

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

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MICHIGAN STATE CONFERENCE OF NAACP :
BRANCHES, as an organization and representative : Civ. No. _____
of its members; ASSOCIATION OF :
COMMUNITY ORGANIZATIONS FOR :
REFORM NOW (ACORN), as an organization and :
representative of its members; and PROJECT : **COMPLAINT FOR**
VOTE, : **DECLARATORY AND**
 : **INJUNCTIVE RELIEF**
 :
Plaintiffs, :
 :
v. :
 :
TERRI LYNN LAND, in her official capacity as :
Secretary of State of Michigan, and :
CHRISTOPHER M. THOMAS, in his official :
capacity as Director of Elections of Michigan, :
 :
Defendants. x

Plaintiffs, by their attorneys, the Brennan Center for Justice at New York University School of Law, the Advancement Project, Amos Williams, and the law firm of Manatt, Phelps & Phillips, LLP, as for their complaint against Defendants, allege as follows:

PRELIMINARY STATEMENT

1. This emergency action is brought to prevent thousands of eligible Michigan voters from being unlawfully disenfranchised in violation of their Constitutional, federal and Michigan law rights. By this action, Plaintiffs seek a declaratory judgment and preliminary injunction to prevent the Michigan Secretary of State and Director of Elections from refusing to count in the upcoming election certain categories of provisional ballots that are required to be counted under federal and Michigan election law. 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 June 16, 2004, Michigan's Director of Elections, acting under the supervision of the Secretary of State, issued a directive ("the June 16 Directive") that, among other things, instructs county election officials how to administer provisional ballots cast by two categories of voters who are entitled by law to vote by provisional ballot: (1) first-time voters who register by mail and who cannot provide identification on election day, and (2) voters who, as a result of either official or voter error, appear to vote in the wrong polling place. Although the June 16 Directive correctly provides that provisional ballots must be *issued* to both categories of voters, in a bizarre and illegal twist, it then dictates that those provisional ballots *may not be counted* under any circumstances.

3. If implemented, the June 16 Directive will unlawfully nullify the "fail-safe voting" provisions in both federal and Michigan law, which were designed to prevent the disenfranchisement of eligible voters entitled to vote by provisional ballot. Both federal and Michigan election law provide that individuals seeking to vote in elections for federal office may cast provisional ballots in the circumstances addressed in this case, among others. Both laws then require 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 directing in advance that the state will not count any provisional ballots cast by two categories of voters who are entitled to vote by provisional ballot, the June 16 Directive effectively eviscerates the protections that Congress and the Michigan legislature have mandated, turning the provisional ballots into no more than scrap paper. The effect of the June 16 Directive would be to

disenfranchise thousands of eligible, registered voters, in violation of the Federal and Michigan Constitutions, HAVA, and Michigan law.

4. In addition to a declaration that the June 16 Directive violates the law, Plaintiffs seek a preliminary and permanent injunction that will take effect before the November 2004 election (i) prohibiting elections officials from rejecting provisional ballots cast by eligible registered voters who cast provisional ballots in the wrong precincts, solely based on the precinct to which the voter has been assigned and (ii) prohibiting elections officials from rejecting provisional ballots solely based on the fact that a first-time voter who registered by mail did not provide identification at the polling place on Election Day.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as a case arising under the Constitution and 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”); under the First and Fourteenth Amendments of the United States Constitution, as a case alleging violations of Plaintiffs’ rights to vote and to associate; under 42 U.S.C. § 1983, as a case seeking to enforce rights and privileges secured by the Constitution and the laws of the United States; and under 28 U.S.C. § 1367, as a case alleging state law claims warranting the exercise of this Court’s supplemental jurisdiction.

