

Secretary of State and as such is the chief elections officer for the State, pursuant to O.R.C. § 3501.04.

Today, March 4, 2008, severe weather across the State has inhibited voters' ability to get to the polls and exercise their right to vote. The National Weather Service has issued two different announcements today covering almost all of the State of Ohio. First, the National Weather Service has issued a Winter Storm Warning for freezing rain and sleet, changing to snow, covering the entire northern half of the State. Most of southern and central Ohio are covered by the Service's Flood Watch, with up to one inch of rain, freezing rain, and sleet expected to fall this afternoon and evening.

Further, the named counties are also suffering a severe ballot shortage. Although Defendant Boards of Elections have indicated that it is trying to get additional supplies to the polling places, weather is slowing those efforts. In several instances requests for replenishment were made by the poll workers long ago, and yet there were delays in getting through to the board of elections and delays in the replenishing supplies to the Boards. Numbers are constantly dwindling causing delays and specific incidences of people who were told they could not vote because of the shortages. In order to ensure that supplies arrive in order to enable voters to cast their vote, polling hours must be extended.

Section 302(c) of the Help America Vote Act of 2002, 42 U.S.C. § 15482(c), sets forth specific procedures that apply when a federal or state court issues an order extending poll-closing times due to inclement weather or other conditions. Under those procedures, any voter who arrives at a polling place after its previously scheduled closing time has a federally guaranteed right to cast a provisional ballot. The pollworkers keep these provisional ballots separate from provisional ballots cast earlier in the day, and the extended-closing-time ballots are routinely counted after the polls close.

Plaintiff and its supporters seek to protect their federal voting rights by obtaining such an order from this Court. Thousands of voters will likely be disenfranchised unless this Court orders that polls throughout the named counties be kept open for an additional 90 minutes —

from 7:30 p.m. to 9:00 p.m. tonight. Plaintiffs also believe that an order requiring all polling places in the state to remain open until 9:00 pm is appropriate given the circumstances to ensure that all citizens of the state have the opportunity to exercise their right to vote.

ARGUMENT

Under governing law, this Court should issue a temporary restraining order. “The Sixth Circuit has held that the standards for issuing a temporary restraining order or preliminary injunction are: (1) the likelihood of success on the merits; (2) the irreparable harm that could result if the injunction is not issued; (3) the impact on the public interest; and (4) the possibility of substantial harm to others.” *Avery Dennison Corp. v. Kitsonas*, 118 F. Supp. 2d 848, 851 (S.D. Ohio 2000) (citing *Basicomputer Corp. v. Scott*, 973 F. 2d 507, 511 (6th Cir. 1992)). This standard has been met in this case.

First, as discussed above, plaintiff is likely to succeed on the merits of the case because the failure to keep polls open in emergency weather conditions and without supplies is a clear imposition on Ohio voters’ ability to exercise their legal right to vote. Section 3501.32 of the Ohio Revised Code requires that voters be able to access the polls for thirteen full hours on Election Day; today, emergency conditions have impaired voters’ ability to cast their votes during a substantial portion of those thirteen hours. The named counties are short of supplies necessary to exercise the right to vote, and there are reports of voters have been told that they will not be able to vote. Second, the loss of voting rights by plaintiff’s supporters and other similarly situated voters constitutes irreparable harm. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373 (1976). Extending the hours will enable supplies to arrive and voters to vote. For the same reason, the public interest would best be served by the issuance of a temporary restraining order ensuring that the right to vote is protected for members of the public. In contrast, defendants will suffer no harm if polls are kept open longer due to the severe weather. Plaintiff has therefore met its burden for issuance of a temporary order.

Relief extending the polling hours due to severe weather is regularly issued to ensure that all voters have the opportunity to cast their ballot. Indeed, in the recent Maryland

primaries, a court directed the state's chief elections official to keep all polling places open an additional 90 minutes due to severe weather throughout the state and traffic conditions affecting only certain parts of the state. *See*

http://www.abc2news.com/news/local/story.aspx?content_id=76ee4d2e-94e7-4dba-bc94-d2df930a0c4b.

CONCLUSION

For the reasons stated above, plaintiff is entitled to a temporary order requiring defendants to take all necessary steps to keep polling places in the named counties open until 9:00 p.m., and to further order that all votes cast by voters who arrive at their polling places after 7:30 p.m. be cast provisionally and kept separate and apart from other provisional ballots cast earlier in the day. Defendants also should take all necessary steps to alert the mass media to this 90-minute extension of the poll-closing time. Further, plaintiff believes that an order directing that all polling places statewide be kept open until 9:00 pm is warranted based on the severe weather across the entire state.

Respectfully submitted,

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