

lawfully registered voter that corresponds to the incorrect voter precinct or that has an incomplete ballot envelope form, *regardless of whether these errors were caused by a poll worker mistake*. *State ex rel. Painter v. Brunner*, 128 Ohio St.3d 17, 941 N.E.2d 782 (2011) (interpreting Ohio Rev. Code §3505.183(B)(4)(a)). Compounding the problem is Ohio's increased consolidation of voting precincts into multi-precinct polling locations, particularly in urban areas, where voters appear to vote at the correct location, only to be given the wrong ballot by poll workers, and are disenfranchised after the election without any notice.

Given the thirteen categories of voters that Ohio requires to vote provisional rather than regular ballots (Ohio Rev. Code §3505.181(A)(1)-(13)), and the *Painter* decision mandating that Ohio strictly apply the ballot disqualification law without exception, Ohio will deny the right to vote for President, Vice President, Senator, United States Representative, and other state and local races, to many thousands of lawfully registered voters in the upcoming election. As the Sixth Circuit and this Court both have recently recognized, these Ohio provisional ballot laws, which permit many votes to be disqualified as a result of poll worker error, are fundamentally unfair and raise very serious constitutional concerns. *See Hunter v. Hamilton County Board of Elections*, 635 F.3d 219, 243 (6th Cir. 2011) ("*Hunter I*"); *accord Hunter v. Hamilton County Board of Elections*, 2012 WL 404786 at *43, 46 (S.D. Ohio Feb. 8, 2012) ("*Hunter II*"). Indeed, these laws unconstitutionally burden the fundamental right to vote protected by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

A preliminary injunction requiring Ohio and its County Boards of Elections to count the votes of lawfully registered voters in the upcoming election is both necessary and appropriate to ensure that voters, including Plaintiffs' members, are not arbitrarily and unfairly stripped of their

right to vote as a result of poll worker error. Plaintiffs are overwhelmingly likely to succeed on the merits of their constitutional claims. Statewide evidence submitted along with this Motion demonstrates that virtually all wrong precinct ballots are given to voters as a result of poll workers making mistakes on election day. Indeed, evidence shows that poll workers actually think they are helping citizens to vote by providing them with provisional ballots that are later disqualified. The Equal Protection Clause of the Fourteenth Amendment will not allow Ohio to impose such a severe burden on – and, indeed, deny – the fundamental right to vote. Such a burden is not supported by any legitimate, let alone compelling, state interest in the post-election invalidation of ballots of lawfully registered voters.

Moreover, there is one group of voters, those covered by the Consent Decree in the *NEOCH v. Husted* case, No. 2:06-CV-896, for which the County Boards of Elections do still consider poll worker error in deciding whether to count provisional ballots. The failure of Ohio to treat all other categories of provisional voters equally with respect to whether or not County Boards may consider poll worker error in deciding to count or reject ballots, as well as the widely varying rates of poll worker error by county, result in unequal treatment of voters that turns arbitrarily on the county in which they live, in further violation of the Equal Protection Clause. And, as the Sixth Circuit and this Court observed in the context of reviewing Hamilton County's treatment of provisional ballots in the 2010 election, Ohio's error-prone provisional ballot system is fundamentally unfair and therefore violates the substantive due process guaranteed by the Fourteenth Amendment. *Hunter I*, 635 F.3d at 243; *Hunter II*, 2012 WL 404786 at *43, 46.

The threat to so many registered Ohio voters' ability to enjoy the most fundamental right in our democracy is too great to allow Ohio to employ its strict disqualification law during the

upcoming election. The balance of harms tips sharply in favor of a preliminary injunction. Denial of the fundamental right to vote in and of itself is irreparable harm, and Ohio and its County Boards of Elections suffer no harm from being enjoined from enforcing an unconstitutional ballot counting law. Plaintiffs bring this Motion to the Court not on the eve of the election but sufficiently in advance of the upcoming vote to allow the adjudication of these issues and implementation of any remedy. The public, Plaintiffs, and their members have a very strong interest in ensuring that voters' faith in the democratic process is not undermined by Ohio's continued arbitrary and undeserved rejection of the votes of lawfully registered voters.

Plaintiffs seek an injunction that is very narrowly tailored to curing the constitutional violations caused by poll worker error and in no way dismantles Ohio's precinct-based voting system. Plaintiffs respectfully request that this Court enjoin Ohio's chief election officer Secretary of State Husted, and the members of the 88 County Boards of Elections from rejecting provisional ballots after the November 2012 election because a poll worker gave the voter a ballot for the wrong precinct, or because the poll worker processed the ballot with an incomplete envelope, unless the County Board of Elections has proof that the voter was warned by the poll worker, as is required by Ohio law, that the vote would not count, and insisted on casting an invalid ballot anyway.

As described in the accompanying Proposed Order, Plaintiffs therefore seek an injunction ordering the Secretary of State and members of the County Boards of Elections *not* to reject any provisional ballots cast by lawfully registered voters because:

- 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.

The statewide evidence submitted in support of this Motion demonstrates that Ohio County Boards have had difficulty uniformly implementing Ohio's provisional ballot laws in the past because of lack of uniform instructions from the Secretary of State, resulting in the arbitrary and unconstitutional denial of votes. Plaintiffs therefore also request that the Court order Defendant Secretary of State Husted to modify the "Precinct Election Official Info" section of Form 12-B ("Provisional Ballot Affirmation"), as set forth in the accompanying Proposed Order, to require counties to implement these requirements uniformly, lest they again employ non-uniform ballot counting standards that run afoul of the equal protection concerns applied in *Bush*

v. Gore, 531 U.S. 98, 107 (2000). Finally, in order to ensure uniform implementation, Plaintiffs ask the Court to order Secretary Husted to issue a Directive requiring the members of the 88 Ohio County Boards of Elections to use the information on that revised 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.

Plaintiffs have filed a Notice of Related Case explaining that this case raises overlapping constitutional issues with those currently pending in *NEOCH v. Husted*, Case No. 2-06-CV-896. In that case, the plaintiffs have moved to strengthen an existing consent decree that applies to a particular category of Ohio voters who cast provisional ballots. The plaintiffs' motion, however, presents the same constitutional violations as are at issue here, and seeks the *exact* same remedy requested here, including the injunction and modification of the Ballot Affirmation Form, for voters covered by the decree. Also pending in the *NEOCH* case is a request by the defendants to terminate the decree, a request that requires the Court to determine whether terminating the Decree will cause constitutional violations. *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367, 391 (1992). Plaintiffs therefore respectfully request, in the interest of judicial economy and the public's interest in the speedy resolution of the proper and constitutional standard for counting the hundreds of thousands of provisional ballots that will be cast in the November 2012 election, that this case be coordinated with the *NEOCH* case, and the critical constitutional issues in the *NEOCH* case and in this case be heard at the same time, on one evidentiary record, with sufficient time to fully resolve these claims in advance of the November 2012 election, including any appeals. A memorandum in support and proposed order are attached.

Dated: June 22, 2012

Respectfully submitted,

/s/Michael J. Hunter

MICHAEL J. HUNTER, *trial attorney* (0018756)

CATHRINE J. HARSHMAN (0079373)

Hunter, Carnahan, Shoub, Byard & Harshman

3360 Tremont Road, Suite 230

Columbus, Ohio 43221

Telephone: (614) 442-5626

E-mail: mhunter@hcands.com

Attorneys for All Plaintiffs

STEPHEN P. BERZON (*pro hac vice* application pending)

STACEY M. LEYTON (*pro hac vice* application pending)

BARBARA J. CHISHOLM (*pro hac vice* application pending)

DANIELLE LEONARD (*pro hac vice* application pending)

Altshuler Berzon LLP

177 Post Street, Suite 300

San Francisco, CA 94108

Telephone: (415) 421-7151

E-mail: sberzon@altshulerberzon.com

*Attorneys for Plaintiffs SEIU Local 1, USW, UAW Local 1005, and
UAW Local 863*

PENDA HAIR (*pro hac vice* application pending)

DONITA JUDGE (*pro hac vice* application pending)

UZOMA NKWONTA (*pro hac vice* application pending)

Advancement Project

1220 L Street, N.W., Suite 850

Washington, D.C. 20005

Telephone: (202) 728-9557

E-mail: phair@advancementproject.org

Attorneys for Plaintiff OOC

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

The State of Ohio’s uniquely complicated provisional ballot laws require the arbitrary and unconstitutional post-election rejection of thousands of votes cast by lawfully registered voters as the result of poll worker error. Plaintiffs Service Employees International Union, Local 1 (“SEIU Local 1”), United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“USW”), Locals 863 and 1005 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (collectively “UAW Locals”), and the Ohio Organizing Collaborative (“OOC”), challenge Ohio’s law mandating that County Boards of Elections (“Boards”) reject provisional ballots cast by registered voters for reasons attributable to poll worker error. In particular, Ohio law disqualifies all the votes on a provisional ballot when the voter was given a “wrong precinct” ballot as a result of poll worker error, and when poll worker error results in technical defects in the completion of the envelope in which the provisional ballot is placed. Because Ohio law denies voters their fundamental right to vote protected by the United States Constitution, Plaintiffs seek a preliminary injunction prohibiting the Ohio Secretary of State and the Boards from rejecting provisional ballots for reasons attributable to poll worker error in the upcoming November 2012 general election.

The Sixth Circuit and this Court both recently observed the fundamental unfairness of Ohio’s system of provisional ballots that permits ballots to be disqualified after the election because of problems caused by poll worker error. *Hunter v. Hamilton County Board. of Elections*, 635 F.3d 219, 243 (6th Cir. 2011) (“*Hunter P*”); accord *Hunter v. Hamilton County*

Board of Elections, 2012 WL 404786 at *43, 46 (S.D. Ohio Feb. 8, 2012) (“*Hunter II*”). A law that disqualifies entire ballots of lawfully registered voters for reasons directly attributable to poll worker error imposes “excessively burdensome requirements” on Ohio voters that are not justified by any legitimate state interest at all, and cannot stand under the Equal Protection Clause of the Fourteenth Amendment. *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 189 (2008); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666-67 (1966); *Carrington v. Rash*, 380 U.S. 89, 96 (1965); *see also Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“[U]nnecessary abridge[ment]” of the right to vote in federal congressional elections does not comport with Article I, Section 2 and the Seventeenth Amendment to the Constitution). Overwhelming evidence from Boards throughout the State demonstrates that voters consistently are penalized for failing to comply with requirements they cannot control – because a poll worker hands the voter an incorrect ballot, or because a poll worker provides the voter a provisional ballot before first ensuring that the provisional ballot envelope is completed correctly.

Moreover, two aspects of Ohio’s provisional ballot system violate the requirement of uniform treatment of similarly situated voters with respect to the counting of votes, in violation of equal protection: first, Ohio voters who vote provisionally using different types of identification are currently subject to different post-election ballot counting standards; and second, voters in different counties are subject to widely disparate and arbitrary rates of poll worker error resulting in the disqualification of ballots. Finally, the statewide evidence submitted by Plaintiffs with this motion conclusively demonstrates that the Sixth Circuit and this Court were correct in observing that Ohio’s provisional ballot laws are fundamentally unfair in

violation of substantive due process. *Hunter I*, 635 F.3d at 243; *Hunter II*, 2012 WL 404786 at *43.

As detailed below, a preliminary injunction is both necessary and appropriate to ensure that voters, including Plaintiffs' members, are not unconstitutionally stripped of their right to cast ballots that will be counted in the upcoming general election. The requested injunction is narrowly tailored to prevent constitutional violations and also reflects the *only* circumstance in which the State should be permitted not to count a wrong precinct provisional ballot, consistent with the Constitution: namely, where it has been documented that the poll worker complied with his or her duties under Ohio law and the provisional voter nonetheless insisted on casting a ballot in the incorrect precinct despite being informed of the correct precinct and that the voter's ballot would not be counted if cast in the wrong precinct, or casting a ballot with an incorrect or incomplete ballot envelope despite being asked to provide complete information.

II. BACKGROUND

A. Ohio Statutes Governing Casting and Counting of Provisional Ballots

In 2006, Ohio enacted one of the most complicated provisional ballot laws in the country, in response to the federal Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. §15301 *et seq.*, which requires all states to permit individuals who do not appear on the official list of eligible voters for a polling place to cast a provisional ballot as a "fail safe" voting mechanism. 42 U.S.C. §15482(a), §15483(b)(2)(B). Ohio identified thirteen different circumstances in which voters are not permitted to cast regular ballots, and instead must use provisional ballots – only one of which is when the voter is not included in the precinct list. Ohio Rev. Code §3505.181(A)(1); *see also id.* §3505.181(A)(2)-(13). As a result of this law, *hundreds of thousands* of Ohio voters have been required to cast provisional rather than regular ballots in

recent elections, more than any state other than California, which has a far greater population. *See* Decl. of David Kimball (“Kimball Decl.”) Ex. B at 3-4 (Tables 1, 2).

Provisional ballots are not counted on election day. Instead, each Ohio County Board of Elections is responsible for “determin[ing] whether a provisional ballot is valid and entitled to be counted” several days after the election in which individuals have cast their ballots. Ohio Rev. Code §3505.183(B)(1), (E)(3). First, the Board is required to “examine [its] records and determine whether the individual who cast the provisional ballot is registered and eligible to vote in the applicable election.” *Id.* After determining that the ballot was cast by a registered voter, the Board is nonetheless required to reject the ballot in a number of circumstances, including:

(ii) The individual named on the affirmation is not eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot.

(iii) The individual did not provide all of the information required under division (B)(1) of this section in the affirmation that the individual executed at the time the individual cast the provisional ballot.

Ohio Rev. Code §3505.183(B)(4)(a)(ii), (iii); *see also id.* §3503.183(B)(3)(a)-(c) (provisional ballots may be counted only if “individual named on the affirmation is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot”). Thus, when a registered voter is permitted to cast a provisional ballot that corresponds to a precinct that election officials later determine not to be that individual’s assigned precinct, the individual’s votes for every federal, state and local contest on that ballot must be rejected.

This system has become increasingly complicated by Ohio’s consolidation of precincts into multi-precinct polling locations, with some counties having as many as 90 to 100 percent of all precincts assigned to polling locations with two or more precincts. Decl. of Natalya DeRobertis-Theye (“Theye Decl.”) ¶5 & Exs. A & B. Under Ohio’s provisional ballot law, even voters who cast their ballots in the proper location (including, remarkably, the early voting

locations at the Board of Elections office) are disqualified if they were given the wrong precinct ballot by a board employee or poll worker.

Ohio's provisional voting laws dictate the manner in which poll workers should distribute provisional ballots on election day, regardless of whether the individual is assigned to a single or multi-precinct polling location. Upon arrival at a polling location, voters are processed by poll workers whose duty it is to determine and direct voters to the correct precinct. For example, Ohio Rev. Code §3505.181(C)(1) provides:

[I]f, upon review of the precinct voting location guide using the residential street address provided by the individual, an election official at the polling place at which the individual desires to vote determines that the individual is not eligible to vote in that jurisdiction, the election official *shall direct the individual to the polling place for the jurisdiction in which the individual appears to be eligible to vote, explain that the individual may cast a provisional ballot at the current location but the ballot will not be counted if it is cast in the wrong precinct, and provide the telephone number of the board of elections in case the individual has additional questions.*

(Emphasis added.) Only if “the individual *refuses to travel* to the polling place for the correct [precinct] or to the office of the board of elections to cast a ballot,” shall the individual “be permitted to vote a provisional ballot at that [precinct].” *Id.* §3505.181(C)(2) (emphasis added); *see also id.* §3505.181(E)(1).

Once a poll worker determines that an individual must cast a provisional rather than regular ballot, the poll worker provides the voter with an affirmation form and instructs the individual to complete “a written affirmation . . . before an election official at the polling place” stating that she or he is a “registered voter in the jurisdiction in which the individual desires to vote” and “[e]ligible to vote in that election.” Ohio Rev. Code §3505.181(B)(2)(a)-(b). Ohio has created a uniform provisional ballot affirmation form to be printed by all 88 Boards on provisional ballot envelopes. Decl. of Juszina Traum (“Traum Decl.”) Ex. M at 5. Ohio poll

workers have the duty to make sure the voter fills out the provisional ballot affirmation correctly, and must verify that the affirmation has been completed before providing a voter with a provisional ballot. Ohio Rev. Code §§3505.181(B)(6), 3505.182, 3505.183(B)(1); *see also State ex rel. Skaggs v. Brunner* (“*Skaggs I*”), 588 F.Supp.2d 828, 836 (S.D. Ohio 2008), *vacated on other grounds*, 549 F.3d 468 (6th Cir. 2008).

