all other voters, violate rights granted to Plaintiffs and their members by the Help America Vote Act of 2002, 42 U.S.C. §§ 15301 *et seq.*;

- (5) Preliminarily and permanently enjoining Defendant, his employees, agents, representatives, and successors in office from applying the provisions of Ohio Secretary of State Directives 2004-07 and 2004-33 that violate the Help America Vote Act of 2002, 42 U.S.C. §§ 15301 *et seq.*;
- (6) Requiring Defendant promptly to issue a new directive to all Ohio county boards of elections, instructing them to issue and count provisional ballots in accordance with the Help America Vote Act of 2002, 42 U.S.C. §§ 15301 *et seq.*;
- (7) Awarding Plaintiffs their attorney fees and costs in accordance with 42 U.S.C. § 1988; and
- (8) Granting Plaintiffs such additional relief as the interests of justice may require, together with their costs and disbursements in maintaining this action.

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