

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CITIZENS ALLIANCE FOR)	JUDGE PAUL R. MATIA
SECURE ELECTIONS, et al.)	
)	CASE NO. 1:04CV2147
Plaintiffs)	
)	
-vs-)	<u>O R D E R</u>
)	
MICHAEL VU, etc., et al.)	
)	
Defendants)	

The within matter came on for hearing upon plaintiffs' motion for temporary restraining order (Doc. 4).

Plaintiffs move the Court for an order:

1. requiring that the defendants correct errors made when data was transcribed from voter registration applications to Cuyahoga County's official voting list;
2. requiring that the defendants add persons to the County's official voting list whose applications were timely submitted as registered voters, but whose applications were never processed by the Cuyahoga County Board of Elections;
3. appointing a Special Master at defendants' expense to review the so-called Fatal Pending List, who would recommend names to be added to the County's official voting list upon the presentation of reasonably accurate proof that their names have been omitted from the official voting list either because of transcription errors or processing errors;
4. requiring that the defendants take steps reasonably calculated to notify persons on the

Fatal Pending List of the need to cure errors and omissions in the transcription and processing of their applications; and

5. finding that a statement contained in the Official Voter Information Guide that was recently mailed out to registered Cuyahoga County voters by the Board is contrary to Ohio Rev. Code 3503.16.

After notice to the parties, the Court held a hearing on the motion. The Court has reviewed the verified complaint (Doc. 1) and amendment by interlineation (Doc. 6) and the memorandum in support of the motion (Doc. 5); and has considered the oral arguments of counsel and statements of Michael DeFranco and defendants Michael Vu and Gwen Dillingham.

The following statement appears in the Official Voter Information Guide that was recently mailed out to registered voters by the Board: "If you are an Ohio voter who moved from one Ohio precinct to another Ohio precinct, and did not update your voter registration, you may vote a provisional ballot at your new voting location." Plaintiffs contend that this statement is contrary to Ohio Rev. Code 3503.16(A) and that the voter in this situation should not have to vote a provisional ballot. Section 3503.16(A) provides in pertinent part:

A registered elector also may update the registration of that registered elector by filing a change of residence or change of

name form on the day of a special, primary, or general election at the polling place in the precinct in which that registered elector resides or at the board of elections or at another site designated by the board.

Four factors are important in determining whether a temporary restraining order is appropriate: (1) the likelihood of the plaintiffs' success on the merits; (2) whether the injunction will save the plaintiffs from irreparable injury; (3) whether the injunction would harm others; and (4) whether the public interest would be served by the injunction. *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985). The test is a flexible one and the factors are not prerequisites to be met, but must be balanced. *Id.* at 1229. In balancing the four considerations applicable to temporary restraining order decisions, the Court holds that equitable relief is not appropriate at this time.

After considering all the matters presented to it, the Court is not convinced that the drastic remedy sought by the plaintiffs is necessary to assure their right to vote. The procedures put in place by the Board of Elections appear to be reasonably calculated to correct any defects in the registration process, and the provisional vote mechanism will allow voters whose names do not appear on the final list of

registered voters to cast ballots that will be counted if it is later determined that their names should have been listed. The Court does not believe that Congress intended by its passage of the Voting Rights Act, 42 U.S.C. § 1971, and the federal Help America Vote Act, 42 U.S.C. §§ 15301, *et seq.*, to authorize federal courts to take over the election processes of the states in the manner suggested by the plaintiffs. Accordingly,

Plaintiffs' motion for temporary restraining order (Doc. 4) is DENIED. However, the Court retains jurisdiction of this matter for further proceedings.

IT IS SO ORDERED.

Dated: October 27, 2004

/s/ Paul R. Matia
CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

A copy of the foregoing Order was filed electronically this 27th day of October, 2004. Notice of this filing will be sent to Avery S. Friedman, Esq., Stephen G. Thomas, Esq., and Sarah J. Moore, Esq. by operation of the Court's electronic filing system. Parties may access this

filing through the Court's system. A copy of the Order has also been sent by fax this 27th day of October, 2004 to Matthew J. Chachère, Esq. (212.740.9645), James L. Hardiman, Esq. (216.502.7777), Kathleen A. Martin and Reno J. Oradini, Jr., Assistant Prosecuting Attorneys (216.443.7602), and Jeffrey P. Hastings, Senior Deputy Attorney General (216.787.3553). Further, a copy of this Order has been sent by regular mail this 27th day of October, 2004 to Matthew J. Chachère, Esq., 76 Wadsworth Avenue, New York, New York 10033-7000; James L. Hardiman, Esq., 75 Public Square, Suite 333, Cleveland, Ohio 44113; Kathleen A. Martin and Reno J. Oradini, Jr., Assistant Prosecuting Attorneys, The Justice Center - Courts Tower, 1200 Ontario St., 8th Floor, Cleveland, Ohio 44113; and Jeffrey P. Hastings, Senior Deputy Attorney General, 615 W. Superior Ave., 11th Floor, Cleveland, Ohio 44113-1899.

/s/ Paul R. Matia
CHIEF JUDGE
UNITED STATES DISTRICT COURT