The envelopes and ballots are transmitted to the Boards for their post-election determination of whether “individual[s]’ provisional ballot[s] shall be counted as . . . vote[s] in [the] election.” Ohio Rev. Code §3505.181(B)(4).

B. The Ohio Supreme Court’s Ruling in *State ex rel. Painter v. Brunner* Prohibits County Boards of Elections from Counting Provisional Ballots Cast Incorrectly as Result of Poll Worker Error

Prior to 2010, county Boards in Ohio employed non-uniform standards for determining whether to count wrong precinct provisional ballots that were given to voters as a result of poll worker error. Decl. of Daniel Miller (“Miller Decl.”) ¶¶7, 18, 26, 31, 32, 34, 38, 39, 44, 48 & Exs. E, P, T, Y, Z, BB, EE, FF, II, LL (attaching minutes from Board meetings at which Boards vote whether to count or reject provisional ballots). In April 2010, this Court entered and approved a consent decree in *Northeast Ohio Coalition for the Homeless v. Brunner* (“*NEOCH*”), No. 2-06-CV-896, a case in which plaintiffs challenged the unequal and unfair application of Ohio’s provisional ballot laws to individuals required to cast provisional ballots because they lack the identification required by Ohio law to cast a regular ballot. The *NEOCH* consent decree requires Ohio to count “wrong precinct” and otherwise technically-flawed provisional ballots cast by individuals using only Social Security numbers for identification when there is evidence of poll worker error. Decl. of Caroline Gentry (“Gentry Decl.”) Ex. A;

see also id. (identifying other grounds on which Boards may not reject provisional ballots cast by individuals using the last four digits of his or her Social Security number for identification).

The November 2010 general election resulted in a contested local judge race in Hamilton County in which provisional ballots affected by poll worker error, including the *NEOCH* ballots, played a potentially outcome-determinative role. This Court, in *Hunter v. Hamilton County Board of Elections*, Case N. 1:10-CV-820, issued a preliminary injunction “commanding [the Board of Elections] to investigate whether provisional ballots cast in the correct polling location but wrong precinct were improperly cast because of poll worker error.” 2010 WL 4878957 at *1 (S.D. Ohio Nov. 22, 2010).¹ Then, in 2011, in separate state court litigation brought challenging under state law the counting of ballots by Hamilton County and the legality of Secretary Brunner’s poll worker error Directives, the Ohio Supreme Court decided *State ex rel. Painter v. Brunner*, 128 Ohio St.3d 17, 941 N.E.2d 782 (2011).

The Ohio Supreme Court held in *Painter* that Ohio law prohibits counting *any* wrong precinct provisional ballots, without exception. *Id.* at 28 (“[U]nder Ohio statutory law, the secretary of state’s instructions to the board of elections, which required an investigation into whether poll-worker error caused any of the 850 provisional ballots [at issue] to be cast in the wrong precinct, were erroneous because there is no exception to the statutory requirement that provisional ballots be cast in the voter’s correct precinct.”). Thus, the court actually concluded that the Hamilton County Board had violated Ohio law by counting 27 provisional ballots “cast in the wrong precinct *at the board of elections* during the early-voting process,” even though the Board had determined “they were cast in the wrong precinct due to poll-worker error.” *Id.* at 32

¹ This preliminary injunction subsequently was affirmed by the Court of Appeals for the Sixth Circuit (*Hunter I*, 635 F.3d at 243), and Chief Judge Dlott entered a permanent injunction following a twelve-day evidentiary hearing. *Hunter II*, 2012 WL 404786 at *43, 46.

(emphasis added). The court acknowledged that only those provisional ballots subject to the federal *NEOCH* consent decree could be counted where the Board was aware of poll worker error.

Following *Painter*, the Ohio Secretary of State has issued unambiguous directives ordering that Boards may not count any wrong precinct ballots cast by voters who use any form of identification other than Social Security number voters covered by the *NEOCH* decree, *regardless of whether the Board knows of poll worker error*. See Traum Decl. Exs. J at 1, M at 4.² Thus, Boards that previously considered poll worker error to count wrong precinct ballots began rejecting such ballots following *Painter*. Compare Miller Decl. ¶¶15-16 & Exs. M-N with *id.* ¶¶17-18 & Exs. O-P; *id.* ¶35 & Ex. CC with *id.* ¶37 & Ex. DD; *id.* ¶40 & Ex. GG with *id.* ¶45 & Ex. II; *see also id.* ¶¶22-25 & Exs. R, S.

C. County Boards of Elections Are Rejecting Thousands of Provisional Ballots Cast by Voters Who are Registered Voters

Ohio rejects very large numbers of provisional ballots. Kimball Decl. Ex. B. at 5-7 (Tables 3, 4). A substantial proportion of the rejected provisional ballots in Ohio results from voters being handed the wrong precinct ballot, including within the proper polling location. *Id.* Ex. B at 18, 23, 24 (Tables 12, 15, 16). In the 2008 election, Ohio Boards rejected over 14,000 ballots cast in the wrong precinct or county, or more than a third of all rejected provisional

² During the next general election after the *Painter* decision in 2011, there was confusion among the Boards of Elections regarding whether *Painter* permitted any investigation into poll worker error with respect to the *NEOCH* ballots, or whether, as some Boards interpreted the *Painter* decision to mean, the Boards were limited to reviewing the face of the ballot affirmation to determine poll worker error. See Miller Decl. ¶¶23-25 & Ex. S at 16-17, 2-28 (Hamilton County Board of Election transcript, November 2011). The plaintiffs in *NEOCH* therefore have asked this Court to modify the *NEOCH* consent decree, in a manner consistent with this motion for preliminary injunctive relief, to more clearly prevent unconstitutional disenfranchisement of the voters covered by that decree.

ballots. *Id.* Ex. B at 16, 20 (Tables 10, 13). In the most recent (non-Presidential year) general election in 2011, Ohio voters were given a total of 3,380 wrong precinct ballots within the correct polling place: 1,826 of these were rejected, and another 1,554 were counted only as a result of the *NEOCH* consent decree. *Id.* Ex. B at 23 (Table 15); Traum Decl. Ex. DD.³ Boards also reported another 2,392 “wrong precinct” ballots in 2011 given to and cast by voters in a polling location other than the one that included their assigned precinct. Kimball Decl. Ex. B at 24 (Table 16). Also in 2011, Boards rejected 568 provisional ballots on the basis of technical deficiencies in the ballot envelopes: the envelopes were missing a printed name or a voter signature, had a misplaced printed name or signature, or (without notice to the voter) the signature on the envelope was deemed not to match the exemplar on file with the Board. Traum Decl. Ex. Z.

The rates by which counties rejected provisional ballots in general, and for the specific reason of being cast in the wrong precinct or because of technical errors, vary widely by county throughout Ohio. *See* Kimball Decl. Ex. B at 15-25 (Tables 10-17). The larger urban counties have higher rates of rejection of wrong precinct ballots, particularly “right location, wrong precinct” ballots cast in multi-precinct locations. *Id.* at 19 (“While the eight most populated counties accounted for 48 percent of total ballots cast in the 2010 election, those same eight counties accounted for 76 percent of the provisional ballots rejected for being in the wrong precinct or county.”).

D. Poll Workers Err By Giving Registered Voters Ballots for Precincts Other Than Those in Which the Voters Are Registered

³ The Secretary did not begin requiring Boards separately to report the number of right-location, wrong-precinct ballots and wrong-precinct, wrong-location ballots until the 2011 general election. Kimball Decl. Ex. B at 22.

Statewide evidence from recent elections demonstrates that: 1) poll workers control whether and how voters receive and cast provisional ballots; 2) virtually all of the “wrong precinct” ballots rejected by Boards were given to voters as a result of poll worker error; and 3) Boards are well aware of the extent and nature of poll worker error that leads to wrong precinct ballots and technical flaws in ballot affirmations.

County board records statewide, including the extensive record with respect to Hamilton County from the *Hunter* trial, demonstrate that poll worker mistakes throughout the voting process result in voters being provided with wrong precinct ballots.⁴ As discussed in greater detail below, *infra* at 15-27, these errors include: poll workers giving provisional ballots to any voter who is not on the precinct voting list, often as a result of a mistaken understanding that such ballots will be counted; poll workers incorrectly identifying voters’ precincts, including because poll workers are unable to use complicated county street guides to locate the voters’ correct precincts; poll workers failing properly to instruct voters how and where to cast a ballot that will be counted; poll workers failing to comply with the statutory mandate that voters should be provided a provisional ballot only when they are informed of the correct location to cast a ballot and refuse to go to that location; and poll workers not informing voters after directing them to the proper precinct that if they insist on casting ballots in the incorrect precinct, their vote will not count. *See* Miller Decl. ¶¶50-63 & Exs. NN-YY; *see also* Decl. of Donald McTigue (“McTigue Decl.”) ¶5 & Ex. C.

⁴ Counsel for plaintiffs in the *NEOCH v. Husted* case submitted public records requests to all 88 Ohio County Boards of Elections for documents including Board minutes and transcripts from 2008-2012 that include discussions of provisional ballots and poll worker error, records of poll worker and voter complaints, poll worker training materials, county address and street guides used by poll workers in the 2012 elections, and records of multi-precinct polling place locations. To date, approximately half of the Boards have responded, at least in part. Miller Decl. ¶¶2-4 & Exs. A-C.

In election after election, from 2008 through the recent 2012 primary, Boards have acknowledged that poll worker error resulted in voters being given wrong precinct ballots and in processing ballots that contain incomplete affirmation forms. *See* Miller Decl. ¶¶6-49 & Exs. E-MM.

III. ARGUMENT

A. Preliminary Injunction Standard

In reviewing Plaintiffs' request for a preliminary injunction, the Court must consider and balance four factors: "(1) [Plaintiffs'] likelihood of success on the merits; (2) whether [Plaintiffs] may suffer irreparable harm absent the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of an injunction upon the public interest." *Deja Vu of Nashville, Inc. v. Metropolitan Gov't of Nashville & Davidson Cty., Tenn.*, 274 F.3d 377 (6th Cir. 2001). The "four considerations . . . are factors to be balanced, not prerequisites that must be met." *Six Clinics Holding Corp., II v. Cafcomp Sys., Inc.*, 119 F.3d 393, 400 (6th Cir. 1997). In cases such as this, which involve asserted constitutional violations, the likelihood of success may be determinative because an infringement of a constitutional right generally constitutes irreparable injury. *See Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998). "Additionally, if the plaintiff shows a substantial likelihood that the challenged law is unconstitutional, no substantial harm to others can be said to inhere in its enjoinder[.]" and "it is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu*, 274 F.3d at 400 (internal quotation marks omitted).

B. Plaintiffs Are Very Likely to Prevail on Their Claim That Ohio Unconstitutionally Disenfranchises Voters By Refusing to Count Provisional Ballots When Poll Workers Have Given Voters the Wrong Precinct Ballot and By Rejecting Ballots for Technical Errors

1. Ohio's Post-Election Invalidation of Provisional Ballots Because Poll Workers Have Erred Infringes the Fundamental Right to Vote Protected by the Equal Protection Clause of the United States Constitution

Ohio's provisional ballot law cannot withstand the scrutiny the Supreme Court requires for laws that burden the fundamental right to vote under the Equal Protection Clause of the Fourteenth Amendment. Ohio Rev. Code §3505.183(B)(4), as definitively interpreted by the Ohio Supreme Court in *State ex rel. Painter v. Brunner*, prohibits Ohio Boards from counting the provisional ballots of lawfully registered voters who were given the wrong precinct ballot by poll-workers or whose ballots contain technical errors. This law severely burdens the right of Ohio voters to cast and have counted their votes for President, Vice President, Congress, and other races, is supported by no legitimate state interest that could justify such a strict disqualification rule, and thus violates the Fourteenth Amendment's protection of the fundamental right to vote. As the Sixth Circuit recently observed with respect to this same law: "To disenfranchise citizens whose only error was relying on poll worker instructions" imposes a "harsh" penalty that raises "substantial constitutional concerns." *Hunter I*, 635 F.3d at 243; accord *Hunter II*, 2012 WL 404786 at *43, 46.⁵

The right to vote is fundamental and "preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) ("Other rights, even the most basic, are illusory if the right to vote is undermined."); *Anderson*, 460 U.S. at 787-88 ("the

⁵ The conclusions of the Sixth Circuit and this Court with respect to substantive due process in the *Hunter* case are discussed further below in Section III.B.3. The Court in *Hunter II* did not order a remedy for the recognized systemic constitutional concerns only because the plaintiffs in that case had not yet notified the Ohio Attorney General of a challenge to the constitutionality of the relevant state statutes as required by Federal Rule of Civil Procedure 5.1. *Id.* at *44, 46 & nn.35-36. Unlike in *Hunter*, Plaintiffs have named the Secretary of State as a Defendant in this action.

right of qualified voters, regardless of their political persuasion, to cast their votes effectively . . . rank[s] among our most precious freedoms”). Thus, the Supreme Court has long held that state laws that deny or burden the right to vote cannot stand under the Equal Protection Clause of the Fourteenth Amendment. *See Norman v. Reed*, 502 U.S. 279, 288–89 (1992); *Anderson*, 460 U.S. at 787 n.7; *Harper*, 383 U.S. at 666-67; *Carrington*, 380 U.S. at 96; *Bullock v. Carter*, 405 U.S. 134, 145-146 (1972). And the Constitution protects not just the right to cast a ballot, but the right to have that ballot counted. *See United States v. Classic*, 313 U.S. 299, 315 (1941) (“[o]bviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted”); *United States v. Mosley*, 238 U.S. 383, 386 (1915). As the Court explained in *Bush v. Gore*, 531 U.S. 98, 104-105 (2000):

The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.

Id. at 104-105.⁶

Ohio’s provisional ballot law cannot withstand the scrutiny the Supreme Court requires under the Equal Protection Clause for laws that burden the fundamental right to vote. State laws that impose a “severe” burden on the right to vote are unconstitutional unless justified by “a narrowly drawn state interest of compelling importance.” *Crawford*, 553 U.S. at 190 (quoting *Norman*, 502 U.S. at 288-89); *see also Libertarian Party of Ohio v. Husted*, 2011 WL 3957259,

⁶ In addition, “our Constitution leaves no room for classification of people in a way that unnecessarily abridges” the right to vote in federal congressional elections, which are separately protected by Article I, Section 2 of the United States Constitution and by the Seventeenth Amendment. *Wesberry*, 376 U.S. at 17-18; *Classic*, 313 U.S. at 314-15; U.S. Const., Art. I Sec. 2; 17th Amend.

at *5 (S.D. Ohio) (Marbley, J.). Moreover, to justify *any* burden on the right to vote, the State must identify and the Court must evaluate “the precise interests” the burden serves. *Anderson*, 460 U.S. at 789. “However slight [the] burden” on the right to vote “may appear, . . . it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford*, 553 U.S. at 191 (internal quotations omitted). Only state interests that make it “necessary to burden the plaintiff’s rights” in the manner required by the regulation are sufficient. *Anderson*, 460 U.S. at 789. Scrutiny in this case is heightened by the fact that the Ohio provisional ballot law requires *post-election* judgment calls as to which ballots count and which do not, “after the initial count of regular ballots is known.” *Hunter I*, 635 F.3d at 235. The possibility that state officials could use post-election rules to discount ballots in a discriminatory manner makes the “cause for constitutional concern . . . much greater.” *Id.* at 235.

Applying this balancing test, Ohio’s provisional ballot law severely burdens the right to vote in two respects: first, by mandating the rejection of provisional ballots when the poll worker erred by providing the voter with the ballot for the wrong precinct (Ohio Rev. Code §3505.183(B)(4)(a)(ii); *Painter*, 128 Ohio St.3d at 17); and, second, by mandating the post-election rejection of ballots for what elections officials determine to be technical ballot affirmation errors (Ohio Rev. Code §3505.183(B)(a)(4)(iii)). These rules deny the vote to thousands of Ohio voters through no fault of their own, are supported by no legitimate state interest let alone the compelling interest required to justify such disenfranchisement, and lack the “plainly legitimate sweep” necessary to withstand constitutional scrutiny. *Crawford*, 553 U.S. at 202.

