

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

Derek Hamilton : Case No. 1:08-CV-02546
Mohican Juvenile Correctional Facility
1012 ODNR Mohican 51 :
Perrysville, Ohio 44864, :

: Judge Nugent

Xavier Brock :
Mohican Juvenile Correctional Facility :
1012 ODNR Mohican 51 :
Perrysville, Ohio 44864, : Magistrate Judge

David Lee Sweazy :
Mohican Juvenile Correctional Facility :
1012 ODNR Mohican 51 :
Perrysville, Ohio 44864, :

FIRST AMENDED COMPLAINT

:
Chevin Joseph Rout :
Mohican Juvenile Correctional Facility :
1012 ODNR Mohican 51 :
Perrysville, Ohio 44864, :

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Javon D. Patton :
Mohican Juvenile Correctional Facility :
1012 ODNR Mohican 51 :
Perrysville, Ohio 44864, :

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Jeremiah M. Ramos :
Mohican Juvenile Correctional Facility :
1012 ODNR Mohican 51 :
Perrysville, Ohio 44864, :

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Jabrail A. Wofford :
Mohican Juvenile Correctional Facility :
1012 ODNR Mohican 51 :
Perrysville, Ohio 44864, :

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Rameon J. Sumlin :
Mohican Juvenile Correctional Facility :
1012 ODNR Mohican 51 :
Perrysville, Ohio 44864, :

:
James Mack :
Mohican Juvenile Correctional Facility :
1012 ODNR Mohican 51 :

Perrysville, Ohio 44864, :

Markus H. Barrett :

Mohican Juvenile Correctional Facility :

1012 ODNR Mohican 51 :

Perrysville, Ohio 44864, :

Raymond L. Welcher :

Mohican Juvenile Correctional Facility :

1012 ODNR Mohican 51 :

Perrysville, Ohio 44864, :

Nicholas M. Seefong :

Mohican Juvenile Correctional Facility :

1012 ODNR Mohican 51 :

Perrysville, Ohio 44864, :

Taronn L. Allen :

Mohican Juvenile Correctional Facility :

1012 ODNR Mohican 51 :

Perrysville, Ohio 44864, :

Troy Tomlin :

Mohican Juvenile Correctional Facility :

1012 ODNR Mohican 51 :

Perrysville, Ohio 44864, :

Nick S. Mallison :

Mohican Juvenile Correctional Facility :

1012 ODNR Mohican 51 :

Perrysville, Ohio 44864, :

and :

Roget Carr :

Mohican Juvenile Correctional Facility :

1012 ODNR Mohican 51 :

Perrysville, Ohio 44864, :

Plaintiffs, :

vs. :

Ashland County Board of Elections :

110 Cottage Street, :

Ashland, Ohio 44805, :

	:
Dennis Ragle	
in his official capacity	:
Ashland County Board of Elections	
110 Cottage Street,	:
Ashland, Ohio 44805,	
	:
Bonnie Manos	
in her official capacity	:
Ashland County Board of Elections	
110 Cottage Street,	:
Ashland, Ohio 44805,	
	:
George Bringman	
in his official capacity	:
Ashland County Board of Elections	
110 Cottage Street,	:
Ashland, Ohio 44805,	
	:
David Samsel	
Ashland County Board of Elections	:
110 Cottage Street,	
Ashland, Ohio 44805,	:
	:
and	:
	:
Jennifer Brunner	:
Secretary of State, State of Ohio	
in her official capacity	:
180 East Broad Street, 16 th Floor	
Columbus, Ohio 43215	:
	:
Defendants.	:

PRELIMINARY STATEMENT

1. Plaintiffs, all first time voters, bring this action to enjoin Defendants from the imminent, unlawful deprivation of the Plaintiffs' fundamental right to vote. The Defendants have disenfranchised Plaintiffs by removing their names from the registration list without

adequate notice or procedural protections, and in clear violation of state law registration requirements.

