

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

OHIO STATE CONFERENCE OF THE	:	Case No. 2:14-cv-00404
NATIONAL ASSOCIATION FOR THE	:	
ADVANCEMENT OF COLORED	:	
PEOPLE, et al.,	:	Judge Peter C. Economous
	:	Magistrate Norah McCann King
Plaintiffs,	:	
	:	
v.	:	
	:	
JOHN HUSTED, et al.,	:	
	:	
Defendants.	:	

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**AMICUS BRIEF OF THE COUNTY OF CUYAHOGA, OHIO SUPPORTING  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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*Counsel for Amicus  
County of Cuyahoga, Ohio*

### **IDENTITY AND INTEREST OF AMICUS**

The County of Cuyahoga is a political subdivision of the State of Ohio. It is a chartered county pursuant to Article X, Section 3 of the Ohio Constitution with home rule powers. The County is Ohio's largest county with a population of 1,263,154, according to the U.S. Census' 2013 estimates. See U.S. Census Bureau State and County Quick Facts, available at <http://quickfacts.census.gov/qfd/states/39/39035.html> (last visited July 7, 2014). Of Ohio's 88 counties, Cuyahoga County is home to approximately eleven percent of Ohio's population of 11,570,808. *Id.*

The County has a substantial interest in early voting and the outcome of this litigation. The long lines and substantial burdens faced by the County's citizens in the 2004 General Election were the primary impetus for the adoption of early voting as the remedy to the State's voting problems in Ohio. See *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (6th Cir. 2008).

As a home rule entity, Cuyahoga County has adopted its own Voting Rights Law. A copy of Cuyahoga County Ordinance No. O2014-0008, enacting the County's Voting Rights Law, is attached as Exhibit 1 to this Brief. It is also available on the County Council's web site at: [http://council.cuyahogacounty.us/pdf\\_council/en-US/Legislation/Ordinances/2014/O2014-0008.pdf](http://council.cuyahogacounty.us/pdf_council/en-US/Legislation/Ordinances/2014/O2014-0008.pdf).

The Cuyahoga County Voting Rights Law added Section 1101.03(K) to the County's Equity Plan, codified in Chapter 11 of the Cuyahoga County Code, which provides:

**Voting Rights and Access to the Ballot.** Cuyahoga County will act to protect its citizens' right to vote. The County will promote voter registration at all levels of citizen interaction with County Government. The County will also promote early voting programs, including voting by mail programs. When deemed necessary and appropriate, the County's Department of Law will

seek court intervention to protect access to the ballot by the County's citizens.

C.C.C. § 1101.03(K), available at <http://code.cuyahogacounty.us/en-US/CCRC-T11C1101.aspx>.

Because this case has a direct impact on the ability of Cuyahoga County's urban and minority citizens to exercise their constitutional right to vote, the County's Law Department has determined that it is necessary and appropriate for it to seek the Court's permission to file this Amicus Brief in accordance with Section 1101.03(K) of the County Code.

Furthermore, as the budgetary authority for the County's Board of Elections, Cuyahoga County has a monetary interest in the outcome of this case. Maximizing early voting opportunities helps the County avoid additional expenses to fix voting problems that may happen on the last day of the election cycle.

The undersigned in-house attorneys authorized this Amicus Brief, and no party or their counsel contributed or will contribute any funds towards its preparation.

### **ARGUMENT**

Cuyahoga County commissioned Cleveland State University to independently examine the impact of the State's voting restrictions imposed in Senate Bill 238 and Directive 2014-17. (Exhibit 2, Declaration of Mark J. Salling, Ph.D., GISP.) The findings are staggering. These voting restrictions directly suppress the vote of urban and minority voters. (Id.)

Cuyahoga County, as a governmental entity itself, appreciates that it is appropriate to afford a reasonable modicum of discretion to governmental entities in how they design and implement programs, including the design and implementation of elections systems. Respectfully, this is not what this case is about, and the challenged State actions cannot be cloaked as such.

The State of Ohio has already developed and implemented a reasonable elections system in the aftermath of the 2004 elections debacle. The system worked well in 2006, 2008, 2010, and—with court intervention—in 2012.

This case is about the State coming in after the fact, armed with data and trends regarding the impact of its actions, and, with surgical precision, amputating Ohio's elections system in a manner that restricts the voting rights of Ohio's urban and minority voters. When the State severs the voting rights of certain segments of its citizenry, the State's discretion goes out the door.

The Court should reject the State's conduct and its unfounded budgetary and uniformity pretexts.