- a. **Votes Should Not Be Thrown Out Because Poll Workers Gave Lawfully Registered Voters the Wrong Precinct Ballot**

Ohio has determined that to administer federal and state elections, voters will be assigned to and required to vote in precincts. *See* Ohio Rev. Code §3505.181(C)(1). Plaintiffs do not contend that a precinct-based voting system is impermissible or overly burdensome. Ohio has, however, also created a uniquely complicated provisional ballot system that makes it extremely difficult and confusing for substantial numbers of voters statewide to receive and cast ballots that will be counted, and which, in election after election, disenfranchises thousands of voters by invalidating their provisional ballots as a result of poll worker error. Plaintiffs challenge the specific Ohio ballot-counting law, Ohio Rev. Code §3505.183(B)(4)(a)(ii), requiring Boards to reject provisional ballots cast due to poll worker error in the wrong precinct, after having already determined that the ballots were cast by lawfully registered voters. Under the system Ohio has created, virtually all of the so-called “wrong precinct” ballots that arrive at the Boards result from such poll worker error.

Ohio’s provisional ballot law, with its thirteen different statutorily-mandated reasons an individual may be required to cast a provisional ballot (Ohio Rev. Code §3505.181(A)(1)-(13)), causes much poll worker confusion and is difficult to administer on election day. Traum Decl. Exs. R at 39-40, T at 10-26 to 10-28, U at 3-6. This law leads to many more provisional ballots being cast in Ohio than in comparably-sized states. Kimball Decl. Ex. B at 1-4 (Tables 1, 2).⁷

⁷ Ohio requires substantially more categories of voters to vote provisionally than most other states. Kimball Decl. Ex. B at 1-4; *compare* Ohio Rev. Code §3505.181(A)(1)-(13) *with* Mich. Comp. Laws § 168.523a(1)(b)(5); Fla. Stat. § 101.048. As a result, with a far smaller population, Ohio ranks second only to California in total number of provisional ballots cast. Kimball Decl. Ex. B at 3 (Table 1). In the 2008 election, Ohio voters cast *more than 200,000* provisional ballots out of 5.7 million votes (and approximately 40,000 of those provisional ballots were later rejected). *Id.* Ex. B at 3, 6 (Table 1, 3). States with comparable voting populations required voters to cast far fewer provisional ballots in the 2008 election: Michigan (approximately 5 million votes, only 3,797 provisional ballots cast); Virginia (approximately 3,750,000 votes, only — *continued*

Ohio's system of voting has become increasingly complicated by the fact that Ohio counties have consolidated precincts into multi-precinct polling locations. Theye Decl. ¶5 & Ex. A; Kimball Decl. Ex. B at 8-10.⁸ For example, Cuyahoga County now has 998 of its 1063 total precincts, or 94 percent, in multi-precinct polling locations, with an average of 2.73 precincts per multi-precinct polling location. Theye Decl. ¶5 & Ex. A. Counties all across the state have similarly consolidated most of their precincts into multi-precinct locations. *Id.*⁹ Even a small county like Coshocton has 55 of a total 57 precincts, or 96 percent, assigned to multi-precinct polling locations, averaging 4.23 precincts per multi-precinct location. *Id.*

This complex system results in the post-election rejection of very large numbers of provisional ballots, including substantial numbers of ballots cast by lawfully registered voters who are required to vote provisionally and are given a ballot by poll workers that does not correspond to their assigned precinct. Kimball Decl. Ex. B at 15-25. In the upcoming 2012 general election, with anticipated high-turnout due to the Presidential election, Ohio can expect both increased numbers of total provisional ballots cast, as well as high numbers of ballots rejected for being cast in the wrong precinct. *Id.* at 2, 6-7.

4,575 provisional ballots cast); Wisconsin (3 million votes; only 211 provisional ballots cast). *Id.* Ex. B at 3 (Table 1); Traum Decl. Ex. EE.

⁸ Ohio ranks near the top of states using multi-precinct locations. Kimball Decl. Ex. B at 8-10 (Tables 5, 6).

⁹ Examples include: Butler (95 percent of precincts in multi-precinct locations, average of 3.31 precincts per multi-precinct location); Greene (100 percent, average 3.68 precincts per multi-precinct location); Franklin (68 percent, average 2.40 precincts per multi-precinct location); Lorain (90 percent, average 2.95 precincts per multi-precinct location); Montgomery (88 percent, average 2.36 precincts per multi-precinct location); Stark (71 percent, average 2.55 precincts per multi-precinct location). Theye Decl. ¶5 & Ex. A.

The clear and undeniable reason for Ohio's alarming rate of rejected provisional ballots is poll worker error. When a voter appears at a polling location on election day in any county in Ohio, the voter is processed by various poll workers before being allowed to vote. Traum Decl. Exs. R at 39-41, T at 10-25 & 10-26, U at 2, 9-10; Miller Decl. ¶¶64-70 & Exs. ZZ-EEE. Ohio voters cannot vote an incorrect provisional ballot without a poll worker determining that the voter should vote a provisional rather than a regular ballot, and without the poll worker choosing to give *that ballot* to the voter. And, poll workers are *required* by Ohio law to determine whether the voter is on the register for the precinct or precincts assigned to that location, and if not, to determine a voter's correct precinct, direct the voter to that precinct, and inform the voter that his or her vote will not count if he or she insists on voting a provisional ballot in the wrong precinct. *See* Ohio Rev. Code §3505.181(C)(1); *Hunter II*, 2012 WL 404786 at *9. Only if a voter has been so informed of the correct precinct and the fact that his or her vote will not be counted if cast in the wrong precinct and nonetheless "refuses to travel to the polling place for the correct jurisdiction," should a poll worker ever provide a wrong-precinct provisional ballot to a voter. Ohio Rev. Code §3505.181(C)(2).

Evidence statewide demonstrates that poll workers are giving voters the incorrect precinct ballots without having complied with their statutory duty to direct voters to the correct precinct. Even when voters are required to cast provisional ballots during early voting at the Board of Elections office, and are handed the wrong ballot because staff incorrectly determines the voter's precinct, *Painter* requires Boards to ignore that undeniable error and reject those votes. 128 Ohio St.3d at 32; *compare* Miller Decl. ¶13 & Ex. K (Cuyahoga County in 2011 rejecting 47 wrong precinct provisional ballots cast "in house" at the Board under *Painter*) with Miller Decl. ¶45 & Ex. II (Summit County in 2008 discussing voters who "came in and we gave

them the wrong ballot” at the Board of Elections and, pre-*Painter*, voting to count the ballots because “[i]t does seem a shame to disenfranchise the voter because of our mistake”).

Problems with poll worker error are particularly acute in Ohio’s many multi-precinct polling locations. In some of these locations, the situation is very similar to early voting at the Board office, because voters must first check in with poll workers, whose duty it is to determine which precinct ballot the voter is supposed to vote (as opposed to first standing in lines that correspond to “precincts”). Miller Decl. ¶¶65, 67, 68, 69, 70 & Exs. ZZ, BBB, CCC, DDD, EEE; Traum Decl. Ex. W at 2. Thus, if the voter is given an incorrect ballot, or incorrect information that another poll worker uses to retrieve an incorrect ballot, the fact that the voter casts an invalid ballot is due entirely to poll worker error, not because the voter somehow chose to vote “in the wrong precinct.” Indeed, there is simply no way for a voter to “travel” to the right or wrong geographic “precinct” within this type of polling location. *See Hunter I*, 635 F.3d at 237.

Other Boards use one table within a multi-precinct polling place to process all provisional voters. Miller Decl. ¶¶17, 65, 66, 67, 68, 69 & Exs. O, ZZ, AAA, BB, CCC, DDD. Here again, if a lawfully registered voter leaves that table with the “wrong” provisional ballot in hand, the cause must be poll worker error. Miller Decl. ¶17 & Ex. O (Franklin County Board member: there “is a single table and a single set of poll workers assigned to the task of provisional ballots for all precincts in a location, [and] it would be pretty difficult in this county to conceive of a situation where it would be voter error.”). All county Boards use either integrated voter registration lists, in paper or electronic form, or very complicated address and street guides, as the means by which poll workers must determine the proper precinct for registered voters required to vote provisionally. Miller Decl. ¶71 & Exs. FFF-XXX. If a voter ends up with an

incorrect ballot at such locations after a poll worker uses these materials to determine the “correct” precinct, it can only be because of poll worker error.

Evidence demonstrates that statewide, poll workers consistently err throughout the process of administering Ohio’s provisional ballot law, including in the following ways:

1. Poll workers misunderstand Ohio law and therefore give provisional ballots to anyone not on the precinct register without attempting to discern the correct precinct, in a misguided effort to help people vote.¹⁰

2. Poll workers mistakenly think the voter is in the correct precinct, even when they are not able to locate the voter in the poll book.¹¹

3. Poll workers direct voters to the wrong precincts; or, within a multi-precinct location where poll workers have access to ballot for several precincts, give voters the wrong precinct ballot.¹²

¹⁰ The record in *Hunter II* demonstrated that poll workers consistently failed to direct voters to right precinct “either because they mistakenly thought the voter was in the right precinct or they mistakenly thought they did not have to direct the voter to the correct precinct for the vote to count,” and they sometimes “assum[ed] another poll worker had already made that determination.” *Hunter II*, 2012 WL 404786 at *18-20, 40-41 & nn.30-31; *id.* at *20 (finding that instead of providing correct precinct or polling place information to voters who did not appear in the books, many poll workers simply gave voters provisional ballots, even in instances where a “voter’s correct precinct was in the same voting location”).

A Ross County Board Member described the problem in 2012 as follows: “How does it happen? . . . Very easily . . . On these, these were done at the polling place and they actually went to the correct polling place but the polling place has maybe two or three different precincts in it. They went to the wrong table and the poll worker is not supposed to vote them unless they’re in their book and if they’re not in their book, they’re supposed to call us to see what precinct to send them to. They didn’t. They just voted them a provisional ballot.” Miller Decl. ¶35 & Ex. CC. The Board then voted unanimously to reject those wrong precinct ballots. *Id.*; *see also id.* ¶51 & Exs. NN-RR, TT-YY (compiling voter and poll worker incident reports); Decl. Emma Kornetsky (“Kornetsky Decl.”) Ex. A.

¹¹ *Hunter II*, 2012 WL 404786 at *18-20, 40-41 & nn.30-31; Miller Decl. ¶51 & Exs. NN-RR, TT-YY (compiling voter and poll worker incident reports).

4. Poll workers fail to give correct precinct information because they make errors in reading the counties' complicated street guides, particularly where streets are split between precincts by odd and even addresses and where there may be more than one residence with the same street number and street name within a county.¹³

¹² Miller Decl. ¶¶52, 54 & Exs. OO-QQ, SS, UU, WW, YY (compiling voter and poll worker incident reports); *id.* ¶37 & Ex. DD (Ross County: "This was poll worker error. The voters were sent to another precinct. Voter's [sic] showed up at the wrong precinct so they were sent to another precinct to vote. But, where they were sent to by the poll worker was also the wrong precinct.").

¹³ Many counties do not provide poll workers with composite lists of registered voters and precinct assignments, which would be by far the easiest way to determine a voter's proper precinct. Instead, poll workers must use the voter's address and a street guide to determine the precinct. Chief Judge Dlott's opinion in *Hunter II* amply demonstrates the difficulty poll workers will encounter in discerning the proper precinct, particularly when precinct lines are divided between the odd and even sides of streets, a problem reported throughout the state. 2012 WL 404786 at *41 (finding that many wrong precinct/right location ballots involved voters who resided on streets that passed through multiple precincts, or whose precinct depended on whether the address was odd or even). Miller Decl. ¶¶ 56-58 & Exs. OO, PP, SS-WW, YY (collecting examples of incident reports of poll workers experiencing difficulty determining odd and even street numbers for split precincts); *id.* Exs. FFF-XXX (excerpts of counties' "street lists" provided to poll workers).

Poll workers testified in the *Hunter II* trial as follows:

A. Hampton: Poll worker believed multi-digit number was "odd" if it had more odd digits than even, or if it began with an odd digit. Gentry Decl. Ex. G at 2-204:3-5, 2-205:1-3.

R. Jackson: Poll worker never looked up anyone's address and not sure if anyone else did either. *Id.* Ex. Q at 5-8:18-24, 5-10:4-16.

A. Johnson: Poll worker not aware that for some addresses the even side of the street votes in one precinct and the odd side in another. *Id.* Ex. S at 6-68:23-69:3.

Board Member Burke: Poll workers "clearly all struggled with the books," which are "difficult to read." *Id.* Ex. D at 1-200:4-7.

The training materials provided by both the Secretary of State and the Boards do little to prevent these errors. Current Secretary of State poll worker training materials and the elections official manual do not instruct poll workers how to determine a voter's correct precinct. Traum Decl., Exs. R at 39, U at 2.

5. Poll workers are not available and do not have or provide appropriate signs and materials to inform voters of where and how they should cast their ballots.¹⁴

6. Poll workers do not inform voters that if they vote a ballot in the wrong precinct, it will not count.¹⁵

7. Poll workers direct voters to vote provisionally without instructing voters on how and/or where they could cast a regular ballot or a correct precinct provisional ballot.¹⁶

8. Poll workers provide voters with provisional ballots without first informing voters of their correct precinct and without waiting for voters to refuse to cast a ballot in that correct precinct.¹⁷

9. Poll workers borrow ballots or ballot envelopes from another precinct table because they run out of the necessary materials.¹⁸

The evidence that poll worker error leads to voters being provided wrong precinct ballots is overwhelming, and is *well known* to the State and the Boards. *See* Miller Decl. Exs. E-MM (compiling Boards' discussions of poll worker error and provisional ballots); *see also League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 478 (6th Cir. 2008) (affirming denial of motion to dismiss in suit alleging “[p]oll workers received inadequate training, causing them to provide incorrect instructions and leading to the discounting of votes” and “poll workers misdirected

¹⁴ Miller Decl. ¶¶55, 58-62 & Exs. OO, QQ, SS, UU, WW, YY (compiling voter and poll worker incident reports).

¹⁵ Miller Decl. ¶51 & Exs. NN-RR, TT-YY (compiling voter and poll worker incident reports).

¹⁶ *Id.* (compiling voter and poll worker incident reports).

¹⁷ *Id.* (compiling voter and poll worker incident reports).

¹⁸ Miller Decl. ¶63 & Exs. NN-QQ, TT-XX (compiling voter and poll worker incident reports).

voters to the wrong polling place”). Yet every year, Boards from throughout the State repeat the refrain that poll worker error results in wrong precinct provisional ballots being given to voters.¹⁹

When presented the opportunity in the *Hunter* case, Hamilton County was unable to provide *any* evidence that even a single voter who had taken the time and expense to come to the polls on election day was actually told before voting a wrong precinct provisional ballot that he or she was in the incorrect precinct and that his or her vote would not count and then knowingly

¹⁹ See, e.g., Adams County: “The pollworkers . . . did not do Provisionals correctly.” Miller Decl. Ex. E at 1.

Butler County: “Each location had a minimum of one poll worker processing provisional ballots incorrectly”; “The problems we saw on Election Day with our Provisional table were due to poll workers not being adequately trained on processing Provisional Voters on the Electronic Poll Books.” *Id.* Ex. H at 2; Ex. F at 18.

Clark County: “We stress the maps and everything in training that’s, you know, you come in, let’s say I live on Detrick Jordan Pike, they can go into the big red map book and they can look up the address, but they can call us, I tell them call us and we can tell you where to send them [voters]. But for whatever reason, I don’t know if they [poll workers] just get frustrated, you don’t know what happens out there on that day of election. . . . It will show in your breakdown there by each precinct and it will say voted in the wrong precinct and if I have one of them, I have up to ten of them.” *Id.* Ex. J at 11-12.

Cuyahoga County: “[T]his problem was a staffing issue; staff had been advised to improve training and to set up additional safety nets to eliminate the incidence of wrong precinct ballots.” *Id.* Ex. K at 1.

Franklin County: “Typically, if they’re in the wrong precinct, we would agree it’s fatally flawed, but if there is poll worker error, and that is the theme of the day, that seems to be the concern that this is the case where it was documented clearly as poll worker error.” *Id.* Ex. P at 23-24; see also *id.* Ex. O at 6.

Hamilton County: Extensive discussions of poll-worker error with respect to *NEOCH* ballots and non-*NEOCH* ballots. *Id.* Ex. S at 16-17, 25-30.

Lake County: Rejecting 288 ballots as wrong precinct and commenting “there is still the need for the poll workers to better understand the provisional voting process.” *Id.* Ex. Z at 2.

Montgomery County: Noting that the poll worker “should have directed to the right table” and discussing “poll worker error.” Kornetsky Decl. ¶3 & Ex. A at 4.

Ross County: Discussion regarding poll worker error, *supra* n.10. See also Miller Decl. Ex. CC at 2; Ex. DD at 2.