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

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

PARTIES

8. Plaintiff Michigan State Conference of NAACP Branches (“Michigan NAACP”) is a membership organization comprised of over 40 statewide units of the National Association for the Advancement of Colored People (NAACP). The purpose of the NAACP is to ensure the equality of minority group citizens and to take lawful action to secure the exercise of constitutional rights of minority group citizens. Michigan NAACP has an office in Bay City, Michigan. Many of Plaintiffs’ members who are registered and eligible voters have suffered disenfranchisement through no fault of their own due to the June 16 Directive’s inflexible polling place requirements because last-minute polling-place closures and reassignments left Plaintiffs’ members unable to vote in their assigned precincts. In many of these instances, before the new polling place reassignments, the Michigan NAACP’s members had voted in the same polling places for years. In many cases, the Michigan NAACP’s members were elderly individuals or lacked transportation to reach the newly reassigned polling place before the close of the polls. For example, shortly before the August 3, 2004 primary election in Michigan, five election precincts were closed in a predominantly black community and those voters were reassigned to another precinct on the other side of town. Although Plaintiff Michigan NAACP expended substantial funds and resources in organizing buses to take the reassigned voters to their new polling places, due to the widespread confusion resulting from the polling place closures, many of Plaintiff Michigan

NAACP's members were disenfranchised because they were unable to determine their new polling place location or to reach their new polling places before the close of the polls.

9. 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 five offices in Michigan and has hired twelve full-time, salaried personnel and 250-300 temporary personnel to work on voter education and registration in low-income and minority communities in the state. As a result of the June 16 Directive, 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 clerk's office if they are confused about the location of their polling place. Due to the diversion of the funds and resources resulting from the June 16 Directive, Project Vote fell short in its voter registration goals in the State of Michigan.

10. The Association of Community Organizations for Reform Now ("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 Michigan, ACORN has focused its grass-roots organizing efforts in low-income communities through direct action, negotiation, legislation and voter participation from its offices in Detroit, Flint, Kalamazoo, Benton Harbor, Pontiac, Grand Rapids, Battle Creek, Ann Arbor and Lansing. ACORN has over 400 members in the State of Michigan. The socioeconomic conditions of ACORN's members often requires them to make frequent changes of residence. Given their unstable residence situation, many of ACORN's members will be severely impacted by the June 16 Directive's instruction that provisional ballots will not be

counted if cast in the wrong precinct. 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 June 16 Directive not to count the provisional ballots of such voters if they do not provide photo identification or documentary proof of residence. Due to the disenfranchisement of its members resulting from the June 16 Directive, ACORN will also suffer frustration of its organizational purposes.

11. 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 organizational purposes.

12. Defendant Terri Lynn Land ("Land") is sued in her official capacity as the Secretary of State of Michigan. Her official residence is at Treasury Building, 1st Floor, 430 West Allegan, Lansing, MI 48918. In her capacity as Secretary of State, Defendant Land is the chief election officer of the state and has supervisory control over local election officials. Mich. Comp. Laws § 168.21. She is responsible for administering all statewide 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, notices, and supplies for use in the conduct of elections and regulations; and for training and instructing township, city, and village clerks with respect to election administration, among other things. *Id.* § 168.31. She is also responsible for coordinating the requirements of Michigan election law and federal law, including the Help America Vote Act of 2002. *Id.* § 168.509n. In

addition, she is charged with establishing and maintaining a statewide qualified voter file, as well as a computer system that allows each county, city, township, or village access to that file. *Id.* § 169.509r(1).

13. Defendant Christopher M. Thomas (“Thomas”) is sued in his official capacity as the Director of Elections of the Office of the Michigan Department of State. His official residence is at Treasury Building, 1st Floor, 430 West Allegan, Lansing, MI 48918. Defendant Thomas is vested with the powers of the Secretary of State with respect to elections and is responsible for the supervision and administration of the election laws, under the supervision of the Secretary of State. *Id.* § 168.31.

FACTS

I. The Statutory Framework

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

14. In the 2000 presidential election, in every State – including Michigan – 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) (hereinafter “Ford-Carter Report”).

15. 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).

16. 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.

17. 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).

18. 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 provisional ballot in an envelope bearing his 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 they verify that the voter was eligible to vote, the envelope is opened and the election officials count the votes he 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.

19. 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.

20. 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.

21. 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).

22. 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

23. HAVA contains a number of provisions to promote voting and election administration systems that 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.

24. HAVA requires each state, including Michigan, 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).

25. HAVA therefore requires each state to allow an individual who appears to vote in the incorrect polling place to cast a provisional ballot.

26. 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.*

27. 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).

28. 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).

29. 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.