**I. Senate Bill 238 and Directive 2014-17 amend Ohio's elections system, with the precision of a surgeon's scalpel, in a manner that directly suppresses the votes of urban and minority citizens.**

The right to vote is a constitutional right expressly protected in the 14th Amendment to the United States Constitution and strengthened with additional amendments thereafter: (a) the 15th Amendment to the United States Constitution provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude;" (b) the 19th Amendment to the U.S. Constitution provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex;" (c) the 24th Amendment to the United States Constitution provides that the "right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax;" and (d) the 26th

Amendment to the United States Constitution provides that the “right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”

Cuyahoga County commissioned Cleveland State University to independently examine the impact of the State’s voting restrictions imposed in Senate Bill 238 and Directive 2014-17. (Exhibit 2, Declaration of Mark J. Salling, Ph.D., GISP.) The independent study’s findings and report unequivocally show:

- a) In Ohio’s largest urban counties, African American voters comprise 22 percent of the voting population but account for 38 percent of all early in-person voting.
- b) In Ohio’s largest urban counties, during Golden Week, minority voters comprised almost half (48.3%) of all early in-person votes.
- c) In Cuyahoga County, African-American voters cast a greater proportion of votes during Golden Week than non-minority voters, and 6.6 percent of African-American voters cast their ballots during Golden Week. Whereas, only 0.2 percent of non-minority voters did so during the same time period. This same effect holds true for overall early voting.
- d) African-American voters, in particular, are harmed by the elimination of “Golden Week” since a significantly larger percentage of African-Americans vote during this period than non-minority citizens.

(Exhibit 2, Exhibit B to the Declaration of Mark J. Salling, PhD, GISP, “The Use of Early In-Person Voting Opportunities in the 2008, 2010, and 2012 General Elections in Ohio’s Largest Urban Counties Comparisons by Race and Hispanic/Latino Ancestry”, Cleveland State University (July 7, 2014).)

The study’s findings make sense. For instance, with respect to Golden Week, approximately 35 percent of Cuyahoga County’s citizens live in rental housing, and it is not uncommon for a percentage of the County’s urban citizens to regularly change residential addresses. *See* U.S. Census Bureau State and County Quick Facts at <http://quickfacts.census.gov/qfd/states/39/39035.html> (last visited July 7, 2014). The County

also has approximately 5,157 homeless citizens above the age of 18 who have the right to vote in accordance with *Northeast Ohio Coalition for the Homeless v. Husted*, 2012 WL 2711393 (S.D. Ohio July 19, 2012). (Exhibit 3, Cuyahoga County Office of Homeless Services, “An Overview of Homeless Services in Cuyahoga County”.)

Golden Week provides such transient citizens—some of whom change their addresses as often as twice a year—with the opportunity to update their voting addresses and vote on the same day. Without Golden Week, these transient citizens have to keep updating their addresses with the Board of Elections—in many cases, every six months when they change addresses—or be relegated to casting provisional ballots that may never count. Whether these citizens are able to register and vote will impact local county matters, such as County Charter amendments, tax levies, and local races, which can often be decided by a handful of votes.

The system adopted after the 2004 elections debacle addressed these problems. In 2008, for instance, early-in person voting in Cuyahoga County included five Saturdays from 9 a.m. to 1 p.m., five Sundays from 1 p.m. to 5 p.m., and 25 week days until 7 p.m. (Exhibit 4, 10/10/2008 Media Advisory by the Cuyahoga County Board of Elections.) In 2010, early-in person voting began on September 28, 2010, and included one week of same-day registration, two Saturdays from 10 a.m. until 1 p.m., two Sundays from 12 p.m. to 5 p.m., and extended weekday voting hours. (Exhibit 5, 11/2/2010 General Election Dates and Deadlines issued by the Cuyahoga County Board of Elections.) This system worked well and proved to be a significant improvement from 2004 debacle. Senate Bill 238 and Directive 2014-17 have unraveled these solutions.

These findings are based on public records that are readily available to the Ohio Secretary of State, Governor, and Legislature. No reasonable state actor can argue that the State was not

aware of the disparate impact of its voting restrictions. The Court should strike down these restrictions, which abridge the voting rights of urban and minority citizens.

**II. To ensure fairness and equity, the State must set the floor, and not the ceiling, of voting opportunities in the different counties that have differing needs.**

The County respectfully requests the Court to thoroughly vet the issue of “uniformity” and its impact on equity and fairness in elections. Applying an across-the-board, cookie-cutter approach in the name of uniformity only results in inequity. Even worse is when so-called “uniformity” is selectively applied in a manner that suppresses the voting rights of urban and minority voters, as the State does in Senate Bill 238 and Directive 2014-17.

As the State properly observed in *Vanzant v. Brunner*, S.D. Ohio Case No. 1:10-cv-596, Ohio is a large, diverse state, and its counties have differing needs. (Exhibit 6, Defendant Ohio Secretary of State Jennifer Brunner’s Memorandum in Opposition to Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction.) The Ohio Attorney General, in fact, contended in *Vanzant*, and the Court agreed, that the “Equal Protection Clause of the Fourteenth Amendment does not, indeed, *cannot*, compel absolute uniformity in every facet of life.” (Id., at p. 1.)