Summit County: Discussions of poll worker error. *Id.* Ex. GG at 80, 82; Ex. HH at 107, 114, 116; Ex. II at 26-27.

insisted on voting an invalid ballot anyway, which would of course be a meaningless exercise.²⁰ The thousands of Ohio voters whose ballots are being rejected for this reason in post-election proceedings unquestionably intended to vote. Voters who arrive to vote on election day do not want to cast invalid ballots. Indeed, in all the county board discussions of poll worker error with respect to wrong precinct ballots (prior to *Painter* decision in 2011), and in the context of implementing the *NEOCH* Consent Decree (which still allows some consideration of poll worker error after *Painter* in very limited circumstances), no Ohio County Board of Elections has decided to reject a provisional ballot based on evidence that the voter was told the correct location and that his or her vote would not count, as required by Ohio law, and then refused to travel there. Miller Decl. Exs. E-MM . Board incident reports from recent elections are replete with examples of poll worker error, but do not reflect instances of voters refusing to travel to a correct precinct and insisting on casting an invalid ballot. *Id.*

All of this evidence demonstrates that, in recent elections, virtually all provisional ballots rejected by Boards because they were cast in the “wrong precinct” made it into the hands of registered voters as a result of poll worker error. A rule that prohibits counting of entire ballots under these circumstances imposes “excessively burdensome requirements” on Ohio voters. *Crawford*, 553 U.S. at 202. These Ohio voters are required to comply with an obligation that

²⁰ See 2012 WL 404786 at *22; Gentry Decl. Ex. E at 2-118:4-8; *id.* Ex. G at 2-198:5-12; *id.* Ex. H at 2-221:4-10; *id.* Ex. O at 4-114:8-25, 4-122:18-21; *id.* Ex. P at 4-148:13-21; *id.* Ex. S at 6-55:17-56:6; *id.* Ex. U at 7-31:10-12; *id.* Ex. V at 7-52:13-22; *id.* Ex. Z at 8-9:17-20; *id.* Ex. FF at 8-193:5-11; *id.* Ex. GG at 8-206:3-17; *id.* Ex. HH at 8-247:16-248:13; *id.* Ex. JJ at 9-69:23-70:10; *id.* Ex. KK at 9-102:8-13; *id.* Ex. NN at 9-171:22-172:2; *id.* Ex. OO 9-199:17-200:1; see also *id.* Ex. M at 4-16:7-17:1 (poll worker would have made record of any refusal to go to correct precinct); see also *McTigue Decl. Ex. A (Paul v. Jeffrey transcript)* at 53:10-55:17, 59:21-60:2, 72:19-73:21, 168:13-169:23, 170:18-171:4, 173:23-174:1, 175:14-21, 200:24-201:4, 201:17-202:12, 203:8-204:3, 207:14-208:3, 208:17-18 (Erie County voters not told that they were voting provisionally in wrong precinct).

they cannot control – the decision of the poll worker to hand them an incorrect ballot. Moreover, Ohio invalidates the entire ballot of federal, state, and local races – not just any races that have some relation to the precinct lines.²¹

To be sure, states may impose “Time[], Place[], and Manner” requirements for voting in an election. *See* Art. I, §4, cl. 1; *Nat’l Ass’n for Advancement of Colored People State Conference of Pennsylvania v. Cortes*, 591 F.Supp.2d 757, 764 (E.D. Pa. 2008). Ohio has done just that by organizing voters into precincts and multi-precinct polling locations, informing voters of their polling locations, organizing regular voting by precincts, and imposing on poll workers a duty to direct voters to the correct precinct. But under the challenged Ohio law, a voter can comply with all of Ohio’s reasonable requirements for voting – by properly registering, by appearing to vote on election day with the requisite identification, and by appearing to vote at the proper polling location – and yet have his or her right to vote denied because a poll worker erroneously hands the voter an incorrect ballot without the proper warning that the ballot will not count, and without instructing the voter how to cast a ballot for his or her correct precinct.²²

When a state denies a citizen the right to vote as a result of poll worker error, that denial is wholly unrelated to voter qualifications, and cannot stand. *See, e.g., Crawford*, 553 U.S. at 189 (even rational restrictions are “invidious” if “unrelated to voter qualifications”); *Harper*, 383

²¹ The burden has an especially “excessive[.]” impact in relation to the class of provisional voters created by Ohio law; voters permitted to cast a regular ballot by definition cannot and do not suffer post-election invalidation of their vote because a poll worker erred by giving them the wrong ballot. *See Crawford*, 553 U.S. at 200-02 (considering whether burden falls particularly heavily on certain subsets of voters).

²² Even if Ohio’s law merely regulated the manner of voting, a State’s right to burden voters with time, place, and manner requirements is not unlimited, and would be far exceeded here. *See, e.g., Cortes*, 591 F.Supp.2d at 764 (although “[s]ome waiting in line . . . is inevitable and must be expected,” there “can come a point when the burden of standing in a queue ceases to be an inconvenience or annoyance and becomes a constitutional violation”).

U.S. at 666-67; *Carrington*, 380 U.S. at 96. Thus, for example, courts repeatedly have held that a state may not, after having provided absentee ballots to voters, refuse to count them on the grounds that it provided the ballots in error. *Griffin v. Burns*, 570 F.2d 1065, 1074 (1st Cir. 1978); *Hoblock v. Albany County Bd. of Elections*, 487 F.Supp.2d 90, 97 (2006).

Here, the State and county Boards will not be able to identify any compelling interest justifying this severe burden posed by Ohio law on the rights of the voters unfairly disenfranchised as a result of poll worker error. Unlike the voter identification requirement considered in *Crawford*, the requirement that a registered voter's ballot be discarded because a poll worker provided the voter with the wrong ballot is entirely "irrelevant to the voter's qualifications," and in no way furthers the "integrity and reliability of the electoral process itself." *Crawford*, 553 U.S. at 189-90 (quoting *Anderson*, 460 U.S. at 788 n.9). That is because the statute requires Boards to invalidate provisional ballots cast by individuals in the "wrong" precinct *only after first determining that those voters are lawfully registered voters*. Ohio Rev. Code §3505.183(B)(4)(a)(i), (ii). For this reason, the concern with potential fraud that justified the voter identification law in *Crawford*, for example, is not implicated at all by the Ohio provisional ballot law. *See Crawford*, 553 U.S. at 189-90.

Nor does Ohio's strict ballot disqualification law serve any legitimate regulatory interest in ensuring that "some sort of order, rather than chaos, is to accompany the democratic processes." *Burdick v. Takushi*, 504 U.S. 428 (1992) (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). Plaintiffs are not challenging Ohio's decision to assign voters to precincts, to inform voters of their proper precinct, to process voters by precinct at the polling place, or to impose on poll workers a duty to identify and direct voters to their proper precinct. Plaintiffs challenge only the extreme rule created by *Painter* that after voters have been processed through

Ohio's precinct-based election system by poll workers and have been given the wrong precinct ballot, county boards of election must disqualify *all the votes* on a wrong-precinct provisional ballot without regard to poll worker error. In contrast to Ohio, many other states are able effectively to conduct elections organized by precinct, while at the same time counting the provisional ballots of any voters cast in the wrong precinct for non-precinct based races for which the voter is eligible.²³

The post-election invalidation of votes as a result of poll worker error ultimately serves to undermine the electorate's faith in the fairness of our democratic process, particularly in a state that requires hundreds of thousands of voters to vote provisionally. "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006); *Hunter I*, 635 F.3d at 234. Whenever a provisional voter is informed that his or her vote has been rejected for reasons outside his control, the voter loses confidence in the voting system. The *Painter* decision itself, by announcing that votes are known to be marred by poll worker error, and yet will not be counted, undermines voter trust both in the poll workers and in the entire voting system. Ohio has no legitimate interest in a rule

²³ See, e.g., New Mexico (N.M. Stat. Ann. §1-12-25.4); Pennsylvania (25 Pa. Stat. Ann. §3050); California (Cal. Elec. Code §14310(c)(3)); Kansas (Kan. Stat. Ann. §25-3002); Massachusetts (Mass. Gen. Laws Ann. ch. 54, §76C); Maryland (Md. Elec. Law §11-303); New Jersey (N.J. Stat. Ann. §19:53C-17); Georgia (Ga. Code Ann. §21-2-419). Indeed, to the extent Ohio claims that disqualifying wrong precinct ballots encourages voters to vote in their proper precincts and encourages efficient elections, the current system of ignoring poll worker error *undermines* that goal. Offering wrong-precinct provisional ballots to voters, without informing them that their wrong-precinct ballot will be not counted, *discourages* voters and poll workers from identifying the voters' correct precincts, and likely increases the numbers of voters who vote outside their assigned precinct and polling place.

that undermines confidence in the democratic process, and discourages lawful voters from voting.

Finally, in order to withstand constitutional scrutiny, the statute at issue must have a “plainly legitimate sweep.” *Crawford*, 553 U.S. at 202. The evidence described above demonstrates the myriad ways poll workers err by giving voters the wrong ballots. In juxtaposition, there is only *one* circumstance in Ohio’s system of provisional voting when a wrong precinct provisional ballot may properly be given to a voter: when the poll worker correctly determines the voter’s assigned precinct, informs the voter of that precinct, and tells the voter, as required by state law, that his or her vote will not count if he or she casts the wrong ballot, and the voter nonetheless *insists* on voting the provisional ballot in the wrong precinct. As already discussed, Plaintiffs are not aware of any evidence that this has *ever* actually happened in Ohio. *See supra* 22-23. Voters who take the time and expense to appear at the polling place on election day are trying to vote, and it would be absurd to suggest that they intend knowingly to cast meaningless, invalid ballots. And, in the many multi-precinct locations where there is no separate area to which the voter must “travel” to vote a valid ballot because one table processes all provisional ballots, the process is entirely in the hands of poll workers. In these locations, there is no circumstance in which a voter will cast a wrong-precinct ballot that is not the result of poll worker error.

Given the system Ohio has designed, and the overwhelming evidence of poll worker error, a law that prohibits Boards from counting these wrong precinct ballots after the election cannot be said to have any legitimate sweep at all. For all these reasons, Ohio cannot show it is “necessary to burden [] plaintiff[s]’ rights” with its rule that wrong-precinct ballots may not be counted. *Anderson*, 460 U.S. at 789.

b. Votes Should Not Be Thrown Out Because Poll Workers Processed Provisional Ballots with Technical Errors

The problem of poll worker error in Ohio is not limited to wrong precinct ballots. Ohio disenfranchises large numbers of voters based on technical defects in affirmations on provisional ballot envelopes, defects that are caused by election officials' failure to carry out their statutory duties.

Ohio law and the statewide evidence show that an incomplete or incorrectly completed provisional ballot affirmation cannot be accepted without error by the poll worker. Under Ohio law, provisional voters generally are required to complete a provisional ballot affirmation form that requires a printed name and a signature. *See* Ohio Rev. Code §§3505.181(B)(2), 3505.182. First, poll workers must affirm that “[t]he Provisional Ballot Affirmation . . . was subscribed and affirmed before me.” *Id.* §3505.182. If the voter in fact did *not* “subscribe and affirm” the ballot form, then the poll worker’s own affirmation is in error. *See also Skaggs I*, 588 F.Supp.2d at 836 (Ohio law “requires more than the mere passive presence of the poll worker, conferring on him a duty to verify the actual completion of the [provisional ballot affirmation] form, thereby requiring him to participate actively in the exercise of an eligible voter’s franchise.”). Second, a poll worker should not give a voter a provisional ballot unless and until the voter has executed the affirmation on the provisional ballot envelope. Ohio Rev. Code §3505.181(B)(2); Traum Decl. Exs. T at 10-25, U at 7. Third, a voter may decline to execute the affirmation, in which case it is the *poll worker’s* responsibility to ensure that the ballot is properly cast by “record[ing] the individual’s name and includ[ing] that information with the transmission of the ballot” to election officials. Ohio Rev. Code §3505.181(B)(6); *see also id.* §3505.182; *State ex rel. Skaggs v. Brunner*, 120 Ohio St. 3d 506 (2008) (“*Skaggs II*”), 512-15.

Statewide, Boards have recognized poll workers regularly process incomplete affirmation forms in violation of their statutory duties. Miller Decl. ¶38 & Ex. EE at 1 (concluding it was poll worker error to “let the person hand in the ballot without the completion of the information” where ballot was filled out “in front of the poll worker and signed by the poll worker”); *id.* ¶63 & Exs. NN-QQ, TT-XX (additional examples of poll workers signing affirmation even though there is no signature from voter or no printed name, or the name appears in the wrong place).

Despite the fact that technical errors in the provisional ballot affirmation forms are thus clearly the result of poll worker errors, the Ohio Supreme Court has held that County Boards of Elections must reject such provisional ballots. *See Skaggs II*, 120 Ohio St.3d at 527. For example, under Ohio law as interpreted by *Skaggs II* and *Painter*, Boards reject provisional ballots of eligible, registered voters if there is a printed name on the affirmation form but no signature; a signature on the affirmation but no printed name; or where the printed name or signature is in the wrong place on the envelope. *See id.* at 512-17.²⁴ *See also* Traum Decl. Exs. Z-CC (data showing rejection of ballots of voters for “no signature,” “no printed name,” “printed name and/or signature in wrong place”); Miller Decl. ¶33 & Ex. AA (Secretary of State instructed Lorain County Board that “printed name, identification and a signature must be placed

²⁴ In *Skaggs II*, the Ohio Supreme Court held that, in the absence of additional evidence that a voter declined to execute an affirmation and that an election official had failed to perform his or her duties, ballots without an executed affirmation should not be counted. The Court stated, however, that “[i]f we were presented with evidence that the election officials had [not] performed any of their statutorily required actions . . . we may have been persuaded that declinations could be presumed.” *Id.* at 515. Yet after *Painter*, Boards are barred from investigating poll worker error, and thus regularly reject provisional ballots that do not have signed affirmations without inquiring into whether the voter might simply have declined to execute the affirmation, triggering the poll worker’s obligation to record the voter’s information. *See* Traum Decl. Ex. Z.

on the front of the provisional envelope” and if “appears on the back of the envelope, . . . it cannot be counted”); *id.* ¶28 & Ex. V at 1 (Secretary of State instructed Huron County Board to reject provisional ballot where “voter signed their name at the top of the envelope instead of printing it.”).

The burden on the right to vote in this circumstance is severe: voters have their right to vote completely denied due to technical errors on their provisional ballot affirmation forms. No compelling state interest can justify this disenfranchisement. *Crawford*, 553 U.S. at 191. The State has no interest in preventing fraud in this circumstance as it has already determined that the voters are eligible, registered voters. Ohio Rev. Code §3505.183(B)(4)(a). Moreover, Ohio law itself evidences the State’s strong interest in preventing disenfranchisement as a result of technical deficiencies in the ballot affirmation forms. Ohio law *permits* provisional voters to decline to execute an affirmation *entirely*, and still have their vote counted, *id.* §3505.183(B)(1); and further provides that “no ballot shall be rejected for any technical error unless it is impossible to determine the voter’s choice.” *Id.* §3505.28. Given this, there can be no compelling interest in not counting ballots of registered voters when a poll worker processes an affirmation that is merely incomplete or incorrectly completed. The fundamental right to vote is thus violated by Defendants’ invalidation of provisional ballots for technical errors.²⁵

²⁵ Boards also reject provisional ballots on the grounds that voters’ signatures on the ballot envelopes purportedly do not match signatures on file with the Board. *See* Traum Decl. Exs. Z-CC. Because there are no objective statewide standards pursuant to which the Boards evaluate whether voters’ signatures match (*see* Miller Decl. ¶15 & Ex. M at 30-31 (acknowledging standard is “subjective”)), the Boards’ rejection of these provisional ballots is inconsistent with the Equal Protection Clause’s guarantee of nonarbitrary treatment of individuals with respect to their right to vote. *See also* *Bush*, 531 U.S. at 108-10 (instructing counties to discern “intent of the voter” with no further guidance led to violations of the equal protection clause). The rejections also violate procedural due process because, unlike a challenge to the signature of a voter casting a regular ballot on election day, a voter casting a provisional ballot is not given the — *continued*

2. All Ohio Voters Regardless of Form of Identification Used to Vote Should be Subject to the Same Standard for Counting Provisional Ballots

In light of the Consent Decree in the *NEOCH v. Husted* case and the Ohio Supreme Court's decision in *Painter*, the Secretary of State has directed Ohio Boards in the 2012 elections to *count* wrong precinct provisional ballots cast by voters using only Social Security numbers as identification where the Board knows of poll worker error, and to *reject* wrong precinct provisional ballots cast by voters using any other form of identification even if the county knows of poll worker error. Traum Decl. Ex. M at 4. Treating voters who use other forms of identification differently from voters who use Social Security numbers with respect to the standard for counting ballots cast in the wrong precinct violates the "constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush*, 531 U.S. at 104-05; *see also League of Women Voters*, 548 F.3d at 477 ("At a minimum, . . . equal protection requires 'nonarbitrary treatment of voters.'" (*quoting Bush*, 531 U.S. at 105)).