C. Michigan’s Election Law

1. Eligibility to Vote

30. As set forth above, HAVA mandates that states count provisional ballots cast by individuals who are eligible to vote under state law. In Michigan, an individual is eligible to vote if she is a citizen of the United States, eighteen or more years old, a resident of Michigan for a specified time period, and resides in the city, township or village in which she seeks to vote.

31. Article 2, Section 1 of the Michigan Constitution provides: “Every citizen of the United States who has attained the age of 21 years,¹ who had resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution.” The Michigan legislature has provided the requirements for local residence as follows: a “qualified elector,” is defined as “any person who possesses the qualifications of an elector as prescribed in section 1 of article 2 of the state constitution and who has resided in the city or township 30 days.” Mich.

¹ Under the 26th Amendment to the United States Constitution, this has been changed to 18 years. U.S. Const. Amend. 26.

Comp. Laws § 168.10. Michigan law further provides that a person with the “qualifications of an elector” is entitled to be registered to vote in the “township, city, or village in which he or she resides.” *Id.* § 168.492.

32. Michigan law prohibits the imposition of additional qualifications for voting on individuals who qualify as eligible voters under Article 2, Section 1 of the Michigan Constitution.

33. There is no support in Michigan law for a voting requirement that would disenfranchise a voter who does not have identification or who casts a provisional ballot in the wrong precinct.

2. Precincts

34. In Michigan, a “precinct” is a political subdivision of a city, ward, township or village, which contains no more than one polling place. Mich. Comp. Laws § 168.654. Thus, the terms “precinct” and “polling place” can be used interchangeably. On information and belief, Michigan currently has 5,219 voting precincts. Within one city, ward, township or village, there may be multiple precincts. For example, on information and belief, in the city of Detroit, there are currently 620 precincts.

3. Michigan’s Implementation of HAVA’s Provisional Ballot Requirements

35. On April 26, 2004, the state of Michigan enacted a Public Act No. 92, which revised Michigan’s Election Law and established provisions designed to implement some of the requirements of HAVA. Among other things, Public Act No. 92 contained new provisions for issuing and counting provisional ballots. The new provisional ballot law in Michigan requires election officials to (1) issue provisional ballots to individuals who seek to vote in the wrong

precincts and to first time voters who register by mail but do not provide identification, among others, and (2) verify and *count* those provisional ballots.

36. Section 168.523a(1)(b) of Michigan’s law provides that, if an individual is not listed on the voter registration list at a polling place, “the election inspector shall determine whether the individual is in the appropriate polling place.” If not, the election official is instructed to direct the individual to the correct polling place. If, for whatever reason, “the individual refuses to go to the appropriate polling place,” the law provides that “the election inspector shall issue the individual a provisional ballot that shall be processed according to subsection (5).” *Id.*

37. Subsection (5) provides that if “the individual is not in the correct precinct, ... the individual shall be issued a provisional ballot that is not tabulated on election day but is *secured for verification after the election.*” *Id.* § 168.523a(5) (emphasis added).

38. Subsection (7) further provides that, “[f]or a provisional ballot issued under subsection (5), the election inspector shall provide the voter with a notice that the voter’s information will be verified by the clerk of the jurisdiction within 6 days after the election *to determine whether the ballot will be tabulated*” *Id.* § 168.523a(5) (emphasis added).

39. These provisions require election officials to “verify” provisional ballots cast in the wrong precincts after the election and to make a “determination,” within six days, as to whether and how to “tabulate” each of those ballots. These provisions would be a nullity if all provisional ballots cast in the wrong precincts could simply be not counted at all.

40. Michigan’s election law does not specifically address first-time voters who register by mail.

41. On information and belief, Michigan has never required voters to present identification at the polls on Election Day as a prerequisite for voting or having their votes counted. Nothing in Michigan law supports such a requirement.

4. Michigan's Voter Files

42. Since 1998, as mandated by the Michigan Legislature, Michigan has maintained a statewide voter registration database known as the "Qualified Voter File" ("QVF"). The QVF links election officials throughout the state to a fully automated, interactive statewide voter registration database. In a memorandum dated July 30, 2001, then-Secretary of State Candice S. Miller stated: "The QVF makes it possible for Michigan's voting jurisdictions to access up-to-date, accurate voter registration information at any given time, on any given day."