Population densities differ in the different counties. Availability of public transportation differs in the different counties. The percentage of population residing in rental housing differs in the different counties. For instance, whereas 35 percent of Cuyahoga County’s citizens reside in rental housing, less than 5 percent of Vinton County’s citizens reside in rental housing. *See* U.S. Census Bureau State and County Quick Facts at <http://quickfacts.census.gov/qfd/states/39/39035.html> (last visited July 7, 2014). Even the weather is different in the different counties: citizens waiting in line to vote in Cleveland,

Youngstown, and other parts of Northeast Ohio may have to deal with freezing rain and cold temperatures while voters in the southern part of the State may have better weather.

There simply is no way to achieve so-called uniformity. If the State is truly concerned about equity and fairness, the only reasonable approach is for the State to set minimum standards that must be observed in all counties. For instance, the State shall require a minimum number of voting hours per day, and it should require a minimum number of voting machines per precinct. And so long as each county complies with the minimum standards set by the State, the State should not bar counties from taking additional measures to address each county's unique needs.

The State's actions here, under the guise of uniformity, disproportionately harm urban and minority voters. The Court should not permit the State to use selective uniformity to eliminate voting rights of minority citizens. Selective uniformity is not uniform nor is it fair.

**III. The County has appropriately budgeted for the Cuyahoga County Board of Elections to handle early expanded early voting.**

Under Ohio law, counties are the budgetary authority for their respective boards of elections, and the boards' expenses are paid from the counties' treasuries. R.C. 3501.17(A) provides in part:

The expenses of the board of elections **shall be paid from the county treasury, in pursuance of appropriations by the board of county commissioners**, in the same manner as other county expenses are paid. (Emphasis added).

Counties have already adopted their 2014 budgets. Cuyahoga County, for instances, adopted its 2014-2015 Budget on December 10, 2013 (Cuyahoga County Resolution R2013-0229, available at [http://council.cuyahogacounty.us/pdf\\_council/en-US/Pending%20Legislation/R2013-0229%20Approving%202014-2015%20Biennial%20Budget%20\(Resolution%20with%20Insert%2010-18-2013\).pdf](http://council.cuyahogacounty.us/pdf_council/en-US/Pending%20Legislation/R2013-0229%20Approving%202014-2015%20Biennial%20Budget%20(Resolution%20with%20Insert%2010-18-2013).pdf)). The



Budget anticipates the inclusion of Golden Week and weekend voting days as part of the 2014 election system.

The argument, therefore, that Cuyahoga County's citizens should surrender their constitutional right to vote for budgetary reasons has no merit. In fact, stymying the early voting process may create problems on the last day of the election cycle. Such problems will trigger the expenditure of additional financial resources, such as the purchase and maintenance of additional voting equipment.

In elections past, the State failed to demonstrate that it struggles to administer a voting period that included twenty-five days of weekday voting, multiple Saturdays, multiple Sundays, extended evening hours, and a week-long same-day registration period. *Obama for America, et al. v. Jon Husted, et al.*, 697 F.3d 423, 429-430 (6th Cir. 2012.) The Court should not now permit this manufactured excuse to eviscerate, piece-by-piece, a constitutional right.

### **CONCLUSION**

For the foregoing reasons, the Court should grant the relief requested in Plaintiffs' Motion for Preliminary Injunction.

Respectfully Submitted,

/s/ Majeed G. Makhlouf  
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Ruchi V. Asher (0090917)  
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[MMakhlouf@cuyahogacounty.us](mailto:MMakhlouf@cuyahogacounty.us)  
[RAsher@cuyahogacounty.us](mailto:RAsher@cuyahogacounty.us)

*Counsel for Amicus  
County of Cuyahoga, Ohio*

**CERTIFICATE OF SERVICE**

I certify that on July 8, 2014, I caused the forgoing document to be electronically filed in accordance with the Court's Electronic Filing guidelines. Notice of this filing will be sent to the parties by operation of the Court's Electronic Filing system. Parties may access this filing through the system.