In *Hunter I*, the plaintiff argued that the counting of some "wrong precinct" provisional ballots caused by poll-worker error (those cast at the Board of Elections office) but not others (those cast at the polls) violated equal protection. The Sixth Circuit concluded that there was a "likelihood that the intrajurisdiction unequal treatment undertaken by the Hamilton County

opportunity to explain or rectify the allegedly non-matching signature. *Cf.* Ohio Rev. Code §3505.18; *Raetzl v. Parks/Bellefont Absentee Election Bd.*, 762 F.Supp. 1354, 1358 (D. Ariz. 1990) (holding failure to provide absentee voters notice that ballots had been challenged and opportunity to respond violated procedural due process).

Board is constitutionally impermissible,” and held that “[t]he Board arbitrarily treated one set of provisional ballots differently from others, and *that unequal treatment violates the Equal Protection Clause.*” 635 F.3d at 242 (emphasis added); *see also id.* at 238 (“This discriminatory disenfranchisement was applied to voters who may bear no responsibility for the rejection of their ballots, and the Board has not asserted ‘precise interests’ that justified the unequal treatment.”); *see also Bush*, 531 U.S. at 109 (an arbitrary difference between how votes are counted *within* counties violates guarantees of equal protection); *League of Women Voters*, 548 F.3d at 476 (invalidating the ballots of voters who were given wrong-precinct ballots by poll workers violates the right of a voter “to have one’s vote counted on equal terms with others” under the Equal Protection Clause).

There likewise can be no justification for counting wrong precinct ballots caused by poll worker error when a voter uses a Social Security number, but then not counting wrong precinct ballots caused by poll worker error for voters who use other forms of identification.²⁶ The State can assert no concrete legitimate interest that would support the continued disparate treatment of the votes of individuals *not* covered by the *NEOCH* Consent Decree. As Judge Dlott concluded after trial in *Hunter*, the proper remedy for such an equal protection violation is to count all the ballots marred by poll worker error, not to discard the Consent Decree votes too. *Hunter II*, 2012 WL 404786, *46 n.40 (“The cure to this violation requires the Board to count other ballots flawed by poll-worker error [I]t is preferable as an equitable matter to enable the exercise

²⁶ In the context of reviewing the *Hunter* preliminary injunction, the Sixth Circuit recognized but declined to reach the issue of any constitutional concern caused by the disparate treatment of voters who cast provisional ballots and use Social Security numbers, and are thus covered by the *NEOCH* consent decree, and those voters casting provisional ballots who use other forms of identification, having already recognized that equal protection required equal treatment of all polling place voters as compared to those who voted at the Board office. *Hunter I*, 635 F.3d at 238 n.17.

of the right to vote” rather than rejecting additional votes) (quoting *Hunter I*, 635 F.3d at 245)). As the distinction between Social Security number provisional voters and those with other forms of identification is arbitrary with regard to whether those wrong precinct ballots result from poll worker error, Plaintiffs are very likely to prove that the continued application of different counting standards to these groups of voters violates equal protection.

3. Ohio’s System for Processing Provisional Ballots Subjects All Provisional Voters to Inconsistent Poll Worker Practices from County to County and Precinct to Precinct that Result in the Arbitrary Rejection of Ballots in Violation of the Uniformity Required By Equal Protection

Ohio voters are subject to arbitrary and non-uniform rates of poll worker error between counties, particularly with respect to large, urban counties. Kimball Decl. Ex. B at 11-25. First, Ohio counties have widely varying rates of provisional ballots as a percentage of total votes cast, as well as varying rates of rejection of those ballots. *Id.* at 11-18. Rejected provisional ballots tend to be disproportionately concentrated in the counties with the most registered voters. *Id.* For example, in the 2010 election the eight largest counties represented about 48 percent of total ballots cast but almost two-thirds of rejected provisional ballots in Ohio. *Id.* at 15.

The rate of rejection of “wrong precinct” ballots varies widely throughout Ohio. *Id.* at 19-25. In several counties more than half of rejected provisional ballots in 2010 were wrong precinct ballots, while in many other counties no provisional ballots were rejected for this reason. *Id.* at 19. And, while the eight most populated counties accounted for 48 percent of total ballots cast in the 2010 election, those same eight counties accounted for 76 percent of the provisional ballots rejected for being in the wrong precinct or county. *Id.* The 2011 statistics also show wide variation in the rate of rejected “right location, wrong precinct” ballots. *Id.* at 22. Again,

while the eight most populated counties accounted for 46 percent of total ballots cast in the 2011 election, those same eight counties accounted for 79 percent of the provisional ballots rejected for being in the wrong precinct but the correct polling place. *Id.*

Such dramatic and arbitrary differences from county to county in the likelihood that a voter will be given an improper wrong precinct ballot by a poll worker, resulting in post-election disenfranchisement, violates equal protection. In *Bush v. Gore*, the Supreme Court made clear that a State may not “accord[] arbitrary and disparate treatment to voters in its different counties.” 531 U.S. at 107 (citing *Gray v. Sanders*, 372 U.S. 368 (1963); *Moore v. Ogilvie*, 394 U.S. 814 (1969)). Any statewide rule – such as *Painter*’s requirement that all provisional ballots marred by poll worker error not be counted – must meet “the rudimentary requirements of equal treatment” across and within counties. *Id.* at 109. Like Florida’s statewide standard of “voter intent” that resulted in impermissibly disparate rejection rates of ballots in *Bush v. Gore*, Ohio’s requirement after *Painter* that counties reject all “wrong precinct” ballots regardless of poll worker error results in impermissibly disparate rejection rates of votes between counties.

Courts repeatedly have concluded that polling systems that permit substantially higher rates of invalidation of ballots due to error in some counties as compared to other counties violate equal protection. See *Black v. McGuffage*, 209 F. Supp. 2d 889, 893 (N.D. Ill. 2002) (equal protection clause was violated where counties employed voting technology with widely varying error rates because “people in different counties have significantly different probabilities of having their votes counted, solely because of the nature of the system used in their jurisdiction”); *Common Cause Southern Christian Leadership Conf. of Greater Los Angeles v. Jones*, 213 F.Supp.2d 1106, 1109 (C.D. Cal. 2001) (allowing counties “to adopt either punch-card voting procedures or more reliable voting procedures” stated a claim for “unreasonable and

discriminatory” election procedures in violation of equal protection); *see also Cortes*, 591 F.Supp.2d at 764 (evidence of widely varying failure rates of voting machines and resulting wait times to vote at different precincts and in different counties established a likelihood of success on equal protection claim). Likewise, Ohio’s provisional ballot system leaves voters from county to county subject to widely varying rates of invalidation due to poll worker error, with no valid justification for not counting these ballots, in violation of equal protection.

4. Ohio’s Provisional Ballot System is Fundamentally Unfair and Violates Substantive Due Process

Both the Sixth Circuit and this Court have observed that Ohio’s practice of refusing to count the votes of registered voters because they were provided a wrong-precinct ballot by a poll worker renders Ohio’s system for the counting of provisional ballots “fundamentally unfair” in violation of substantive due process. A state violates voters’ right to substantive due process if a state employs “non-uniform rules, standards and procedures” that result in significant disenfranchisement and vote dilution. *League of Women Voters*, 548 F.3d at 478 (internal quotations omitted); *see also Ury v. Santee*, 303 F.Supp. 119, 126 (N.D. Ill. 1969) (failure to provide “adequate and substantially equal voting facilities” when reduced number of polling places from 32 to 6 violated voters’ right to due process). Ohio’s system of rejecting ballots for reasons caused by poll worker error does just that.

The Sixth Circuit in *Hunter I* stated that it had “substantial constitutional concerns regarding the invalidation of votes cast in the wrong precinct due solely to poll-worker error.” *Id.* at 243-44. The Court observed that:

Ohio has created a system in which state actors (poll workers) are given the ultimate responsibility of directing voters to the right location to vote. Yet, the state law penalizes the voter when a poll worker directs the voter to the wrong precinct, and the penalty, disenfranchisement, is a harsh one indeed. *To*

disenfranchise citizens whose only error was relying on poll-worker instructions appears to us to be fundamentally unfair.

Id. at 243 (emphasis added); see also *League of Women Voters*, 548 F.3d at 478; *Hunter II*, at *43 (to the extent that Ohio law “provides that provisional ballots cast in the wrong precinct shall not be counted under any circumstance, those provisions, as applied to situations where evidence of poll-worker error exist, are fundamentally unfair to voters.”).

The holdings of the Sixth Circuit in *Hunter I* and *League of Women Voters* and of this Court in *Hunter II*, are consistent with the long-standing rule that once state workers have induced a voter’s reliance on a particular manner of voting, invalidation of that voter’s ballot is “fundamentally unfair.” See *Griffin*, 570 F.2d at 1074 (it violates substantive due process to invalidate absentee ballots that state officials provided to primary voters, where the effect of the state’s action was to induce voters to vote by this means rather than in person); *Hoblock*, 487 F.Supp.2d at 97 (“when a group of voters are handed ballots by election officials that, unsuspected by all, are invalid, and then state law forbids counting the ballots, the election officials violate the constitutional rights of the voters, and the election process is flawed”) (internal quotations and alterations omitted).

The statewide evidence cited in the previous sections demonstrates that the Ohio provisional ballot system, whereby poll workers arbitrarily provide Ohio voters with the wrong ballots, regardless of whether they think that they are helping voters, is fundamentally unfair. Plaintiffs are very likely to prevail on their claim that this system of arbitrary disenfranchisement violates the Constitution’s guarantees of substantive due process.

5. Plaintiffs Have Standing to Challenge Ohio’s Law Requiring Unconstitutional Rejection of Provisional Ballots

Just as Plaintiffs have established that they are very likely to prevail on the merits of their constitutional claim, Plaintiffs also satisfy Article III's standing requirements. Plaintiffs are membership organizations and have standing "to assert . . . the rights of their members who will vote in the [upcoming federal] election." *Sandusky Cty. Dem. Pty. v. Blackwell*, 387 F.3d 565, 574 (6th Cir. 2004).²⁷ It is well-settled that "[a]n association has standing to bring suit on behalf of its members when [1] its members would otherwise have standing to sue in their own right, [2] the interests at stake are germane to the organization's purpose, and [3] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000).

Plaintiffs' members have standing in their own right to challenge Ohio's unconstitutional provisional ballot law. Many of Plaintiffs' members are registered voters and intend to vote in the upcoming election. *See* Decl. of Ronnie Wardrup ("Wardrup Decl." ¶¶3-4); Decl. of Steven Frammartino ("Frammartino Decl.") ¶¶3-5; Decl. of Lance Wyatt ("Wyatt Decl.") ¶4; Decl. of Erin Kramer ("Kramer Decl.") ¶¶4-8; Decl. of Rick Lawwill ("Lawwill Decl.") ¶¶2-5. Evidence from the last several statewide elections reflects that a substantial number of voters are required to cast provisional ballots, and that a large number of those ballots are rejected as a result of poll worker error. There can be no doubt that Plaintiffs' members will be subject to Ohio's error-ridden provisional balloting system, and to the State's refusal to count ballots cast in "wrong precincts" as a result of poll worker error. *See* Lawwill Decl. ¶¶2-5; Kramer Decl. ¶¶4-8; *see also, e.g.*, Wyatt Decl. ¶4 (USW has 2,423 members in Cuyahoga County, a county in which

²⁷ Plaintiffs also have standing to assert their own rights as organizations, and allege that their organizations will have to divert limited resources to address and counteract Ohio's unconstitutional vote counting practices. *See* Kramer Decl. ¶10; Decl. of Karen Gasper ("Gasper Decl.") ¶¶3-6.

93% of precincts are in multi-precinct voting locations, and 24.4% of rejected provisional ballots in Cuyahoga County are wrong precinct/correct polling place ballots).

That Plaintiffs cannot now predict – before an election – which of their members will be required to vote provisional ballots and will have those ballots not counted as a result of poll worker error does not affect their standing. In *Sandusky County Democratic Party*, 387 F.3d 565, the Sixth Circuit found that organizations had standing to assert the rights of their members who would vote in the coming election, explaining:

[Plaintiffs] have not identified specific voters who will seek to vote at a polling place that will be deemed wrong by election workers, but this is understandable; by their nature, mistakes cannot be specifically identified in advance. Thus, a voter cannot know in advance that his or her name will be dropped from the rolls, or listed in an incorrect precinct, or listed correctly but subject to a human error by an election worker who mistakenly believes the voter is at the wrong polling place. It is inevitable, however, that there will be such mistakes. The issues [Plaintiffs] raise are not speculative or remote; they are real and imminent.

387 F.3d at 574. The same is true here. The disenfranchisement of voters will be caused directly by Ohio’s refusal to count ballots cast incorrectly because of poll worker error, an injury that will be remedied by Plaintiffs’ requested remedy.

Plaintiffs satisfy the remaining requirements for associational standing. The goal of ensuring that members and the public are able to cast ballots that will be counted is germane to the purposes of Plaintiffs’ organizations. See Frammartino Decl. ¶¶6-7; Kramer Decl. ¶11; Gasper Decl. ¶2; Lawwill Decl. ¶7; Wardrup Decl. ¶5. And individual participation of Plaintiffs’ members is not necessary where, as here, Plaintiffs seeks “prospective [and] injunctive relief for [their] members.” *United Food & Comm. Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 546 (1996).

C. Without an Injunction, Ohio’s Arbitrary and Unfair System for Counting and Rejecting Provisional Ballots Will Irreparably Harm Thousands of Voters in the Upcoming November 2012 Election

The Court should grant Plaintiffs' request for injunctive relief because Plaintiffs have made a strong showing of likelihood of success on the merits of their claims that Ohio's failure to count "wrong-precinct" provisional ballots is unconstitutional. The balance of harms also weighs heavily in favor of granting injunctive relief.

In the absence of injunctive relief, some of Plaintiffs' members inevitably will have their right to vote not merely burdened but completely denied as a result of Ohio's prohibition on counting "wrong-precinct" ballots even when caused by poll-worker error. The denial of the fundamental right to vote is unquestionably "irreparable harm." *See Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986); *Miller v. Blackwell*, 348 F. Supp. 2d 916, 922 (S.D. Ohio 2004) (Dlott, J.) ("Because this Court has found that Defendants' challenged actions threaten or impair both Plaintiffs' constitutional right to due process and constitutional right to vote, the Court must find that Plaintiffs will suffer an irreparable injury"); *see also Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F.3d 566, 578 (6th Cir. 2002) ("a plaintiff can demonstrate that a denial of an injunction will cause irreparable harm if the claim is based upon a violation of the plaintiff's constitutional rights").

By contrast, the State cannot be harmed by the enjoining of Ohio laws that violate Plaintiffs' constitutional rights. *See Deja Vu*, 274 F.3d at 400. Moreover, as discussed *supra* 25, Ohio's provisional ballot counting law does not serve any concrete state interest in the reliability or integrity of the voting process, as it indisputably disenfranchises only eligible, registered voters. Nor does it serve administrative efficiency, as the post-election disqualification of these votes does not encourage or facilitate correct-precinct voting. *See supra* 26.

Finally, both Plaintiffs and the public have an interest in ensuring that the public's confidence in the electoral system is not undermined, and that voters are not discouraged from

participating in the democratic system. As the Sixth Circuit explained, “counting the ballots of qualified voters miscast as a result of poll-worker error may enhance confidence in the integrity of our electoral processes, which is essential to the functioning of our participatory democracy.” *Hunter I*, 635 F.3d at 244-45. The public also has a strong interest in the prompt determination of the outcome of elections – particularly elections for President and Vice President of the United States (*see Bush*, 531 U.S. at 110-11), and in ensuring that uniform standards for the counting of ballots are established before an election and not during the exigent circumstances of the vote-counting process. *Cf. Hunter I*, 635 F.3d at 235 (“specific standards to ensure equal application” are particularly important during vote-counting process “after the initial count of regular ballots is known”) (internal quotation marks and alterations omitted).

For all these reasons, the balance of harms and the public interest tip sharply in favor of granting Plaintiffs’ requested injunctive relief.