43. On information and belief, the QVF is regularly updated with daily address changes processed from driver license and voter registration transactions processed by the Secretary of State's Office and local clerks throughout the state.

44. In providing for the establishment of the QVF, the Michigan Legislature also set forth mandatory provisions regarding its upkeep and maintenance. Section 509 of the Michigan Elections Code requires the Secretary of State to establish and maintain the QVF and its computer systems, and requires county, city, township, and village clerks to verify the accuracy of the names and addresses of registered voters in the QVF. Mich. Comp. Laws § 169.509r. The statute also requires that the Secretary of State give the election officials of each jurisdiction (i.e., county, city, village or township) access to the QVF. *Id.*

45. Section 501a of the Michigan Elections Code further mandates that every "city, village, or township shall maintain a file containing the signature of each elector registered in the city, village, or township." The township, city, or village clerk is also required to maintain the

original election registration cards that were sworn to and signed by the voter. *Id.* §§ 168.500g, 168.501, 168.502.

46. Because of the existing requirements of Michigan’s Elections Code and Michigan’s state-of-the-art QVF system, it would require only a minimal administrative burden for county, city, township, or village clerks to determine the eligibility of a voter who has cast a provisional ballot, or to match the signature on a provisional ballot to the voter’s signature on his or her registration card.

5. Protection Against Fraud

47. Michigan 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 and the fraudulent use of deceased voters’ names, 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.

48. In a 1997 opinion, the Attorney General of Michigan stated there is no evidence of significant voter fraud in Michigan. According to the opinion, the then-Secretary of State of Michigan agreed that there is no real evidence of voter fraud in Michigan.

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

II. The June 16 Directive Issued by the Director of Elections

50. On June 16, 2004, Defendant Thomas issued a Memorandum to all County, City and Township Clerks entitled “HAVA Compliance Procedures and Processes.” Christopher

Thomas, *Memorandum: HAVA Compliance Procedures and Processes* (June 16, 2004) (“the June 16 Directive”) (attached hereto as Exhibit A). The memorandum purports to outline “the procedures and processes which must be carried out on the county and local level” to implement the requirements of HAVA.

51. With respect to voters who seek to vote in the wrong precinct, although the June 16 Directive provides that they should be issued provisional ballots, the Directive instructs clerks not to verify or count those ballots. Specifically, in the section titled “Procedure for Handling ‘Envelope’ Ballots Returned to Clerk’s Office,” the Memorandum provides that a provisional (or “envelope”) ballot “cannot be counted if: . . . The elector was unable to confirm that he or she currently resides in the precinct where the ‘envelope’ ballot was issued.”

52. The June 16 Directive similarly provides that a voter who is subject to HAVA’s identification requirements but failed to bring identification to the polls on Election Day will be issued a provisional ballot. However, the June 16 Directive instructs city and township clerks not to verify or count such provisional ballots. Specifically, the Memorandum provides that a provisional ballot “cannot be counted if the elector failed to provide” photo identification or documentary proof of residence at the polls.

53. The procedures set forth in the June 16 Directive effectively nullify the provisional ballot provisions of both HAVA and Michigan law with respect to two categories of voters who are entitled to vote by provisional ballot: (1) first-time voters who registered by mail and who fail to bring required identification to the polling place on Election Day, and (2) voters who seek to vote at the wrong polling place. Although these two categories of voters will be issued provisional ballots, the Defendants have directed in advance that none of their ballots will be counted, regardless of whether a voter was eligible to vote in the election. If implemented,

the June 16 Directive would transform the provisional balloting scheme into a meaningless sham, presenting the voter with a decoy ballot while effectively disenfranchising him or her.

III. The Widespread Disenfranchisement Threatened by the June 16 Directive and its Disparate Impact on Minority and Low-Income Voters

54. The June 16 Directive to reject all votes cast in provisional ballots by voters subject to, but who cannot meet, the new identification requirements and by voters who appear in the wrong precincts will disenfranchise a significant number of eligible voters. Moreover, it will have a disparate impact on voters in precincts with high minority or low-income populations.

55. In past elections in Michigan, 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.

56. For many individuals eligible to vote in Michigan, 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.

57. In 2002, the Michigan legislature engaged in a statewide redistricting, redrawing a number of state and federal legislative district lines. According to a 2002 memorandum by Christopher Thomas, in districts where the boundaries changed, city and township clerks were required to alter their precinct boundary lines in order to accommodate the new legislative districts. As a result, a substantial number of voters have been assigned to different precincts than they were in the 2000 elections.

