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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DEMOCRATIC NATIONAL)	Civil Action No.: 81-3876
COMMITTEE,)	JUDGE DICKINSON R.
<i>et al.</i> ,)	DEBEVOISE
Plaintiffs,)	
v.)	
REPUBLICAN NATIONAL)	
COMMITTEE,)	
<i>et al.</i>)	
Defendants.)	
)	

COMPLAINT IN INTERVENTION FOR PRELIMINARY AND PERMANENT INJUNCTIVE AND DECLARATORY RELIEF¹

Intervenor Ebony Malone, by and through her undersigned counsel, allege upon knowledge as to herself and upon information and belief as to all other matters as follows:

DISCLOSURE OF LOCATION OF PARTIES UNDER L.R. 10.1(A)

1. Ebony Malone is located at 7908 Euclid Avenue, Apartment 503, Cleveland, Ohio 44103.

¹ A copy the Complaint was attached as Exhibit D to Intervenor's Memorandum in Support of Motions on Behalf of Individual Minority Voters to Intervene and Reopen Case, and Take Expedited Discovery for the Purpose of Enforcing Consent Decrees. This Complaint reflects the withdrawal of proposed Intervenor Irving Agosto and updates the signature block at the end of this Complaint.

2. Plaintiff Democratic National Committee (“DNC”) has its principal place of business located at 430 South Capitol Street, S.E., Washington D.C. 20003.
3. Defendant Republican National Committee (“RNC”) has its principal place of business located at 310 First Street, S.E., Washington, D.C. 20003.

NATURE OF THE CASE

4. Intervenor is a newly registered African-American voter who seeks to enforce Consent Decrees entered into between the DNC and RNC. Enforcing the Consent Decrees will ensure Intervenor will be able to vote in the upcoming November 2, 2004, general election.
5. This Court has entered two Consent Decrees and an Order against the RNC that restrain the “ballot security” or “ballot integrity” activities of the RNC. The Consent Decrees arose out of complaints filed by the DNC alleging, *inter alia*, that the RNC had participated in mass mailings to registered voters, and used letters returned as undelivered to compile voter challenge lists.
6. The RNC’s “ballot security” activities were purportedly done to combat “vote fraud,” but in fact had the effect of suppressing legitimate African-American votes. Consequently, Consent Decrees were entered. The second Consent Decree requires that the RNC apply for, and obtain, approval from this Court *before it engages in, or* “assists or participates in,” any ballot security or anti voter fraud efforts.
7. On information and belief, it has come to light in the last few days that the RNC has participated in yet another “ballot security” program, relying on mass mailings to registered voters and using letters returned undelivered to compile voter challenge lists. A list of 35,000 registered voters was developed in Ohio (the “List”). Like the other lists leading to the Consent

Decrees, this List does not show that the voters on it are unqualified to vote. And like the other lists leading to the Consent Decrees, it affects African-American voters disproportionately.

8. The List is reportedly overwhelming the ability of Ohio election officials to adjudicate the challenges. And it threatens to clog the election process in Ohio on Election Day.
9. Intervenor, a newly registered African-American voter whose name is on the List intervenes because she is concerned that the Defendant RNC's "ballot integrity" program will deprive her and many minority voters of the right to vote. The second Consent Decree requires advance approval of this Court before challenge lists may be compiled and used to challenge voters. It does so precisely to prevent such a list from being used to disrupt the election process at the Eleventh Hour. By continuing with its challenges to these voters, the RNC will disrupt the election process in Ohio where election resources already are stretched to the breaking point. The resulting chaos, confusion and delays will cause African-American voters disproportionately to be deprived of their right to vote.

JURISDICTION AND VENUE

10. "[A] federal district court has authority to enforce its consent decree" *National R.R. Passenger Corp. v. Pennsylvania Public Utility Comm'n*, 342 F.3d 242, 259 (3d Cir. 2003). This court has retained jurisdiction to enforce the Consent Decrees. (See July 27, 1987, Settlement Stipulation and Order of Dismissal, p. 3.)
11. Venue is proper in this district pursuant to 28 U.S.C. §1391(b).