D. This Court Should Require Ohio to Count All Provisional Ballots Cast By Lawfully Registered Voters Unless the Poll Worker Affirms That the Voter Was Informed of an Error in Precinct or the Ballot Affirmation *and* that the Vote Would Not Count and Insisted on Casting an Invalid Ballot

Rather than ask for a blanket injunction requiring the Boards to count all wrong precinct votes, Plaintiffs seek a preliminary injunction tailored to preventing the constitutional violations caused by poll worker error, but which also permits the State to reject ballots cast in the single circumstance in which a voter may knowingly and intentionally vote a wrong precinct provisional ballot. The *only* circumstance under which that could happen is when the poll worker has complied with the statutory duty to inform the voter of his correct precinct, directed that voter to the correct precinct, informed the voter that his vote will not count if cast in the wrong precinct, and then the voter refuses and insists on knowingly casting a wrong precinct ballot. Therefore, Plaintiffs request a remedy that would guard against the proven constitutional

violations that occur when votes are disqualified because poll workers give voters the wrong ballot and permit voters to cast a provisional ballot in an incorrect precinct without informing them that their votes will not count.

As described in accompanying Proposed Order, Plaintiffs ask the Court to issue an injunction ordering the County Boards of Election *not* to reject provisional ballots cast by lawfully registered voters because:

- 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.

Ohio counties must implement these requirements uniformly, lest they again employ ballot counting standards that run afoul of equal protection concerns applied in *Bush v. Gore*, 531 U.S. at 107. Plaintiffs therefore ask the Court to order Defendant Secretary of State Husted to 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: _____.

Finally, in order to ensure uniform implementation, Plaintiffs ask the Court to order Defendant Secretary of State to 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 poll worker erred in providing a wrong precinct ballot to the voter or erred in processing a ballot with an incomplete affirmation form.

IV. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request this Court grant Plaintiffs' motion for a preliminary injunction to prevent the arbitrary and unconstitutional disenfranchisement caused by poll worker error.

Dated: June 22, 2012

Respectfully submitted

/s/Michael J. Hunter

MICHAEL J. HUNTER, *trial attorney* (0018756)

CATHRINE J. HARSHMAN (0079373)

Hunter, Carnahan, Shoub, Byard & Harshman

3360 Tremont Road, Suite 230

Columbus, Ohio 43221

Telephone: (614) 442-5626

E-mail: mhunter@hcands.com

Attorneys for All Plaintiffs

STEPHEN P. BERZON (*pro hac vice* application pending)

STACEY M. LEYTON (*pro hac vice* application pending)

BARBARA J. CHISHOLM (*pro hac vice* application pending)

DANIELLE LEONARD (*pro hac vice* application pending)

Altshuler Berzon LLP

177 Post Street, Suite 300

San Francisco, CA 94108

Telephone: (415) 421-7151

E-mail: sberzon@altshulerberzon.com

Attorneys for Plaintiffs SEIU Local 1, USW, UAW Local 1005, and UAW Local 863

PENDA HAIR (*pro hac vice* application pending)
DONITA JUDGE (*pro hac vice* application pending)
UZOMA NKWONTA (*pro hac vice* application pending)
Advancement Project
1220 L Street, N.W., Suite 850
Washington, D.C. 20005
Telephone: (202) 728-9557
E-mail: phair@advancementproject.org

Attorneys for Plaintiff OOC

CERTIFICATE OF SERVICE

I certify that on June 22, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, parties may access this document through that system. Additionally, hard copies of the foregoing inclusive of exhibits were served, by prepaid United Parcel Service, upon:

Jon Husted
Secretary of State
180 E Broad St., 16th Floor
Columbus, OH 43215

Jeff Hastings
Cuyahoga County Board of Elections
2925 Euclid Avenue
Cleveland, Ohio 44115

Timothy M. Burke
Hamilton County Board of Elections
824 Broadway
Cincinnati, OH 45202

Douglas J. Preisse
Franklin County Board of Elections
280 East Broad Street, Room 100
Columbus, OH 43215

Mike Dewine
Ohio Attorney General
30 E. Broad St., 14th Floor
Columbus, OH 43215

/s/ Michael J. Hunter

**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

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

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1;
UNITED STEEL, PAPER AND
FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION;
INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL
1005; and INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL 863,
and OHIO ORGANIZING
COLLABORATIVE,

Plaintiffs

vs.

JON HUSTED, in his official capacity as
Secretary of State of Ohio; TIMOTHY M.
BURKE, in his official capacity as member
of the Hamilton County Board of Elections
and on behalf of similarly situated
members of county boards of elections;
JEFF HASTINGS, in his official capacity
as member of the Cuyahoga County Board
of Elections and on behalf of similarly
situated members of county boards of
elections; and DOUGLAS J. PREISSE, in
his official capacity as member of the
Franklin County Board of Elections and on
behalf of similarly situated members of
county boards of elections,

Defendants.

Case No. 2:12 cv 562

JUDGE GEORGE C. SMITH

Magistrate Judge Mark R. Abel

**DECLARATION OF ERIN KRAMER
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

CLASS ACTION

DECLARATION OF ERIN KRAMER

I, Erin Kramer, declare the following based upon my personal knowledge:

1. I am a member of Service Employees International Union, Local 1 (“SEIU Local 1”), and am SEIU Local 1’s Director for Ohio and Indiana. I have held the position of Director for Ohio and Indiana for approximately three years.

2. As Director for Ohio and Indiana of SEIU Local 1, I am responsible for the day-to-day operations of the union, including all of its work representing its members, its outreach and educational activities in the communities in which our members reside, and its political and legal work. I am familiar with the membership of SEIU Local 1, and attend and organize membership meetings and caucuses to discuss issues of importance to our members.

3. SEIU Local 1 represents between 4,000 and 4,500 members, depending on the season. Many of these members work in low-wage jobs in the janitorial and food service industry, which can have seasonal fluctuations in employment.

4. SEIU Local 1’s members reside in several Ohio counties. In particular, SEIU Local 1 represents approximately 1,200 to 1,700 members, depending on the season, residing in and around Cuyahoga County. Additionally, SEIU Local 1 represents approximately 1,000 members residing in and around Franklin County, and 1,000 members in and around Hamilton County.

5. Many of SEIU Local 1’s members do not drive and do not have driver’s licenses, and rely on public transportation. I am aware that most of the members who do not have driver’s licenses also do not have State-issued photo identification. Members have told me that this is because the State-issued photo identification is expensive and because it is difficult to travel by public transportation to the locations where the identifications are issued.

6. Approximately twenty-five percent of SEIU Local 1's members are new immigrants. Many of these immigrant members are citizens and are eligible to vote in Ohio. For example, SEIU Local 1 represents several Somali immigrants who are new citizens who are registered to vote or who intend to register to vote, and who intend to vote in upcoming elections.

7. SEIU Local 1's members also move their residences frequently. SEIU Local 1 has devoted resources to educating members about the need to update their voter registrations when they move, but I am aware that large numbers of our members do not update their voter registrations when they move.

8. SEIU Local 1 is concerned that Union members and their family members who are registered to vote in Ohio will be required to cast provisional ballots in the upcoming November 2012 general election. This is because many Union members will have moved since they last voted or since they registered to vote, and because many members will not have the requisite documentary identification necessary to cast a regular ballot in Ohio, or because they will fall within one of the multiple other triggers under Ohio law for provisional rather than regular voting.

9. I and others leaders within SEIU Local 1 are aware that many thousands of Ohio voters have had their provisional ballots rejected after elections because they were ballots for the "wrong" precinct, even if the person voted in the right location, and we are very concerned about the unfair denial of additional thousands of votes in upcoming November 2012 general election.

10. Because of SEIU Local 1's understanding that there is often confusion at polling locations regarding which precinct ballot a person required to vote a provisional ballot should receive, and because of reports of widespread poll worker error in the administration of the provisional balloting system, SEIU Local 1 is expending significant time and resources to

address these problems. For example, SEIU Local 1 is assisting members in navigating Ohio's identification and change of address requirements, helping members with transportation, assisting members with verifying their voter registration status, and providing members with information about their polling locations, early voting procedures, and the identification required for voting. Members of SEIU Local 1 have conveyed to me that they are very concerned their votes will not count. Specifically, members do not want to cast provisional ballots because they believe such ballots will not be counted, and that if there are problems with members' provisional ballots, the members will not be notified and permitted to fix those problems.

11. SEIU Local 1 is an affiliate of Service Employees International Union, CTW, CLC ("SEIU"), and is governed by the SEIU Constitution. Article II of the SEIU Constitution identifies the Union's "Objects and Purposes" and makes clear the Union's commitment to working to advance the interests of the membership, including by "engaging in civic, . . . political, legal, . . . [and] educational . . . activities" for the membership and the community. A true and correct copy of excerpts of the SEIU Constitution is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 17th day of June, 2012.

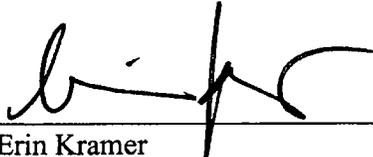

Erin Kramer

EXHIBIT A

SEIU 2008 CONSTITUTION AND BYLAWS

As adopted at the SEIU 2008 Convention



Service Employees International Union, CTW, CLC

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CONSTITUTION AND BYLAWS

PREAMBLE

As almost every improvement in the condition of working people has been accomplished by the efforts of organized labor and as the welfare of wage, salary, and professional workers can best be protected and advanced by their united action in one International Union, we have organized the Service Employees International Union and have adopted the following Constitution:

SEIU MISSION STATEMENT

We are the Service Employees International Union, an organization of more than 2 million members united by the belief in the dignity and worth of workers and the services they provide and dedicated to improving the lives of workers and their families and creating a more just and humane society.

We are public workers, health care workers, building service workers, office workers, professional workers, and industrial and allied workers. We seek a stronger union to build power for ourselves and to protect the people we serve.

As a leading advocacy organization for working people, it is our responsibility to pursue justice for all.

People of every race, ethnicity, religion, age, physical ability, gender, gender expression and sexual orientation, we are the standard-bearers in the struggle for social and economic justice begun nearly a century ago by janitors who dared to dream beyond their daily hardships and to organize for economic security, dignity and respect.

Our vision is of a society:

Where all workers and their families live and work in dignity. Where work is fulfilling and fairly rewarded.

Where workers have a meaningful voice in decisions that affect them.

Where workers have the opportunity to develop their talents and skills.

Where the collective voice and power of workers is realized in democratic and progressive unions.

Where union solidarity stands firm against the forces of discrimination and hate and the unfair employment practices of exploitative employers.

Where government plays an active role in improving the lives of working people.

2 CONSTITUTION AND BYLAWS

To achieve this vision:

We must organize unorganized service workers, extending to them the gains of unionism while securing control over our industries and labor markets.

We must build political power to ensure that workers' voices are heard at every level of government to create economic opportunity and foster social justice.

We must provide meaningful paths for member involvement and participation in strong, democratic unions.

We must develop highly trained and motivated leaders at every level of the union who reflect the membership in all its diversity.

We must bargain contracts that improve wages and working conditions, expand the role of workers in workplace decision-making, and build a stronger union.

We must build coalitions and act in solidarity with other organizations who share our concern for social and economic justice.

We must engage in direct action that demonstrates our power and our determination to win.

To accomplish these goals we must be unified—inspired by a set of beliefs and principles that transcends our social and occupational diversity and guides our work.

We believe we can accomplish little as separate individuals, but that together we have the power to create a just society.

We believe unions are the means by which working people build power—by which ordinary people accomplish extraordinary things.

We believe our strength comes from our unity, and that we must not be divided by forces of discrimination based on gender, race, ethnicity, religion, age, physical ability, sexual orientation or immigration status.

We believe our power and effectiveness depend upon the active participation and commitment of our members, the development of our leaders, and solidarity with each other and our allies.

We believe we have a special mission to bring economic and social justice to those most exploited in our community—especially to women and workers of color.

We believe our future cannot be separated from that of workers in other parts of the world who struggle for economic justice, a decent life for their families, peace, dignity and democracy.

We believe unions are necessary for a democratic society to prevail, and that unions must participate in the political life of our society.

We believe we have a moral responsibility to leave the world a better place for our children—and everyone's children.

**Article I
NAME**

This organization shall be known as the Service Employees International Union, affiliated with Change to Win and the Canadian Labour Congress, and shall consist of an unlimited number of Local Unions chartered by it, and the membership thereof, and such affiliated bodies as may be established from time to time. In order to add the strength of this great union to the efforts of its members at every level of the Union, the name of every Local Union and affiliated body shall begin with "SEIU."

Name and organization

**Article II
OBJECTS AND PURPOSES**

The objects and purposes of this International Union shall be to benefit its members and improve their conditions by every means, including but not limited to:

Goals of the union

A. Securing of economic advantages, including better wages, hours and working conditions, through organization, collective bargaining, legislative and political action, and the utilization of other lawful means;

B. By organizing and uniting in this International Union all working men and women eligible for membership herein;

Organizing

C. By engaging in all such civic, social, political, legal, economic, cultural, educational, charitable, and other activities, whether on local, national, or international levels, as will advance this International Union's standing in the community and in the labor movement and further the interests of this organization and its membership, directly or indirectly;

Wide range of activities

D. By advancing and strengthening the rights of working men and women to bargain collectively;

Collective bargaining

E. By providing benefits and advantages to individual union members, officers, and employees through education, training, access to new technology, member resource centers, a 21st century communications system, pensions, and death and welfare benefits;

Benefits

F. By helping Local Unions to share experiences, pool resources, learn from each other's best practices, and be accountable to each other;

G. By cooperating with and assisting, by moral, monetary or other means, other labor organizations, whether or not affiliated with this International Union, or any other groups or organizations, having objectives which are in any way related or similar to those of this International Union, or which are of a nature beneficial to this International Union or to its members, directly or indirectly;

Cooperation with other organizations

H. By strengthening and safeguarding this International Union by every lawful means so that it may carry out its purposes, objects and obligations;

Safeguarding the union

4 CONSTITUTION AND BYLAWS

Financial goals I. By utilizing, in every lawful way, including but not limited to every kind of use, expenditure and investment, the property and funds of this International Union, in order to achieve its purposes and objects and perform its obligations, and for such other purposes directly or indirectly furthering the interests of this International Union and its members; and

Affiliations J. By affiliating workers in independent organizations through agreements which recognize the long history, unique needs and traditions, and successes of such organizations, and making every effort possible to provide such organizations the same types of services which have benefited our existing members.

**Article III
JURISDICTION AND MEMBERSHIP**

Jurisdiction **Section 1.** The International Union shall be composed of and have jurisdiction over its affiliated bodies and all Local Unions composed of working men and women who are employed or engaged in any phase of private, nonprofit or public employment, including without limitation employees of colleges, schools or universities, public employers (including cities, counties, states, provinces, territories, commonwealths, governmental districts, federal agencies and multiple agencies or authorities and any subdivisions thereof), institutions or agencies, hospitals, nursing homes or other health facilities, and private and public utilities, department stores, industrial plants, law enforcement agencies, insurance companies and all employees thereof including clericals, technicians, professionals, paraprofessionals and paramedicals, or those who are engaged in maintenance, sales, servicing, protection or operation of all types of institutions, buildings or structures, commercial, mercantile or other establishments, edifices and grounds, and their environs, whether private, public or nonprofit, and all categories of employees therein and thereabout, including places of assembly, amusement, recreation, entertainment and the presentation of sporting events.

Power to construe jurisdiction The International President is empowered to construe the jurisdiction above defined to embrace all classifications of workers within any establishment anywhere in the world.

Authority of International Union **Section 2(a).** The International Union shall have jurisdiction over the Local Unions and their members and over all affiliated bodies.

Affiliated bodies defined **(b).** The term "affiliated bodies" shall include State and Provincial Councils, Joint Councils, Service Councils, area, regional, or industry Conferences and Divisions, organizing committees, and provisional locals, and such other bodies on the local, national or international level as the International Union shall from time to time establish, but shall not include Local Unions. The term "Local Union" shall not include any other affiliated body.

Eligibility for membership **Section 3(a).** Any person employed in any employment over which this International Union claims or exercises

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

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1;
UNITED STEEL, PAPER AND
FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION;
INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL
1005; and INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL 863,
and OHIO ORGANIZING
COLLABORATIVE,

Plaintiffs

vs.

JON HUSTED, in his official capacity as
Secretary of State of Ohio; TIMOTHY M.
BURKE, in his official capacity as member
of the Hamilton County Board of Elections
and on behalf of similarly situated
members of county boards of elections;
JEFF HASTINGS, in his official capacity
as member of the Cuyahoga County Board
of Elections and on behalf of similarly
situated members of county boards of
elections; and DOUGLAS J. PREISSE, in
his official capacity as member of the
Franklin County Board of Elections and on
behalf of similarly situated members of
county boards of elections,

Defendants.