58. Over ninety percent of Michigan's voting age population was affected by a change in the boundaries of one of its state or federal legislative districts in 2002. Thus, a large number of Michigan voters are likely to have been reassigned to different precincts since the

2000 elections. Many Michigan voters who seek to cast a vote at the polling place to which they were assigned in the 2000 election will arrive at the wrong polling place.

59. The 2002 legislative redistricting disproportionately affected minority voters. For example, 15.8% of Michigan's black voting age population and 14.8% of Michigan's Latino population had U.S. Congressional, Michigan Senate, and Michigan House of Representatives legislative district boundaries change as a result of the 2002 legislative redistricting. By contrast, only 3.3% of Michigan's white voting age population was similarly affected. African-American and Latino voters are therefore far more likely than white voters to be assigned to new precincts. As a result, the June 16 Directive not to count the provisional ballots cast in the wrong precincts threatens to have a disparate impact on minority voters.

60. The June 16 Directive not to count the votes cast by first-time voters who register by mail but do not provide identification will also disenfranchise many eligible voters. Many individuals eligible to vote in Michigan do not possess or carry identification. On information and belief, approximately 10% of eligible voters in Michigan do not possess a driver's license or other state-issued identification.

61. In Michigan, the cost of a driver's license as of 2004 is as follows: \$25.00 for an original; \$18.00 for a renewal, \$9.00 for a duplicate. The cost of a state identification card in Michigan is \$10.00 in 2004.

62. Many individuals eligible to vote in Michigan 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.

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

64. 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.”).

65. 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.*

66. 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).

CLAIMS

Count I (Violation of the Help America Vote Act)

67. Plaintiffs repeat and reallege paragraphs 1 through 66, as if fully set forth herein.

68. To the extent that the June 16 Directive instructs election officials not to count provisional ballots cast by voters who arrive at the wrong precinct, even though they are eligible and registered to vote under Michigan law, it violates HAVA and interferes with federal rights secured under HAVA.

69. Specifically, the June 16 Directive's instruction that provisional ballots shall not be counted if cast in the wrong precinct violates HAVA's mandate that a provisional ballot must be counted if the individual who cast the ballot is "eligible under state law to vote" in the election.

70. The requirement of voting in the correct polling place or precinct is not a condition of eligibility to vote under Michigan law.

71. An otherwise eligible voter who is registered to vote in the county, city, or township and who appears to vote in the incorrect polling place is "eligible to vote" in Michigan in all races for which they would have been eligible to vote had they appeared in the correct polling place.

72. Therefore, the June 16 Directive conflicts with HAVA, a federal statute, and is preempted.

73. Absent this Court's intervention, Plaintiffs and their members will suffer irreparable injury through the June 16 Directive's interference with their federal rights to vote, to associate for the purposes of voting, and to have their votes counted, all of which are further protected under HAVA.

74. Defendants' conduct must be preliminarily and permanently enjoined to prevent their actions in enforcing the June 16 Directive from interfering with federal rights and thereby causing irreparable injury to Plaintiffs and their members.

Count II
(Violation of the Help America Vote Act)

75. Plaintiffs repeat and reallege paragraphs 1 through 74, as if fully set forth herein.

76. To the extent that the June 16 Directive 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, even though they are eligible and registered to vote under Michigan law, it violates HAVA and interferes with federal rights secured by HAVA.

77. Specifically, by refusing to count the ballots of voters subject to HAVA's identification requirements if such voters failed to present identification and documentary proof of residence in the precinct on Election Day, the June 16 Directive flatly violates HAVA's mandate that a provisional ballots must be counted if the individual casting a provisional ballot is "eligible under state law to vote" in the election.

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 Michigan 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 Michigan.

80. Therefore, the June 16 Directive conflicts with HAVA, a federal statute, and is preempted.

81. Absent this Court’s intervention, Plaintiffs and their members will suffer irreparable injury through the June 16 Directive’s interference with their federal rights to vote, to associate for the purposes of voting, and to have their votes counted, all of which are further protected under HAVA.