2. Plaintiffs are eighteen years or older and are eligible to vote. Each resides at the Mohican Juvenile Correctional Facility in Ashland County, Ohio (“Mohican”). Each registered to vote by the October 6, 2008 deadline. Each will have resided there for more than 30 days before the November 4, 2008 election. None are scheduled to be released from Mohican before the election. Accordingly, they are each entitled to vote in Ashland County.

3. On October 15, 2008, a local resident filed a challenge to Plaintiffs’ voter registrations, claiming that they should not be allowed to vote in Ashland County because they were only residing there temporarily. The Board of Elections scheduled a challenge hearing for October 24, 2008. Plaintiffs, however, did not receive notice of the hearing until October 23, 2008. Because they are incarcerated in a secure facility, Plaintiffs were unable to obtain court orders to allow them to attend the hearing, or to obtain the assistance of counsel to represent them at the hearing.

4. Despite the fact that not a single Plaintiff was in attendance, the Board proceeded to hold this hearing and determined that Plaintiffs were ineligible to vote pursuant to R.C. 3503.02, the default rule for determining residence. But, the Board failed to consider that Plaintiffs are eligible to vote pursuant to R.C. § 3503.04, which requires inmates of public institutions to register in the county in which the institution is located. Had plaintiffs been afforded an opportunity to attend the hearing, they would have informed the Board of their right to register in Ashland County. Instead, the Board voted to remove Plaintiffs from the registration list and deprive them of their fundamental right to vote.

5. Plaintiffs seek emergency injunctive relief ordering Defendant Board of Elections officials to reinstate Plaintiffs' voter registrations and permit them to vote in Ashland County via absentee ballot.

JURISDICTION AND VENUE

6. This action is brought under the 42 U.S.C ¶ 1983. Jurisdiction over claims brought under the Civil Rights Act of 1871 is conferred on this Court by 28 U.S.C. §§1331, 1343 (3) and (4).

7. Supplemental jurisdiction over Plaintiffs' state law claims may be exercised by this Court pursuant to 28 U.S.C. §1367.

8. Venue is proper pursuant to 28 U.S.C. § 1391(b) and Civ. R. 82.1 because Defendants reside in the Northern District of Ohio, Eastern Division.

PARTIES

Plaintiffs

Derek Hamilton

9. Plaintiff Derek Hamilton is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Hamilton registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

10. Plaintiff Hamilton explains the importance of his voting rights as follows: "My voting rights are very important to me – especially now that I have a young son. There are a lot of issues that matter to me and my family and it is very important to me that I make my voice be heard by voting."

Xavier Brock

11. Plaintiff Xavier Brock is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Brock registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

12. Plaintiff Brock explains the importance of his voting rights as follows: “It is very important that I be able to vote. This is my first election and I am concerned about the future of the country. I want my future to be bright. Some day I hope to own a business. Who the president is could impact my life and whether I will be able to achieve my dreams.”

David Lee Sweazy

13. Plaintiff David Lee Sweazy is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Sweazy registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

14. Plaintiff Sweazy explains the importance of his voting rights as follows: “I really want to vote. I am worried about gas prices and high food costs. I am worried about my family. I want my voice to be heard.”

Chevin Joseph Rought

15. Plaintiff Chevin Joseph Rought is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008.

Plaintiff Rought registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

16. Plaintiff Rought explains the importance of his voting rights as follows: “I want to vote for a couple of important reasons. First, I want to make my voice heard. Second, I just recently had a son. When my boy is old enough to understand, I want to tell him that I voted in my first election. I want to set an example for him to follow when he is old enough to vote.”

Javon D. Patton

17. Plaintiff Javon D. Patton is a nineteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008.

Plaintiff Patton registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

18. Plaintiff Patton explains the importance of his voting rights as follows: “Voting is a big part of being an American. I want to vote so that I can make my voice heard on how the country should be run.”