Case No. 2:12 cv 562

JUDGE GEORGE C. SMITH

Magistrate Judge Mark R. Abel

**DECLARATION OF KAREN GASPER
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

CLASS ACTION

DECLARATION OF KAREN GASPER

I, Karen Gasper, declare the following based upon my personal knowledge:

1. I am the Civic Engagement Director at the Ohio Organizing Collaborative (“OOC”). As Civic Engagement Director of OOC, I am familiar with OOC’s operations and activities, including OOC’s educational and outreach programs. I am also familiar with OOC’s decision-making process regarding the allocation of funds based on organizational priorities.

2. OOC is a statewide, nonpartisan community organizing and advocacy association comprised of faith-based, labor, and neighborhood organizations. OOC works to build and support community throughout Ohio, including by carrying out trainings, providing community members with strategies to enhance relationships within the community and with community institutions, and encouraging community engagement. As part of OOC’s work encouraging community engagement, OOC has a voter engagement campaign, the primary goal of which is to ensure that all Ohioans who are eligible and want to vote are able to do so. Thus, OOC works to mobilize and educate voters about the voting process, rules, and ID requirements. The OOC devotes staff and financial resources toward this end in order to protect the rights of these groups and have their votes counted. As Civic Engagement Director, I work closely with the voter engagement campaign and have taken part in OOC’s voter education activities.

3. OOC is a 501(c)(3) non-profit organization, and it obtains its funding through donations and grants from individuals and philanthropic organizations. In the current economic climate, the organization’s funds are particularly limited. As a result, OOC is not able to pursue many of its organizational objectives, and it must make very difficult decisions about where its resources and staff time are most needed.

4. OOC has decided to dedicate some of its limited resources this election year on addressing the growing problem caused by the fact that large numbers of voters who are required

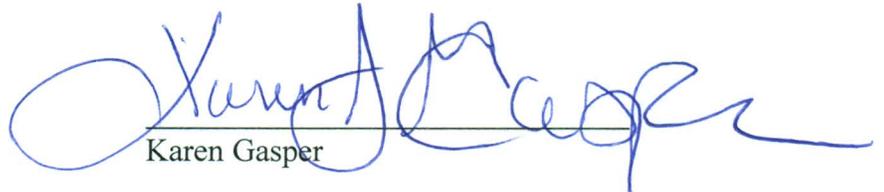
to cast provisional ballots are having their votes disqualified by county boards of elections through no fault of their own and as a result of poll worker error. OOC's past activities have focused on, for example, mobilizing voters to get to the polls, however this year, the organization has concluded that such efforts are ultimately ineffective if once voters get to the polls, they cast provisional ballots that are disqualified because of poll worker error.

5. As a result of OOC's understanding that poll worker errors jeopardize the ability of voters who cast provisional ballots on Election Day to have those ballots counted, OOC has decided to dedicate a large portion of its limited staff time and resources to mobilizing people to vote early and educating voters on the provisional balloting process.

6. If Ohio county boards of elections were not invalidating provisional ballots because of poll worker error, OOC would be using its limited resources in very different ways this summer and fall, including putting additional funds into voter registration efforts and into more broadly-applicable voter education efforts.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 22nd day of June, 2012.


Karen Gasper

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

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1;
UNITED STEEL, PAPER AND
FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION;
INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL
1005; and INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL 863,
and OHIO ORGANIZING
COLLABORATIVE,

Plaintiffs

vs.

JON HUSTED, in his official capacity as
Secretary of State of Ohio; TIMOTHY M.
BURKE, in his official capacity as member
of the Hamilton County Board of Elections
and on behalf of similarly situated
members of county boards of elections;
JEFF HASTINGS, in his official capacity
as member of the Cuyahoga County Board
of Elections and on behalf of similarly
situated members of county boards of
elections; and DOUGLAS J. PREISSE, in
his official capacity as member of the
Franklin County Board of Elections and on
behalf of similarly situated members of
county boards of elections,

Defendants.

Case No. 2:12 cv 562

JUDGE GEORGE C. SMITH

Magistrate Judge Mark R. Abel

**DECLARATION OF LANCE WYATT
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

CLASS ACTION

DECLARATION OF LANCE WYATT

I, Lance Wyatt, declare the following based upon my personal knowledge:

1. I am employed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") as Information Systems Manager.

2. As USW's Information Systems Manager, one of my job duties is to supervise individuals who maintain and update USW's membership database. This membership database contains information about current members of USW throughout the country, including their states and counties of residence.

3. On June 18, 2011, at my direction, USW Technician Timothy Sciulli ran a report in USW's membership database to determine the number of active USW members in Ohio, and where those members reside. The report determined that USW currently represents 47,173 active members throughout Ohio.

4. USW has members who reside in each of Ohio's 88 counties. Stark County has the highest number of USW members, with 4,405 members residing in that county. Another nine counties each have more than 1,000 USW members in residence. They are: Trumbull County (2,632 members); Lorain County (2,520 members); Cuyahoga County (2,423 members); Summit County (2,379 members); Mahoning County (1,958 members); Lucas County (1,577 members); Jefferson County (1,494 members); Tuscarawas County (1,489 members); and Columbiana County (1,117). There are fifty-seven Ohio counties, each of which has between 100 and 1,000 USW members in residence. The remaining twenty-one Ohio counties each has between 27 and 100 USW member residents.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lance Wyatt", written over a horizontal line.

Lance Wyatt

Executed this 18th day of June, 2012.

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

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1;
UNITED STEEL, PAPER AND
FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION;
INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL
1005; and INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE
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WORKERS OF AMERICA, LOCAL 863,
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of Elections and on behalf of similarly
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his official capacity as member of the
Franklin County Board of Elections and on
behalf of similarly situated members of
county boards of elections,

Defendants.

Case No. 2:12 cv 562

JUDGE GEORGE C. SMITH

Magistrate Judge Mark R. Abel

**DECLARATION OF RICK LAWWILL
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

CLASS ACTION

DECLARATION OF RICK LAWWILL

I, Rick Lawwill, declare the following based upon my personal knowledge:

1. I am a member and the President of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"), Local 863 ("UAW Local 863").
2. As President of UAW Local 863, I am responsible for all operations and activities of the local union, including its representational activities, outreach to community members, and education programs. I am familiar with the membership of UAW Local 863 and, in carrying out my various job duties, frequently engage in conversations with union members about the issues that are important to them. Based on these conversations, I know that the right to vote and have one's vote counted is important to our membership.
3. UAW Local 863 represents approximately 1,527 active members and 4,500 retired workers in Ohio. The active members work in the automobile manufacturing industry. Many of the UAW Local 863's members reside in and around Hamilton County. Most of UAW Local 863's members are registered to vote in Ohio.
4. I am registered to vote in Butler County. In previous elections, I have been assigned to vote in a multi-precinct polling location. I found the multi-precinct location to be confusing because it was difficult to figure out where I should vote within the location. I intend to vote in the upcoming November 2012 general election, and want my ballot and the ballots of all other qualified and registered Ohio voters to be counted.
5. UAW Local 863 is concerned that Union members and other members of the community who are registered to vote in Ohio will be required to cast provisional ballots in the upcoming November 2012. UAW Local 863 has many members who, like me, are assigned to

vote in multi-precinct locations, where voters may accidentally cast a ballot in an incorrect precinct.

6. In advance of the November 2012 general election, UAW Local 863 is intending to expend time and resources on voter-education activities and get-out-the-vote efforts.

7. UAW Local 863 is an affiliate of UAW, and is governed by the UAW Constitution. The UAW Constitution provides in its preamble that "Union members must take seriously their responsibilities as citizens and work, through their union and individually, to realize the goals of participatory democracy," and, in Article II, states that one of the primary objects of the organization is "[t]o engage in legislative, political, educational, civic . . . and other activities which further . . . the joint interests of the membership of th[e] organization." A true and correct copy of excerpts of the UAW Constitution is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

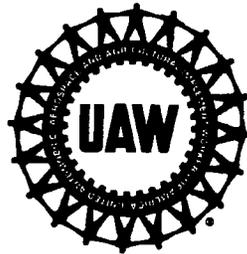
Executed this 20th day of June, 2012.


Rick Lawwill

EXHIBIT A

CONSTITUTION
of the
INTERNATIONAL UNION

United Automobile,
Aerospace and
Agricultural Implement
Workers of America,
UAW



Adopted at the 35th
UAW Constitutional Convention
Detroit, Michigan
June, 2010

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**CONSTITUTION
of the
International Union**

**United Automobile, Aerospace and
Agricultural Implement Workers of America, UAW**

Note: Amendments adopted by the **2010** Constitutional Convention appear in **bold type**. Where a portion of a section has been deleted, the entire section, as amended, appears in bold type. The **2010** Convention provided that where the meaning of one article is changed, all related articles are automatically changed to carry out the intent of the change.

PREAMBLE

1 We hold these truths to be self-evident; expressive of the
2 ideals and hopes of the workers who come under the
3 jurisdiction of this INTERNATIONAL UNION, UNITED
4 AUTOMOBILE, AEROSPACE AND AGRICULTURAL
5 IMPLEMENT WORKERS OF AMERICA (UAW): "that all
6 men and women are created equal, that they are endowed by
7 their Creator with certain inalienable rights, that among these
8 are life, liberty and the pursuit of happiness. That to secure
9 these rights, governments are instituted among men and
10 women, deriving their just powers from the consent of the
11 governed." Within the orderly processes of such government
12 lies the hope of the worker in advancing society toward the
13 ultimate goal of social and economic justice.

14 The precepts of democracy require that workers through
15 their union participate meaningfully in making decisions
16 affecting their welfare and that of the communities in which
17 they live.

18 Managerial decisions have far reaching impact upon the
19 quality of life enjoyed by the workers, the family, and the
20 community. Management must recognize that it has basic
21 responsibilities to advance the welfare of the workers and the
22 whole society and not alone to the stockholders. It is essential,
23 therefore, that the concerns of workers and of society be taken
24 into account when basic managerial decisions are made.

25 The structure of work established by management is
26 designed to make of the workers an adjunct to the tool rather
27 than its master. This, coupled with the authoritarian climate of
28 the workplace, robs the worker of her/his dignity as an adult

1 human being. This belies the democratic heritage we cherish as
2 citizens in a society rooted in democratic values.

3 Essential to the UAW's purpose is to afford the opportunity
4 for workers to master their work environment; to achieve not
5 only improvement in their economic status but, of equal
6 importance, to gain from their labors a greater measure of
7 dignity, of self-fulfillment and self-worth.

8 Workers must also participate meaningfully in political and
9 legislative action because government impacts importantly on
10 their lives and on their communities. If government is to be the
11 means by which people achieve a humanitarian and equitable
12 society, it must be a responsible and accountable government.

13 Therefore, the UAW has the duty and responsibility to
14 promote real and meaningful participatory democracy through
15 its members and their families, so that free people and their
16 institutions may be heard in the councils of government and so
17 that officeholders are guided by principle alone.

18 To achieve these wholesome objectives:

19 • Management must accept union organization and
20 collective bargaining as an essential and constructive force in
21 our democratic society;

22 • The workers must be provided a meaningful voice in
23 maintaining a safe and healthful workplace with decent
24 working conditions, and must enjoy secured rights, together
25 with a satisfactory standard of living and maximum job
26 security;

27 • The workers must have a voice in their own destiny and
28 the right to participate in making decisions that affect their
29 lives before such decisions are made;

30 • The UAW must play an active role at all levels of
31 government to protect the lives and rights of its members and
32 their families. We must work constantly on the political and
33 legislative problems facing the whole society;

34 • Union members must take seriously their
35 responsibilities as citizens and work, through their union and
36 individually, to realize the goals of participatory democracy
37 and responsible and accountable government.

Art. 1-2

**ARTICLE 1
Name**

1 This Organization shall be known as the "International
2 Union, UNITED AUTOMOBILE, AEROSPACE AND
3 AGRICULTURAL IMPLEMENT WORKERS OF AMERICA
4 (UAW)," hereinafter referred to as the International Union.
5 This document shall be officially known as the Constitution
6 and Bylaws of said International Union, and it shall also be the
7 Constitution of every affiliated subordinate body.

**ARTICLE 2
Objects**

8 **Section 1.** To improve working conditions, create a uniform
9 system of shorter hours, higher wages, health care and
10 pensions; to maintain and protect the interests of workers under
11 the jurisdiction of this International Union.

12 **Section 2.** To unite in one organization, regardless of
13 religion, race, creed, color, sex, political affiliation or
14 nationality, age, disability, marital status or sexual orientation,
15 all employees under the jurisdiction of this International Union.

16 **Section 3.** To improve the sanitary and working conditions
17 of employment within the workplace and in the
18 accomplishment of these necessary reforms, we pledge
19 ourselves to utilize the conference room and joint agreements;
20 or if these fail to establish justice for the workers under the
21 jurisdiction of this International Union, to advocate and support
22 strike action.

23 **Section 4.** To educate our membership in the history of the
24 Labor Movement and to develop and maintain an intelligent
25 and dignified membership; to vote and work for the election of
26 candidates and the passage of improved legislation in the
27 interest of all labor. To enforce existing laws; to work for the
28 repeal of those which are unjust to Labor; to work for
29 legislation on a national scale, having as its object the
30 establishment of real social and unemployment insurance, the
31 expense of which to be borne by the employer and the
32 Government.

Art. 2-3

1 **Section 5.** To engage in legislative, political, educational,
2 civic, welfare and other activities which further, directly or
3 indirectly, the joint interests of the membership of this
4 organization in the improvement of general economic and
5 social conditions in the United States of America, Canada, the
6 Commonwealth of Puerto Rico and generally in the nations of
7 the world.

8 **Section 6.** (a) To work as an autonomous International
9 Union affiliated with the Canadian Labour Congress (CLC),
10 American Federation of Labor and Congress of Industrial
11 Organizations (AFL-CIO) together with other International
12 Unions, for solidification of the entire Labor Movement;
13 provided, however, that the International Executive Board may
14 at any time alter the Union's relationship to such bodies in any
15 way it deems appropriate. To provide assistance, financial and
16 otherwise, to labor and other organizations in the United States,
17 Canada and other parts of the world having purpose and
18 objectives similar or related to those sought by this
19 organization.

20 (b) The International Executive Board is authorized to take
21 whatever action is required to enable the UAW to mobilize,
22 assist and work with other organizations, alone or in
23 combination, toward the objective of meeting the urgent
24 problems which confront society and the Labor Movement in
25 this 21ST Century period of rapid and accelerating
26 technological and social change.

27 (c) The International Union shall seek to affiliate groups of
28 employees, whether by agreement or merger. To do so, and
29 better accomplish this objective, the International Executive
30 Board is authorized to allow necessary deviations from specific
31 provisions of this Constitution, provided however, that any
32 such affiliations must be ratified not later than the next regular
33 convention.

ARTICLE 3

Constitution

34 This Constitution as amended at the **Detroit, Michigan**
35 Convention convened on **June 14, 2010** and as may hereafter
36 be amended, shall be the supreme law of the International
37 Union, **UNITED AUTOMOBILE, AEROSPACE AND**
38 **AGRICULTURAL IMPLEMENT WORKERS OF AMERICA**
39 (UAW), and can be amended only by a majority

**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; | : | |
| UNITED STEEL, PAPER AND | : | |
| FORESTRY, RUBBER, | : | |
| MANUFACTURING, ENERGY, ALLIED | : | JUDGE GEORGE C. SMITH |
| INDUSTRIAL AND SERVICE | : | |
| WORKERS INTERNATIONAL UNION; | : | Magistrate Judge Mark R. Abel |
| INTERNATIONAL UNION, UNITED | : | |
| AUTOMOBILE, AEROSPACE AND | : | |
| AGRICULTURAL IMPLEMENT | : | DECLARATION OF RONNIE |
| WORKERS OF AMERICA, LOCAL | : | WARDRUP IN SUPPORT OF |
| 1005; and INTERNATIONAL UNION, | : | PLAINTIFFS' MOTION FOR |
| UNITED AUTOMOBILE, AEROSPACE | : | PRELIMINARY INJUNCTION |
| AND AGRICULTURAL IMPLEMENT | : | |
| WORKERS OF AMERICA, LOCAL 863, | : | CLASS ACTION |
| and OHIO ORGANIZING | : | |
| COLLABORATIVE, | : | |
| | : | |
| Plaintiffs | : | |
| | : | |
| vs. | : | |
| | : | |
| JON HUSTED, in his official capacity as | : | |
| Secretary of State of Ohio; TIMOTHY M. | : | |
| BURKE, in his official capacity as member | : | |
| of the Hamilton County Board of Elections | : | |
| and on behalf of similarly situated | : | |
| members of county boards of elections; | : | |
| JEFF HASTINGS, in his official capacity | : | |
| as member of the Cuyahoga County Board | : | |
| of Elections and on behalf of similarly | : | |
| situated members of county boards of | : | |
| elections; and DOUGLAS J. PREISSE, in | : | |
| his official capacity as member of the | : | |
| Franklin County Board of Elections and on | : | |
| behalf of similarly situated members of | : | |
| county boards of elections, | : | |
| | : | |
| Defendants. | : | |

DECLARATION OF RONNIE WARDRUP

I, Ronnie Wardrup, declare the following based upon my personal knowledge:

1. I am a member of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“USW”), and am employed by USW as Staff Representative in Cincinnati, Ohio.

