

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SERVICE EMPLOYEES	:	Case No. 2:12 cv 562
INTERNATIONAL UNION, LOCAL 1, <i>et</i>	:	
<i>al.</i> ,	:	JUDGE GEORGE C. SMITH
	:	
Plaintiffs	:	Magistrate Judge Mark R. Abel
	:	
vs.	:	
	:	
JON HUSTED, <i>et al.</i> ,	:	[PROPOSED] ORDER GRANTING
	:	PLAINTIFFS' MOTION FOR
	:	PRELIMINARY INJUNCTION
Defendants.	:	

This matter comes before this Court on Plaintiffs' Motion for Preliminary Injunction. This Court has provided an opportunity for the Defendants to respond and has considered the arguments of the parties, the evidence in support of and against this Motion, and the relevant statutory and case law. Plaintiffs have established a likelihood of success on their constitutional claims that Ohio's law requiring the post-election disqualification of provisional ballots regardless of poll worker error violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment, as well as the right to vote for Congress and Senator protected by Article 1, Section 2 and the Seventeenth Amendment to the United States Constitution, and that the balance of harms weighs strongly in favor of this injunction for the November 2012 election. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, for good cause shown, the Court GRANTS Plaintiffs' Motion.

Accordingly, it is hereby ORDERED that a defendant class of the members of the 88 Ohio County Boards of Elections is provisionally certified for purposes of this preliminary relief.

It is FURTHER ORDERED that Defendants Secretary of State and the members of the 88 Ohio County Boards of Election may *not* reject any provisional ballots cast by lawfully registered voters in the November 2012 general election for the following reasons:

- 1) The voter cast his or her provisional ballot in the wrong precinct, *unless* the poll worker who processed the voter's provisional ballot has affirmed under penalty of election falsification that:
 - a) the poll worker determined the correct precinct for the voter;
 - b) the poll worker directed the voter to the correct precinct;
 - c) the poll worker informed the voter that casting the wrong precinct ballot would result in all votes on the ballot being rejected under Ohio law; and
 - d) the voter refused to travel to the correct precinct and insisted on voting the invalid ballot;

and the Board of Elections has verified that the precinct to which the poll worker directed the voter was the correct precinct for that voter. If the poll worker does not attest to all of the above, or the County Board of Elections cannot verify that the poll worker directed the voter to the correct precinct, the provisional ballot must be counted; or

- 2) The provisional ballot envelope does not contain a voter signature and the County Board of Elections has otherwise been able to determine that the voter is a registered voter; and/or the provisional ballot envelope does not contain the voter's full printed name and the County Board of Elections has otherwise been able to determine that the voter is a registered voter; and/or the voter did not sign and/or print the voter's name in the correct place(s) on the ballot envelope and the County Board of Elections has otherwise been able to determine that the voter is a registered voter.

It is FURTHERED ORDERED that, in order to ensure the uniform treatment of ballots by the members of the 88 Ohio County Boards of Elections during the November 2012 election,

Defendant Secretary of State shall modify the "Precinct Election Official Info" section of Form 12-B ("Provisional Ballot Affirmation") to read as follows:

Precinct election officials MUST complete the following section. However, failure by the precinct election official to complete this section will not result in the disqualification of this ballot.

Correct Voter Precinct Information

- Precinct Election Official's printed name: _____
- The name of the **Polling Location** where this Ballot was cast is _____
- This **Voter's Correct Precinct** is _____
- This **Voter was Provided with the Ballot for Precinct** _____

Affirmation for Voter Who Insists on Casting Incorrect Precinct Ballot:

I affirm under the penalty of election falsification that I informed this voter of the correct precinct number _____, and its location _____, and the voter refused to travel to that precinct, at which point I informed the voter that a ballot cast in the wrong precinct number _____ would not count because it was not the voter's assigned precinct, and after being so informed, the voter insisted on casting the invalid ballot.

Poll Worker Signature: _____

Provisional Ballot Form Checklist

- The Voter printed his/her full name on the top line. ____ Yes ____ No
- The Voter signed his/her name on the bottom line, directly below the affirmation. ____ Yes ____ No
- The Voter has completed all other required portions of the affirmation. ____ Yes ____ No

If no, the poll worker must confirm that the Voter intends to decline to execute the affirmation.

- The Voter declined to print or sign his/her name on the affirmation or fully complete the affirmation after I informed the voter of the incomplete affirmation. ____ Yes ____ No. If the Voter declines, the **Precinct Election Official** must write the Voter's name here:
_____.

It is FURTHER ORDERED that Defendant Secretary of State issue a Directive requiring the members of the 88 Ohio County Boards of Elections to use the "Precinct Election Official Info"

section on the Provisional Ballot Affirmation Form to determine if the Precinct Election Official erred in providing a wrong precinct ballot to the voter or erred in processing a ballot with an incomplete affirmation form.

IT IS SO ORDERED.

Date: _____

UNITED STATES DISTRICT JUDGE