Jeremiah M. Ramos

19. Plaintiff Jeremiah M. Ramos is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008.

Plaintiff Ramos registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

20. Plaintiff Ramos explains the importance of his voting rights as follows: “I want to vote because this is an important election. I keep hearing that the presidential election could

come down to Ohio and that it could be close. I believe that every vote matters. I want to vote and have my voice heard.”

Jabrail A. Wofford

21. Plaintiff Jabrail A. Wofford is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Wofford registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

22. Plaintiff Wofford explains the importance of his voting rights as follows: “People I respect tell me that every vote matters and that I shouldn’t let my opportunity to vote go to waste. That’s why I want to vote.”

Rameon J. Sumlin

23. Plaintiff Rameon J. Sumlin is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Sumlin registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

24. Plaintiff Sumlin explains the importance of his voting rights as follows: “Voting is important to me because there are not too many people in my family who take the opportunity to vote. I feel that because I am of age I should vote. Voting gives me the chance to express my views about who should run the country. Voting is an important responsibility.”

James Mack

25. Plaintiff James Mack is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Mack registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

26. Plaintiff Mack explains the importance of his voting rights as follows: "I really want to vote to make a difference and to have my voice heard. Voting is my right."

Markus H. Barrett

27. Plaintiff Markus H. Barrett is over eighteen years old and is a United States citizen. He resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Barrett registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

28. Plaintiff Barrett explains the importance of his voting rights as follows: "It is very important to me that I vote on November 4, 2008 because I want to make a difference."

Raymond L. Welcher

29. Plaintiff Raymond L. Welcher is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Welcher registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

30. Plaintiff Welcher explained the importance of his voting rights as follows: "I really want to vote to have my say in how society should change."

Nicholas M. Seefong

31. Plaintiff Nicholas M. Seefong is a twenty year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Seefong registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

32. Plaintiff Seefong explains the importance of his voting rights as follows: “I want to vote because I will be released and I would like to have a voice and opinion about who leads this country since I will be impacted by his decisions and policies.”

Taronn L. Allen

33. Plaintiff Taronn L. Allen is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Allen registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

34. Plaintiff Allen explains the importance of his voting rights as follows: “I really want to vote. Now that I am old enough, I realize how important voting is. I’ve been paying attention to the election and want to vote.”

Troy Tomlin

35. Plaintiff Troy Tomlin is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008.

Plaintiff Tomlin registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

36. Plaintiff Tomlin explains the importance of his voting rights as follows: “Because I am 18, I have the right to vote. Voting is something that is very important to me.”

Nick S. Mallison

37. Plaintiff Nick S. Mallison is an eighteen year-old United States citizen, who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Mallison registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

38. Plaintiff Mallison explains the importance of his voting rights as follows: “I want to vote because one vote can make a difference. I want to be a part of deciding who runs the country. Now that I’ve turned eighteen, I want to make my voice heard by voting.”

Roget Carr

39. Plaintiff Roget Carr is an eighteen year-old United States citizen who resides at Mohican. He will have resided at Mohican in excess of thirty days immediately before the November 4, 2008 election. He is not scheduled to be released before November 4, 2008. Plaintiff Carr registered to vote in Ashland County before the October 6, 2008 deadline, and requested that he be provided an absentee ballot.

40. Plaintiff Carr explains the importance of his voting rights as follows: “I want to vote because my opinion is just as important as anyone else’s. Now that I am eighteen, I want to help choose who runs the country.”

Defendants

Ashland County Board of Elections (County Defendant)

41. Defendant Ashland County Board of Elections is, and at all times relevant hereto was, a public quasi-corporation organized under the laws of the State of Ohio, charged with conducting, managing, and overseeing elections within its geographical jurisdiction. As part of its duties, Defendant Ashland County Board of Elections determines voter eligibility and provides information to Ashland County residents, including ex-offenders, inquiring about their eligibility to vote. Defendant Ashland County Board of Elections is, for all purposes herein, a “person” within the meaning of 42 U.S.C. §1983.