2. As a Staff Representative I am familiar with USW’s membership in Ohio. My job duties include representing the members, engaging in outreach to members and to the communities in which our members reside, and working to encourage members and the community to participate in our State’s and country’s democratic institutions.

3. I am aware that a large number of our Ohio membership is registered to vote in Ohio. In the last several general elections, voter turn-out among USW membership in Ohio has been high.

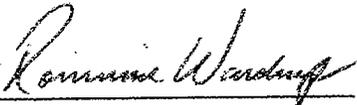
4. I am registered to vote in Butler County, Ohio. I intend to vote in the upcoming November 2012 general election. It is my desire that my vote in that election be counted, and that the votes of all other qualified and registered Ohio voters be counted in any forthcoming elections in Ohio.

5. USW’s Constitution reflects the union’s commitment to ensuring that its members and the public are able to engage in our nation’s democratic processes. Excerpts of a true and correct copy of USW’s current Constitution are attached hereto as Exhibit A. Article II, “Objects,” Third provides:

Third. To engage in educational, legislative, political, civic, social, welfare, community and other activities; to advance and safeguard the economic security and social welfare of workers in the industry, the International Union, its Local Unions and the free labor movements of the United States, Canada and the world; to seek to eliminate all forms of discrimination; to protect and extend our democratic institutions and civil rights and liberties; and to perpetuate and extend

the cherished traditions of democracy and social and economic justice in the United States, Canada and the world community.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.


Ronnie Wardrup

Executed this 21st day of June, 2012.

EXHIBIT A

**Constitution
of
International Union
UNITED STEELWORKERS**

MANUAL



UNITY AND STRENGTH FOR WORKERS

**ADOPTED AT
LAS VEGAS, NEVADA
AUGUST, 2011**



FORM 130 12/11

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ARTICLE I

Name

1 This Organization shall be known as the United
2 Steel, Paper and Forestry, Rubber, Manufacturing,
3 Energy, Allied Industrial and Service Workers
4 International Union (to be known in short as the
5 "United Steelworkers" and by the acronym "USW").
6 This document shall be known as the Constitution and
7 By Laws of the International Union and it shall also be
8 the Constitution of each Local Union chartered by the
9 International Union.

ARTICLE II

Objects

10 First. To unite in this union all working men and
11 working women eligible for membership.

12 Second. To establish through collective bargaining
13 adequate wage standards, shorter hours of work and
14 improvements in the conditions of employment for
15 workers in industry.

16 Third. To engage in educational, legislative, polit-
17 ical, civic, social, welfare, community and other activ-
18 ities; to advance and safeguard the economic security
19 and social welfare of workers in industry, the
20 International Union, its Local Unions and the free labor
21 movements of the United States, Canada and the world;
22 to seek to eliminate all forms of discrimination; to pro-
23 tect and extend our democratic institutions and civil

1 lished by the International Executive Board.

2 Section 3. No person shall be eligible for member-
3 ship, or for nomination or election or appointment to,
4 or to hold any office, or position, or to serve on any
5 Committee in the International Union or a Local Union
6 or to serve as a delegate who is a consistent supporter
7 of, or who actively participates in, the activities of any
8 hate based-racist, terrorist, or other organization which
9 advocates violence to affect government policy or to
10 oppose the democratic principles to which the United
11 States and Canada and our Union are dedicated.
12 This eligibility requirement shall be in addition to any
13 other eligibility requirement imposed by any other
14 Article or Section of this Constitution.

ARTICLE IV

**International Officers, International
Executive Board, Internation Tellers,
Delegates to the Conventions of the Federation
and Rubber/Plastics Industry Conference**

15 Section 1. The International Officers of the
16 International Union shall be the International President,
17 the International Secretary-Treasurer, the International
18 Vice President (Administration), the International Vice
19 President (Human Affairs) and the Canadian National
20 Director.
21 There shall be one District Director for each District.
22 The persons duly elected to such positions shall per-
23 form the functions set forth in this Constitution.

24 Section 2. The term of office of the International

1 rights and liberties; and to perpetuate and extend the
2 cherished traditions of democracy and social and eco-
3 nomic justice in the United States, Canada and the
4 world community.

5 Fourth. To function as an autonomous
6 International Union affiliated with other international
7 unions in national and international federations in the
8 United States, Canada and the free world; to unify and
9 solidify the International Union, its Local Unions and
10 the entire labor movement; and to provide financial and
11 other aid and assistance to labor and other organiza-
12 tions in the United States, Canada and other parts of the
13 world.

14 Fifth. To take all steps and actions consistent with
15 the Constitution and policies of the International Union
16 to implement and carry out the objects, rights, activities
17 and responsibilities of this organization.

ARTICLE III

Eligibility

18 Section 1. All working men and working women
19 in the United States, Canada, insular areas adjacent
20 thereto and the Western Hemisphere, for whom the
21 union assumes or seeks to assume the collective bar-
22 gaining and other responsibilities set forth in Article II,
23 and all officers, staff representatives and employees of
24 the International Union, are eligible for membership.

25 Section 2. Persons having supervisory power shall
26 be eligible for membership subject to the terms estab-

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

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1;
UNITED STEEL, PAPER AND
FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION;
INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL
1005; and INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL 863,
and OHIO ORGANIZING
COLLABORATIVE,

Plaintiffs

vs.

JON HUSTED, in his official capacity as
Secretary of State of Ohio; TIMOTHY M.
BURKE, in his official capacity as member
of the Hamilton County Board of Elections
and on behalf of similarly situated
members of county boards of elections;
JEFF HASTINGS, in his official capacity
as member of the Cuyahoga County Board
of Elections and on behalf of similarly
situated members of county boards of
elections; and DOUGLAS J. PREISSE, in
his official capacity as member of the
Franklin County Board of Elections and on
behalf of similarly situated members of
county boards of elections,

Defendants.

Case No. 2:12 cv 562

JUDGE GEORGE C. SMITH

Magistrate Judge Mark R. Abel

**DECLARATION OF STEVEN
FRAMMARTINO IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

CLASS ACTION

DECLARATION OF STEVEN FRAMMARTINO

I, Steven Frammartino, declare the following based upon my personal knowledge:

1. I am a member and the President of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”), Local 1005 (“UAW Local 1005”).

2. As President of UAW Local 1005, I am responsible for all operations and activities of the union, including the union’s representational activities, educational and outreach programs, and the day-to-day operations. I am familiar with the membership of UAW Local 1005, and frequently attend membership meetings and otherwise meet with workers represented by the union to discuss issues that are important to them.

3. UAW Local 1005 represents approximately 1,400 active members and 3,000 retired workers in Ohio. The active members are employed in the automobile and janitorial industries. For the most part, UAW Local 1005’s members reside in one of the following six Ohio counties: Cuyahoga County, Medina County, Lorain County, Lake County, Summit County, and Portage County. Many of the members are registered to vote in Ohio.

4. I am registered to vote in Cuyahoga County. In previous elections, I have voted in a multi-precinct polling location. When I voted at that location, I observed several voters who appeared to be confused about which table they should approach in order to vote. I intend to vote in the upcoming November 2012 general election, and want my ballot and the ballots of all other qualified and registered Ohio voters to be counted.

5. UAW Local 1005 is concerned that Union members and other members of the community who are registered to vote in Ohio will be required to cast provisional ballots in the upcoming November 2012. Many of UAW Local 1005’s members live in urban areas where

most of the polling locations are multi-precinct locations, where voters may accidentally seek to vote in an incorrect precinct.

6. UAW Local 1005 has a history of engaging in election-related educational activities and voter registration efforts, and is again undertaking such activities in advance of the November 2012 general election. This year, the union is particularly concerned with reports of high levels of poll worker error in many of the voting locations, and confusion about the provisional ballot process. For that reason, UAW Local 1005 is working with the community and union members to ensure that individuals who want to vote are registered and obtain accurate information about the location of their precinct polling locations. Additionally, in an attempt to avoid problems caused by poll worker error on Election Day, the union intends to provide election information to individuals wishing to cast early votes.

7. UAW Local 1005 is an affiliate of UAW, and is governed by the UAW Constitution. The UAW Constitution provides in its preamble that "Union members must take seriously their responsibilities as citizens and work, through their union and individually, to realize the goals of participatory democracy," and, in Article II, states that one of the primary objects of the organization is "[t]o engage in legislative, political, educational, civic . . . and other activities which further . . . the joint interests of the membership of th[c] organization." A true and correct copy of excerpts of the UAW Constitution is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 21st day of June, 2012.

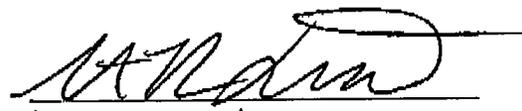
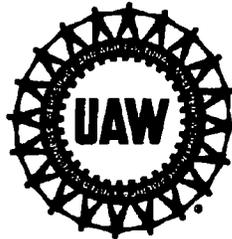

Steven Frammartino

EXHIBIT A

CONSTITUTION
of the
INTERNATIONAL UNION

**United Automobile,
Aerospace and
Agricultural Implement
Workers of America,
UAW**



**Adopted at the 35th
UAW Constitutional Convention
Detroit, Michigan
June, 2010**

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**CONSTITUTION
of the
International Union**

**United Automobile, Aerospace and
Agricultural Implement Workers of America, UAW**

Note: Amendments adopted by the 2010 Constitutional Convention appear in **bold type**. Where a portion of a section has been deleted, the entire section, as amended, appears in bold type. The 2010 Convention provided that where the meaning of one article is changed, all related articles are automatically changed to carry out the intent of the change.

PREAMBLE

1 We hold these truths to be self-evident; expressive of the
2 ideals and hopes of the workers who come under the
3 jurisdiction of this INTERNATIONAL UNION, UNITED
4 AUTOMOBILE, AEROSPACE AND AGRICULTURAL
5 IMPLEMENT WORKERS OF AMERICA (UAW): "that all
6 men and women are created equal, that they are endowed by
7 their Creator with certain inalienable rights, that among these
8 are life, liberty and the pursuit of happiness. That to secure
9 these rights, governments are instituted among men and
10 women, deriving their just powers from the consent of the
11 governed." Within the orderly processes of such government
12 lies the hope of the worker in advancing society toward the
13 ultimate goal of social and economic justice.

14 The precepts of democracy require that workers through
15 their union participate meaningfully in making decisions
16 affecting their welfare and that of the communities in which
17 they live.

18 Managerial decisions have far reaching impact upon the
19 quality of life enjoyed by the workers, the family, and the
20 community. Management must recognize that it has basic
21 responsibilities to advance the welfare of the workers and the
22 whole society and not alone to the stockholders. It is essential,
23 therefore, that the concerns of workers and of society be taken
24 into account when basic managerial decisions are made.

25 The structure of work established by management is
26 designed to make of the workers an adjunct to the tool rather
27 than its master. This, coupled with the authoritarian climate of
28 the workplace, robs the worker of her/his dignity as an adult

1 human being. This belies the democratic heritage we cherish as
2 citizens in a society rooted in democratic values.

3 Essential to the UAW's purpose is to afford the opportunity
4 for workers to master their work environment; to achieve not
5 only improvement in their economic status but, of equal
6 importance, to gain from their labors a greater measure of
7 dignity, of self-fulfillment and self-worth.

8 Workers must also participate meaningfully in political and
9 legislative action because government impacts importantly on
10 their lives and on their communities. If government is to be the
11 means by which people achieve a humanitarian and equitable
12 society, it must be a responsible and accountable government.

13 Therefore, the UAW has the duty and responsibility to
14 promote real and meaningful participatory democracy through
15 its members and their families, so that free people and their
16 institutions may be heard in the councils of government and so
17 that officeholders are guided by principle alone.

18 To achieve these wholesome objectives:

19 • Management must accept union organization and
20 collective bargaining as an essential and constructive force in
21 our democratic society;

22 • The workers must be provided a meaningful voice in
23 maintaining a safe and healthful workplace with decent
24 working conditions, and must enjoy secured rights, together
25 with a satisfactory standard of living and maximum job
26 security;

27 • The workers must have a voice in their own destiny and
28 the right to participate in making decisions that affect their
29 lives before such decisions are made;

30 • The UAW must play an active role at all levels of
31 government to protect the lives and rights of its members and
32 their families. We must work constantly on the political and
33 legislative problems facing the whole society;

34 • Union members must take seriously their
35 responsibilities as citizens and work, through their union and
36 individually, to realize the goals of participatory democracy
37 and responsible and accountable government.

Art. 1-2

**ARTICLE 1
Name**

1 This Organization shall be known as the "International
2 Union, UNITED AUTOMOBILE, AEROSPACE AND
3 AGRICULTURAL IMPLEMENT WORKERS OF AMERICA
4 (UAW)," hereinafter referred to as the International Union.
5 This document shall be officially known as the Constitution
6 and Bylaws of said International Union, and it shall also be the
7 Constitution of every affiliated subordinate body.

**ARTICLE 2
Objects**

8 **Section 1.** To improve working conditions, create a uniform
9 system of shorter hours, higher wages, health care and
10 pensions; to maintain and protect the interests of workers under
11 the jurisdiction of this International Union.

12 **Section 2.** To unite in one organization, regardless of
13 religion, race, creed, color, sex, political affiliation or
14 nationality, age, disability, marital status or sexual orientation,
15 all employees under the jurisdiction of this International Union.

16 **Section 3.** To improve the sanitary and working conditions
17 of employment within the workplace and in the
18 accomplishment of these necessary reforms, we pledge
19 ourselves to utilize the conference room and joint agreements;
20 or if these fail to establish justice for the workers under the
21 jurisdiction of this International Union, to advocate and support
22 strike action.

23 **Section 4.** To educate our membership in the history of the
24 Labor Movement and to develop and maintain an intelligent
25 and dignified membership; to vote and work for the election of
26 candidates and the passage of improved legislation in the
27 interest of all labor. To enforce existing laws; to work for the
28 repeal of those which are unjust to Labor; to work for
29 legislation on a national scale, having as its object the
30 establishment of real social and unemployment insurance, the
31 expense of which to be borne by the employer and the
32 Government.

Art. 2-3

1 **Section 5.** To engage in legislative, political, educational,
2 civic, welfare and other activities which further, directly or
3 indirectly, the joint interests of the membership of this
4 organization in the improvement of general economic and
5 social conditions in the United States of America, Canada, the
6 Commonwealth of Puerto Rico and generally in the nations of
7 the world.

8 **Section 6. (a)** To work as an autonomous International
9 Union affiliated with the Canadian Labour Congress (CLC),
10 American Federation of Labor and Congress of Industrial
11 Organizations (AFL-CIO) together with other International
12 Unions, for solidification of the entire Labor Movement;
13 provided, however, that the International Executive Board may
14 at any time alter the Union's relationship to such bodies in any
15 way it deems appropriate. To provide assistance, financial and
16 otherwise, to labor and other organizations in the United States,
17 Canada and other parts of the world having purpose and
18 objectives similar or related to those sought by this
19 organization.

20 **(b)** The International Executive Board is authorized to take
21 whatever action is required to enable the UAW to mobilize,
22 assist and work with other organizations, alone or in
23 combination, toward the objective of meeting the urgent
24 problems which confront society and the Labor Movement in
25 this 21ST Century period of rapid and accelerating
26 technological and social change.

27 **(c)** The International Union shall seek to affiliate groups of
28 employees, whether by agreement or merger. To do so, and
29 better accomplish this objective, the International Executive
30 Board is authorized to allow necessary deviations from specific
31 provisions of this Constitution, provided however, that any
32 such affiliations must be ratified not later than the next regular
33 convention.

ARTICLE 3
Constitution

34 This Constitution as amended at the **Detroit, Michigan**
35 **Convention convened on June 14, 2010** and as may hereafter
36 be amended, shall be the supreme law of the International
37 Union, **UNITED AUTOMOBILE, AEROSPACE AND**
38 **AGRICULTURAL IMPLEMENT WORKERS OF AMERICA**
39 **(UAW)**, and can be amended only by a majority