

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

	)	CASE NO. 1:04CV2147
CITIZENS ALLIANCE FOR SECURE ELECTIONS	)	JUDGE PAUL R. MATIA
3270 Norwood Road	)	
Shaker Heights, OH 44122	)	
and	)	NOTICE OF AMENDMENT
	)	OF THE VERIFIED COMPLAINT BY
CLEVELAND TENANTS ORGANIZATION	)	INTERLINEATION
3631 Perkins Ave., Suite 3a-4	)	
Cleveland, OH 44114	)	
and	)	
	)	
ALLIANCE OF HUD TENANTS	)	
3631 Perkins Ave, Suite 3A-4	)	
Cleveland, OH 44114	)	
and	)	
	)	
VENITA MEREDITH	)	
	)	
	)	
and	)	
	)	
MICHAEL HARWELL	)	
	)	
	)	
and	)	
	)	
CHAUNTIA MARIE DIMMINGS	)	
	)	
	)	
and	)	
	)	
JOLENA OGLESBY	)	
	)	

and )  
LATANYA TERESE FARMER )

and )  
HAROLD F. SMITH )

and )  
ROBERT MARRERO )

and )  
Other similarly situated Plaintiffs, )  
As a Class )

Plaintiffs, )

-vs- )

MICHAEL VU, DIRECTOR, CUYAHOGA )  
COUNTY BOARD OF ELECTIONS; GWEN )  
DILLINGHAM, DEPUTY DIRECTOR, )  
CUYAHOGA COUNTY BOARD OF )  
ELECTIONS; ROBERT T. BENNETT, )  
EDWARD C. COAXUM, JR., SALLY D. )  
FLORKIEWICZ AND LOREE K. SOGGS, )  
MEMBERS OF CUYAHOGA COUNTY )  
BOARD OF ELECTIONS )  
2925 Euclid Avenue )  
Cleveland, Ohio 44115 )

Defendants. )

Now come the plaintiffs, by and through counsel, and hereby give notice that they amend the verified complaint by interlineation. This amendment is made as a matter of right pursuant to Fed. R. Civ. Pro. 15(a), and is made to include paragraphs 50 through paragraph 64 as well as the prayer for relief paragraph 1 through paragraph 13, which were inadvertently omitted from the original filing.

50. The NVRA compels State election boards to “ensure that any eligible applicant is registered to vote” in an election for Federal office. 42 U.S.C. § 1973gg-6(a)(1). Registrations must be completed within 30 days or the period specified by State law.

51. Here, Plaintiffs submitted voter registration applications to the BOE in a timely manner. But the BOE failed to register Plaintiffs and similarly situated members of the affected class.

## **SECOND CAUSE OF ACTION**

### **(FAILURE TO NOTIFY APPLICANTS OF ERRORS)**

52. Plaintiffs repeat and reallege each and every allegation in the foregoing Paragraphs 1 through 51 as set forth fully herein.

53. The NVRA compels State election boards to notify each applicant of the disposition of the application. 42 USC § 1973gg-6(a)(2). ORC § 3503.19(c) requires that if the BOE does not accept an application for registration, it shall immediately notify the applicant of the reasons for rejecting the application and request the applicant to provide whatever information or verification is necessary to complete the application.

54. Here, the BOE failed to timely notify Plaintiffs and other similarly situated members of the class.

**THIRD CAUSE OF ACTION**

**(FAILURE TO ACCEPT CORRECTED INFORMATION TO CURE ALLEGED DEFECT)**

55. Plaintiffs repeat and reallege each and every allegation in the foregoing Paragraphs 1 through 54 as set forth fully herein.

56. The NVRA prohibits discriminatory and unfair registration laws and procedures that damage voter participation in elections for federal office or disproportionately harm voter participation by various groups, including racial minorities.

57. Defendants have violated and continue to violate the NVRA as a result of their policy and practice of denying applicants the right to vote because:

- a) Defendants failed to process the applicants' duly delivered application for registration;
- b) Defendants rejected applications because of errors made in recording what was correct information on the applications;
- c) Defendants rejected applications on the basis of non-material omissions in voter registration applications;
- d) Defendants failed to notify applicants in a timely manner of their right to correct any errors in their applications; and
- e) Defendants have failed to afford rejected applicants meaningful opportunity to correct any errors made by the BOE or to correct immaterial errors in their applications;

thereby damaging voter participation in the upcoming November 2<sup>nd</sup> general election and disproportionately affecting African-American and Hispanic voters.

58. Defendants have violated and continue to violate the NVRA as a result of their policy and practice of denying applicants the right to vote by rejecting applications with allegedly incorrect addresses and failing to send required notification of rejection.

#### **FOURTH CAUSE OF ACTION**

##### **(SECTION 1983 CLAIM FOR VIOLATION OF THE VOTING RIGHTS ACT'S MATERIALITY PROVISION, 42 U.S.C. §1971(a)(2)(B))**

59. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs 1 through 58 as if fully set forth herein.