PARTIES AND STANDING

12. Ebony Malone is a registered voter in Ohio who is on the List. Ms. Malone fears that challenges made to voters at her precinct, including herself, may slow down the electoral process and discourage other voters from casting a ballot during the general election. Ms. Malone is African-American. She is therefore an intended beneficiary of the Consent Decrees. (*See Exhibit A, Malone Declaration.*)
13. The Consent Decrees that Intervenor seeks to enforce were issued in a civil rights case brought under 42 U.S.C. §§ 1971, 1973, 1983, and 1985. Intervenor is one of its intended beneficiaries, and accordingly has standing to enforce its terms. Fed. R. Civ. P. 71; *see also Coca-Cola Bottling Co. v. Coca-Cola Co.*, 645 F. Supp. 1419, 1438 (D. Del. 1987) (“*Coke IV*”) (“Consent decrees arising from suits asserting violations of the civil rights statutes have also been found amenable to subsequent third-party enforcement”); *Virgo v. Local Union 580*, 107 F.R.D. 84, 91 (S.D.N.Y. 1995) (“As to consent decrees entered in civil rights cases, the weight of authority indicates that . . . those whom the parties to a consent decree intended to be benefited thereby may enforce the decree in a separate action”).
 - A. **History of Consent Decree Proceedings.**
14. In 1981, the RNC, under the guise of a “Ballot Security Task Force” (“Task Force”), allegedly obtained lists of registered voters in predominately African-American precincts in New Jersey and mailed letters to those registered voters. When 45,000 of those letters came back undeliverable, the RNC compiled a challenge list and attempted to have all of those

individuals removed from the voter rolls without knowing whether they still lived somewhere in the same voting precinct.

15. A final Consent Decree (“Final Consent Decree”) was entered on July 27, 1987, to ensure that future RNC activities did not “us[e], nor appear[] to use, racial or ethnic criteria in connection with ballot integrity, ballot security or other efforts to prevent or remedy suspected vote fraud . . .” (See July 27, 1987, Final Consent Decree at pp. 1-2.) Pursuant to initial Consent Decree, the RNC must

(e) refrain from undertaking any ballot security activities in polling places or election districts where the racial or ethnic composition of such districts is a factor in the decision to conduct, or the actual conduct of, such activities there and where a purpose or significant effect of such activities is to deter qualified voters from voting; and the conduct of such activities disproportionately in [sic] or directed toward districts that have a substantial proportion of racial or ethnic populations shall be considered relevant evidence of the existence of such a factor and purpose

(11/1/1982 Consent Decree.)

16. Although the foregoing stipulation terminated by its terms on March 1, 1987, it was replaced by the Final Consent Decree, which required the RNC to obtain *prior court approval* for all “ballot security” efforts (defined to include any “efforts to prevent or remedy vote fraud”) other than normal poll watcher efforts. (Final Consent Decree at p. 2.) Even poll watchers cannot use the fruits of pre-election ballot security efforts, such as voter challenge lists, without prior court approval. (*Id.*)
17. In 1990, the Court found that the RNC had violated the Consent Decree “by failing to include in ballot security instructional and informational materials guidance to state parties on unlawful practices under the consent decree or

copies of such decree for their review.” (See November 15, 1990, Order at ¶2.)

B. The RNC’s Current Ballot Security Activities.

18. On information and belief, October 22, the Republican Party filed a “challenge” list of 35,000 names in Ohio (“List”). Intervenor is on this List. (See Exhibit A, Malone Declaration.)
19. On information and belief, the List was discussed by RNC Chairman Ed Gillespie at a press conference in Ohio as a way of combating “voter fraud.” See Jo Becker, *Ohio GOP Challenges 35,000 Voters*, Washington Post, Oct. 23, 2004.
20. On information and belief, the List was compiled just as the previous illegal lists were compiled; mass mailings were sent to registered voters and voters whose mail was returned undelivered were put on that list.
21. On information and belief, the List has been used to challenge registered voters throughout Ohio. Some of the challenges have been withdrawn or rejected on their face because the lists were riddled with errors. However, thousands of challenges remain unresolved. Approximately 8,000 registered voters in Cuyahoga County are under challenge.
22. On information and belief, the 35,000 challenges on the List have jeopardized the election process. Ohio election officials currently have no set procedure for providing notice to the challenged voters and resolving the challenges. Many officials are considering extreme measures in order to accomplish their duties by election day so that the challenged individuals who are eligible to vote will be able to vote with no complications, delays or errors.