82. Defendants’ conduct must be preliminarily and permanently enjoined to protect their actions in enforcing the June 16 Directive from interfering with federal rights and thereby causing irreparable injury to Plaintiffs and their members.

Count III
(Violation of the First and Fourteenth Amendments to the U.S. Constitution)

83. Plaintiffs repeat and reallege paragraphs 1 through 82, as if fully set forth herein.

84. 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.

85. As detailed above, by directing election officials not to count the votes of registered voters who cast provisional ballots in the wrong precincts, Defendants’ June 16 Directive 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.

86. 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.

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

88. 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 to the U.S. Constitution)

89. Plaintiffs repeat and reallege paragraphs 1 through 88, as if fully set forth herein.

90. 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, Defendants' June 16 Directive 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.

91. 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.

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

93. 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 of the
Fourteenth Amendment to the U.S. Constitution)

94. Plaintiffs repeat and reallege paragraphs 1 through 93, as if fully set forth herein.

95. The right to vote, and to vote on equal terms, is a fundamental right protected under the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment further prohibits a state, by arbitrary and disparate treatment, from valuing one person's vote over another's.

96. The June 16 Directive's instruction to local officials not to count provisional ballots cast in the wrong precinct burdens the right to vote by disenfranchising eligible registered voters.

97. If the Defendants are permitted to apply the provisions set forth in the June 16 Directive, Plaintiffs' members and thousands of other voters like them are likely not to have their votes counted based on the arbitrary distinction that they cast their provisional ballot at the wrong precinct.

98. Low-income 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 the laws of the United States.

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

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

101. The enforcement of the June 16 Directive's instruction not to count provisional ballots cast in the wrong precinct must be preliminarily and permanently enjoined to protect Plaintiffs and their members from this real and imminent threat.

Count VI
(Violation of the Equal Protection Clause of the
Fourteenth Amendment to the U.S. Constitution)

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

103. The June 16 Directive's instructions to local officials not to count ballots cast by voters subject to HAVA's identification requirements who do not present identification at the polling place on Election Day burdens the fundamental right to vote by disenfranchising eligible registered voters.

104. If the Defendants are permitted to enforce the provisions set forth in the Memorandum, 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.

105. Low-income and homeless 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.

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

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

108. The enforcement of the June 16 Directive'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.

Count VII
(Violation of Michigan Election Law)

109. Plaintiffs repeat and reallege paragraphs 1 through 108, as if fully set forth herein.

110. To the extent that the June 16 Directive instructs election officials not to count provisional ballots cast by voters who arrive at the wrong precinct, even though they are eligible and registered to vote under Michigan law, it violates Michigan's election law.

111. Specifically, the June 16 Directive's instruction that provisional ballots shall not be counted if cast in the wrong precinct violates the mandate in Section 168.523a of the Michigan Code that provisional ballots cast by voters in the wrong must be verified after the election and not simply discounted based on a prior determination that all such ballots are invalid.

112. Absent this Court's intervention, Plaintiffs' members and similarly situated voters will suffer irreparable injury through the deprivation of their fundamental right to vote secured by Michigan's election law.

113. The enforcement of the June 16 Directive's instruction not to count provisional ballots cast in the wrong precinct must be preliminarily and permanently enjoined to protect Plaintiffs and their members from this real and imminent threat.

Count VIII

(Violation of the Equal Protection Clause of the Michigan Constitution)

114. Plaintiffs repeat and reallege paragraphs 1 through 113, as if fully set forth herein.

115. To the extent that Defendants' June 16 Directive directs election officials not to count provisional ballots cast by eligible voters in the wrong precinct, it violates the equal protection clause of Michigan's Constitution.

116. The June 16 Directive as to individuals who seek to vote in the wrong precincts is not directed at voter registration. Rather, it removes a class of eligible registered voters – including Plaintiffs' members – from the voting lists by refusing to count their votes if they appear to vote at an incorrect precinct. If the Defendants are permitted to enforce the provisions set forth in the June 16 Directive, Plaintiffs' members and other voters like them are likely not to have their votes counted based on the arbitrary distinction that they cast their provisional ballot at the wrong precinct.