60. The NVRA prohibits defendants from denying a person the right to vote because of an error or omission in a registration application that “is not material to determining whether such individual is qualified to vote in such election.” 42 U.S.C. §1971(a)(2)(B).

61. Defendants, acting in their respective capacities as BOE and BOE Defendants, have violated and continue to violate this provision of the Voting Rights Act by refusing to process voter registration applications because of non-material omissions or non-material voter error enumerated herein, such as transposing of address numbers, misspelling of street names and the like.

#### **FIFTH CAUSE OF ACTION**

##### **(SECTION 1983 CLAIM FOR VIOLATION OF HELP AMERICA VOTE ACT (HAVA), 42 U.S.C. 15483(a)(1)(A)(vi) (FAILURE TO ENTER INFORMATION))**

62. Plaintiffs repeat and reallege each and every allegation in the foregoing Paragraphs 1 through 61 as set forth fully herein.

63. The HAVA compels the BOE to electronically enter voter information “on an expedited basis at the time the information is provided to the local official.” 42 U.S.C. §15483(a)(1)(A)(vi).

64. Here, the BOE failed to enter Plaintiffs' voter registration information on the electronic list of eligible voters on an expedited basis. Plaintiffs and similarly situated members of the class filed registration applications in a timely manner, yet the BOE has failed to place Plaintiffs on the list of registered voters.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for a judgment:

1. Declaring that Defendants are violating the Voting Rights Act, the NVRA, HAVA, the United States Constitution and ORC Chapter 35 by failing or refusing to process applications which have been timely submitted to them and notifying the applicant of their acceptance or rejection and immediately appoint a monitor to oversee corrections in order to re-enfranchise the plaintiffs and the class which they represent;
2. Declaring that Defendants are violating the Voting Rights Act , the NVRA, HAVA, the United States Constitution and ORC Chapter 35 by incorrectly recording correct data from voter registration applications and failing or refusing to notify such applicants;

3. Directing Defendants to review immediately their records to locate such missing applications or inaccurately input data, add such applications to the voting lists and notify them by mail, telephone and generally published notice;
4. Declaring that Defendants are violating the Voting Rights Act, the NVRA, the United States Constitution and ORC Chapter 35 by refusing to process as “incomplete” applications in which applicant failed to provide either an Ohio drivers license number or the last four digits of the applicant’s Social Security Number on Item 10 of the Ohio Voter Registration Application Form and that same or a current photo identification or current utility bill, bank statement, paycheck, government check or other government document showing applicant’s name and address may be provided up to the close of the polls on election day;
5. Declaring that Defendants are violating the Voting Rights Act, the NVRA, HAVA, the United States Constitution and ORC Chapter 35 by refusing to process as “incomplete” applications in which applicant failed to provide a date of birth in item 9, in the case of non-mailed registrations;
6. Declaring that Defendants’ policy as set forth above regarding such “incomplete” Ohio Voter Registration Application Forms is inconsistent with the NVRA, HAVA and the Ohio Revised Code, Chapter 35, and, therefore, invalid;

7. Declaring that the Defendants are violating the Voting Rights Act, the NVRA, HAVA, the United States Constitution and ORC Chapter 35 by failing to provide timely notice to applicants whose registration forms are deemed incomplete and an opportunity for those applicants to submit the missing information in time to vote in the November 2<sup>nd</sup> general election;
8. Directing Defendants to issue instructions to all poll workers stating that the absence of an Ohio drivers license number or the last four digits of the applicant's Social Security Number does not render an Ohio Voter Registration Application Form incomplete and does not constitute a legal basis for refusing to register the applicant if same, or a current and valid photo identification, or a current utility bill, bank statement, paycheck, government check or government document that shows the name and address of the voter are presented at the polls when a voter seeks to vote;
9. Directing the Defendants to instruct the poll workers to register applicants whose voter registration applications were not mailed, but who did not include the date of birth thereon and to allow those applicants to vote in the November 2<sup>nd</sup> general election;
10. Directing Defendants to permit applicants to correct errors on their application forms by phone, mail or in person at the BOE at any time prior to the November 2, 2004 election;

11. Directing Defendants to open the offices of the BOE in the evening until 9:00 p.m. and weekends from 9:00 a.m. to 6:00 p.m. for correction of either BOE or voter errors.
12. Directing Defendants to publicize at least the Friday, Saturday and Sunday immediately prior to the election as well as on election day, placed in the First or Metro section of the Cleveland Plain Dealer, The Call and Post, and on the three most widely watched television stations in Cuyahoga County during primetime hours, a prominent advertisement of the instructions ordered above to the poll workers; which proposed advertisements shall be submitted to the Court for approval with a copy to the Plaintiffs.
13. Awarding the Plaintiffs attorney's fees and costs; and

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CERTIFICATE OF SERVICE

I, Avery S. Friedman, attorney for plaintiffs, hereby certify that a copy of the foregoing Notice of Amendment of the Verified Complaint by Interlineation was served upon defendants with the summons and complaint.

/s/ Avery S. Friedman  
Avery S. Friedman