Dennis Ragle (County Defendant)

42. Defendant Dennis Ragle is a member of the Ashland County Board of Elections. As such, he is responsible for discharging the duties of the Board, including determining voter eligibility. Defendant Ragle is sued in his official capacity.

Bonnie Manos (County Defendant)

43. Defendant Bonnie Manos is a member of the Ashland County Board of Elections. As such, she is responsible for discharging the duties of the Board, including determining voter eligibility. Defendant Manos is sued in her official capacity.

George Bringman (County Defendant)

44. Defendant George Bringman is a member of the Ashland County Board of Elections. As such, he is responsible for discharging the duties of the Board, including determining voter eligibility. Defendant Bringman is sued in his official capacity.

David Samsel (County Defendant)

45. Defendant David Samsel is a member of the Ashland County Board of Elections. As such, he is responsible for discharging the duties of the Board, including determining voter eligibility. Defendant Samsel is sued in his official capacity.

Jennifer Brunner

46. Defendant Jennifer Brunner is the Secretary of State for the State of Ohio. She is the chief elections official of the State. As such, she and her agents are responsible for supervising the administration of election laws in Ohio, and compelling elections officers to comply with all state and federal election laws. Defendant Brunner is sued in her official capacity.

THE PERTINENT VOTER REGISTRATION PROVISIONS

47. To vote in a general election in Ohio, an individual must register thirty days before the election and reside in the county in which he seeks to vote. R.C. § 3503.01. In order to qualify to register, an individual need only be a citizen, eighteen years old, “and who, if he continues to reside in the precinct until the next election, will at that time have fulfilled all the requirements as to length of residence to qualify him as an elector.” R.C. § 3505.07.

48. Ohio has three statutory provisions to determine the county of residence. The default rules for determining residence are found in R.C. § 3503.02. There are two default rules relevant here. R.C. § 3503.02 (A) states: “That place shall be considered the residence of a person in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.” R.C. § 3503.02 (C) states: “A person shall not be considered to have gained a residence in any county of this state into which the person comes for temporary purposes only, without the intention of making such county the permanent place of abode.”

49. But Ohio has two exceptions to these default rules, one for “inmates” of soldiers’ homes and one for inmates of public or private institutions. R.C. § 3503.03; R.C. § 3503.04. These exceptions mandate that these inmates “shall have their lawful residence in the county, city, village and township in which said institution is located...,” provided the inmates are “qualified as to age and residence within the county....” R.C. § 3503.03; R.C. § 3503.04.

50. The age and residency qualifications are set forth in R. C. § 3503.07 which states that any person who is a citizen, eighteen years old, and resides in the precinct for thirty days is qualified to register.

51. Ohio law allows a qualified voter to challenge the right to vote of any registered voter and seek a cancellation of his right to vote, but the challenge “shall be filed with the board on a form prescribed by the secretary of state and shall be signed under penalty of election falsification.” R.C. § 3503.24. When a proper challenge is filed, a county board of elections is required to set a hearing and send notice to the challenged voter at least three days before the hearing. *Id.* A challenge may be filed to question whether the voter has registered in the correct county.

FACTUAL ALLEGATIONS

52. Plaintiffs incorporate, herein, ¶¶ 10-51 above.

53. On or about October 15, 2008, Michael Barrett, an Ashland County registered voter, challenged Plaintiffs’ registrations alleging that Plaintiffs are only temporary residents of Ashland County.

54. Barrett did not file his challenge on the forms prescribed by the Secretary of State’s Office under penalty of election falsification.

55. County Defendants scheduled a hearing on Barrett's challenge for October 24, 2008.

56. Plaintiffs did not receive the notice until October 23, 2008.

57. Because Plaintiffs are incarcerated, they would have had to first obtain a court order to be released to attend any hearing outside the facility. Plaintiffs did not have counsel at the time they received notice of the October 24, 2008 hearing and were unable to arrange for a court order to attend the hearing. Accordingly, Plaintiffs were unable to attend the October 24th hearing.