23. On information and belief, the challenges affect African-American voters disproportionately. A person living in a precinct that is over 90% African American is four times as likely to be challenged than a person living in a precinct over 90% white. (See Exhibit B, Declaration of Phillip Klinkner.)
24. On information and belief, use of this List did not receive prior approval of this Court.

COUNT ONE

Violation of Consent Decree

25. Intervenors reallege and incorporate herein the allegations set forth in Paragraphs 1 through 26 above.
26. The Final Consent Decree requires that the RNC obtain prior court approval for all “ballot security” efforts, which include any “efforts to prevent or remedy vote fraud.” The RNC recognized this requirement when it entered into the Final Consent Decree, but did not seek this Court’s approval for its current “ballot security” efforts. This Court should preliminarily enjoin any challenges by the RNC or any organization acting in concert with it based on any ballot security efforts until approved by this Court.

PRAYER FOR RELIEF

WHEREFORE, Intervenor requests that this Court enter judgment in their favor as follows:

- (a) That this Court assume jurisdiction;
- (b) Declare that the ballot security efforts described in this Complaint were recognized to have been submitted to this Court for approval, but were not;
- (c) That this Court preliminarily enjoin any challenges by the RNC or any organization acting in concert with it based on any ballot security efforts until approved by this Court;

- (d) Award Intervenor reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. § 19731(e) and § 1988; and
- (e) Grant Intervenor such other relief as may be just.

Respectfully submitted,



John W. Niels

Patricia G. Bulter

Laura S. Shores

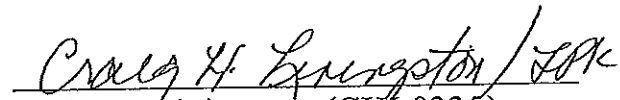
Ari N. Rothman

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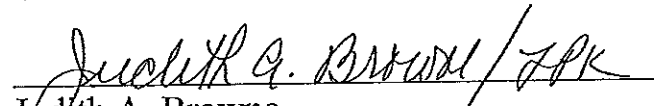
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Dated: October 31, 2004

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Exhibit A

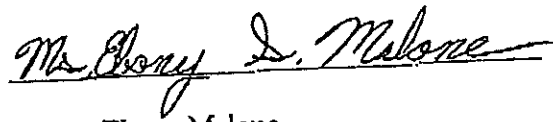
DECLARATION OF EBONY MALONE

1. I am 20 years old and an African American citizen of the United States. My date of birth is May 1, 1984. My current address is 7908 Euclid Avenue, Apartment 503, Cleveland, OH 44103, and I have lived at that address since about February 2004.
2. In or about November 2003, I registered to vote in Downtown Cleveland during a voter registration drive. At that time, I lived at 12700 Shaker Boulevard, Apt 417, Cleveland, OH 44120. I received my voter registration card for that address in about January 2004.
3. In or about February 2004, I moved to my current address. I completed a voter registration application for my current address during a voter registration drive in Downtown Cleveland about three (3) times between February 2004 and September 2004.
4. I am a first-time voter and I registered to vote three times because I wanted to make sure that I was registered to vote in the November 2004 election. I have not received a voter registration card for my current address.
5. A few days ago, I was contacted by a representative from the ACORN organization who informed me that I was on a list of voters whose eligibility would be challenged at the polls. I have not received any correspondence from the Cuyahoga elections office stating that my voter registration eligibility is being questioned.

6. I am worried that I will be unable to vote on Election Day. Also, I am concerned that challenges made to voters at my precinct may slow down the electoral process and discourage other voters from casting a ballot.

Pursuant to 28 U.S.C. § 1746 and Ohio Stat. § 2921.11, I declare under penalty of perjury that I have read the foregoing and that the facts stated in it are true and correct.

Dated: 10-27-04


Ebony Malone