117. Furthermore, low-income and minority voters such as Plaintiffs' members are likely to suffer disparate impact as a result of the enforcement of the June 16 Directive's instruction not to count provisional ballots cast in the wrong precinct, thereby depriving them of the equal protection of Michigan and federal law.

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

119. The enforcement of the June 16 Directive's instruction not to count provisional ballots cast in the wrong precinct must be preliminarily and permanently enjoined to protect Plaintiffs and their members from this real and imminent threat.

Count IX

(Violation of the Equal Protection Clause of the Michigan Constitution)

120. Plaintiffs repeat and reallege paragraphs 1 through 119, as if fully set forth herein.

121. To the extent that Defendants' June 16 Directive directs election officials not to count provisional ballots cast by first-time voters who register by mail and do not provide photo identification or proof of residence at the polls on Election Day, it violates the equal protection clause of Michigan's Constitution.

122. Defendants' identification directive is not directed at voter registration. Rather, it removes a class of qualified voters under the Michigan Constitution from the voting lists by refusing to count their votes if they fail to present specified forms of photo identification or proof of residence at the polling place on Election Day.

123. If the Defendants are permitted to enforce the provisions set forth in the June 16 Directive, Plaintiffs' members and other voters like them are likely not to have their votes counted based on the arbitrary distinction that they cast their provisional ballot at the wrong precinct.

124. Furthermore, low-income and homeless voters such as Plaintiffs' members are likely to suffer disparate impact as a result of the enforcement of the June 16 Directive's instruction not to count provisional ballots from first-time voters who register by mail who fail to offer photo identification or documentary proof of residence at the polling place on Election Day. Plaintiffs' members and other voters like them are therefore not guaranteed the equal protection of Michigan and federal law.

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

126. The enforcement of the June 16 Directive's instruction not to count provisional ballots cast in the wrong precinct must be preliminarily and permanently enjoined to protect Plaintiffs and their members from this real and imminent threat.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction over this matter;
2. Issue a declaratory judgment (a) that the June 16 Directive's instruction to election officials not to count provisional ballots cast by qualified electors if the elector cast the ballot in the wrong polling place violates federal and state law, specifically the Help America Vote Act of 2002, 42 U.S.C. §§ 15301 *et seq.*; the First and Fourteenth Amendments of the United States Constitution, both facially and as applied to Plaintiffs; Article I, Section 2 of the Michigan constitution; and the Michigan Elections Code; and (b) that the June 16 Directive's instruction to election officials not to count provisional ballots cast by qualified first-time electors who registered by mail unless the elector provides photo identification or proof of residence at the polls on election day violates federal and state law, specifically the Help America Vote Act of 2002, 42 U.S.C. §§ 15301 *et seq.*; the First and Fourteenth Amendments of the United States Constitution, both facially and as applied to Plaintiffs; Article I, Section 2 of the Michigan constitution; and the Michigan Elections Code;
3. Grant injunctive relief in the form of an order enjoining Defendants, their employees, agents and successors from (a) enforcing the June 16 Directive's instruction to election officials not to count provisional ballots cast by qualified electors if the elector cast the ballot in the wrong polling place; and (b) enforcing the June 16 Directive's instruction to election officials not to count provisional ballots cast by qualified first-time electors who registered by mail unless the elector provides photo identification or proof of residence at the polls on election day;

4. Grant injunctive relief in the form of an order requiring Defendants to instruct election officials to count the provisional ballots cast in the wrong polling place as validly cast votes for all offices for which the voter would have been eligible to vote had the voter voted in the correct polling place;

5. Grant injunctive relief in the form of an order requiring Defendants to instruct election officials to count as a validly cast vote the provisional ballot cast by a first-time voters who registered by mail and did not provide identification if

(a) the voter provides either a driver's license number, a personal state identification number, or the last four digits of a social security number, unless the state affirmatively establishes on an individual basis that the voter is ineligible to vote; or

(b) (i) the voter signs an affirmation or oath certifying that he or she is eligible to vote; and (ii) the signature on the voter's registration form matches the signature on the provisional ballot envelope; unless the state affirmatively establishes on an individual basis that the voter is ineligible to vote;

6. Grant plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

7. Retain jurisdiction of this case and grant plaintiffs such further relief as may be appropriate by law.

Dated: October 1, 2004.

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