58. County Defendants had the authority to issue subpoenas compelling Plaintiffs to attend the hearing. Defendants failed to do so.

59. At the hearing on October 24, 2008, County Defendants voted to uphold Barrett's challenge, and have declared Plaintiffs ineligible to vote.

60. County Defendants have not provided absentee ballots to Plaintiffs.

**CLAIM FOR RELIEF – VIOLATION OF THE DUE PROCESS CLAUSE OF THE
FOURTEENTH AMENDMENT**

61. Paragraphs 1-60 above are incorporated herein.

62. Plaintiffs were unable to attend the hearing due to inadequate notice. County Defendants held the hearing without giving them a meaningful opportunity to be heard.

63. County Defendants disenfranchised Plaintiffs without adequate notice and an opportunity to be heard in violation of Plaintiffs' Due Process Rights.

**CLAIM FOR RELIEF – VIOLATION OF THE EQUAL PROTECTION CLAUSE OF
THE FOURTEENTH AMENDMENT**

64. Paragraphs 1-63 are incorporated herein.

65. Defendant Brunner's office instructed Ohio Justice & Policy Center ("OJPC") staff that eligible youth incarcerated at Division of Youth Services ("DYS") facilities, like Mohican, should register to vote in their county of confinement. Based on this information, OJPC staff and volunteers registered eligible youth at six DYS facilities in six separate counties.

66. Plaintiffs' believe that they were the only DYS residents to have their voter registration canceled.

67. Defendant Brunner is responsible for ensuring that Ohio's voting laws are fairly and uniformly administered throughout the State.

68. In short, Plaintiffs have been denied the right to vote where similarly situated DYS residents in other counties are being allowed to vote. As a result, Defendants have denied Plaintiffs equal protection of the law.

CLAIM FOR RELIEF – VIOLATION OF FIRST AMENDMENT

69. Paragraphs 1-68 above are incorporated herein.

70. Defendants, acting under color of state law, have violated rights secured to Plaintiffs by the First and Fourteenth Amendments to the United States Constitution including the right to free expression, the right of association, and the right to vote.

CLAIM FOR RELIEF – VIOLATION OF STATE REGISTRATION LAW

71. Paragraphs 1-70 above are incorporated herein.

72. Although Ohio law allows electors to challenge the right to vote of any registered elector, but, the challenge "shall be filed with the board on a form prescribed by the secretary of state and shall be signed under penalty of election falsification." R.C. § 3503.24. Because Barrett's challenge was unlawfully filed, County Defendants violated R.C. § 3503.24 by hearing the challenge and then upholding it.

73. Even if the hearing were proper, the Board failed to apply the correct residency statute to the Plaintiffs. Instead of recognizing that R.C. § 3503.04 required Plaintiffs to register in Ashland County, County Defendants purged Plaintiffs' lawful registrations based on R.C. § 3503.02 in violation of Ohio law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

- A. A temporary restraining order directing Defendants to immediately restore Plaintiffs' names to the Ashland County registration list.
- B. An injunction prohibiting Defendants from removing Plaintiffs from the voter registration list in Ashland County before Plaintiffs vote in the November 4, 2008 election.
- C. An injunction requiring Defendants to deliver absentee ballots to Plaintiffs.
- D. An order granting Plaintiffs' counsel reasonable attorneys' fees and cost incurred in prosecuting this action pursuant to statutory and common law; and
- E. An order granting such other and further relief as this Court finds just and equitable.

Respectfully submitted,

/s/DAVID A. SINGLETON

David A. Singleton (Ohio #0074556)

Attorney for Plaintiffs

Stephen JohnsonGrove (Ohio#0078999)

Margie Slagle (Ohio #0082217) *

Co-Counsel for Plaintiffs

Ohio Justice & Policy Center

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* Seeking admission pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *First Amended Complaint* was filed electronically on October 29, 2008. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/DAVID A. SINGLETON
David A. Singleton