/s/ Majeed G. Makhlouf  
One of the Counsel for Amicus  
County of Cuyahoga, Ohio

# Exhibit 1

## County Council of Cuyahoga County, Ohio

### Ordinance No. O2014-0008

<p>Sponsored by: <b>County Executive FitzGerald and Councilmember Simon</b></p> <p>Co-sponsored by: <b>Councilmembers Hairston, Brady, Jones, Miller, Connally and Conwell</b></p>	<p><b>An Ordinance</b> enacting the Cuyahoga County Voting Rights Law; updating the Cuyahoga County Equity Plan in Chapter 1101 of the Cuyahoga County Code in conformity therewith; and declaring the necessity that this Ordinance become immediately effective.</p>
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WHEREAS, as recognized by the U.S. Court of Appeals for the 6<sup>th</sup> Circuit in *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (6th Cir. 2008), the citizens of Cuyahoga County experienced substantial problems and long lines trying to exercise their constitutional right to vote during the 2004 general election; and,

WHEREAS, the voting problems experienced by the County's citizens in 2004 are not a mere accident, but are the byproduct of unique conditions and needs of large, urban counties; and,

WHEREAS, Cuyahoga County is Ohio's largest county with a population of 1,280,122 according to the 2010 U.S. Census; and,

WHEREAS, of Ohio's 88 counties, Cuyahoga County is home to approximately 11 percent of Ohio's population of 11,536,502 according to the 2010 U.S. Census; and,

WHEREAS, a significant percentage of the County's citizens often change residential addresses a number of times in between elections. Almost 35 percent of Cuyahoga County's citizenry reside in rental housing. Furthermore, the County's Office of Homeless Services estimates that approximately 5,157 homeless citizens above the age of 18 live in the County who are entitled to cast their ballots in accordance with *Northeast Ohio Coalition for the Homeless v. Husted*, 2012 WL 2711393 (S.D. Ohio July 9, 2012); and,

WHEREAS, 94 percent of the voting precincts in Cuyahoga County are in multi-precinct locations, which significantly raises the possibility of relegating the County's citizens to provisional ballots when they vote on Election Day; and,

WHEREAS, the County found a real solution to these voting problems through a combination of mechanisms working together, including (1) the ability of its citizens, especially citizens who change residential addresses multiple times in between elections, to register to vote or update their voting registration and cast

their vote on the same day during early in person voting at the Board of Elections; (2) early in person voting at the Board of Elections during after hours, the weekends, especially Sundays, and the Monday before the election; and (3) mailing the vote by mail applications to its citizens with postage-prepaid return envelopes to promote early voting and voting by mail; and,

WHEREAS, the citizens of Cuyahoga County have come to expect and rely on the fact that they automatically receive their requests for ballots to vote by mail, with postage-prepaid return envelopes, for every election; and,

WHEREAS, these solutions proved successful, and the County reduced the number of voting precincts available on Election Day; and,

WHEREAS, by the adoption of Ohio Senate Bills 205, 216, and 238, and Secretary of State Directive 2014-06, the State has jettisoned the very solutions that proved successful in resolving elections problems in Cuyahoga County; and,

WHEREAS, Cuyahoga County has a substantial interest in ensuring that its citizens have adequate opportunities to cast their ballots in every election; and,

WHEREAS, Cuyahoga County also has a substantial interest in protecting the integrity of its own elections, including elections for its elected offices and issues that it places on the ballot by ensuring that the County's citizens have adequate opportunities to cast their ballot in elections that can be very close and impacted by the citizenry's ability to have adequate access to the ballot. For instance, in the 2010 primary election for County Council, the Republican primary for County Council District 1 was decided by just 96 votes, and the Democratic primary for County Council District 3 was decided by 201 votes; and,

WHEREAS, Cuyahoga County also has a substantial monetary interest in protecting the integrity of elections in Cuyahoga County through early in person voting and voting by mail. The County is the budgetary authority for the County's Board of Elections. The County appropriates the funds, and the County's Treasury pays the Board's expenses pursuant to R.C. 3501.17. If the State were to succeed in eliminating the solutions that proved very successful in Cuyahoga County and it results in voting problems as happened in 2004, such problems will trigger the need for investing additional financial resources, including potentially having to purchase additional voting machines and to spend money maintaining these additional machines, to avoid the problems in the future; and,

WHEREAS, In August 2012, Cuyahoga County adopted an Equity Plan, which is codified in Chapter 1101 of the Cuyahoga County Code; and,

WHEREAS, Section 1101.02(A) of the Cuyahoga County Code expressly provides that the County's objective is to remove barriers that stand in the way of the County's citizens:

Cuyahoga County embraces the ideal of one united community, committed to equality of opportunity for all of our citizens. As part of our equity plan, the county's objective is to remove barriers and enable all citizens in our community to have equal opportunities to fulfill their potential. The county will do so by ensuring that best practices in equity are being implemented by all county departments and agencies and by measuring progress on an ongoing basis. In addition, the county will work with community partners to influence other important domains that reinforce the economic, educational, health and social progress of Cuyahoga County and its citizens.

WHEREAS, the restrictions imposed by the State have a disparate impact on working men and women in Cuyahoga County; and,

WHEREAS, the County should do everything possible to remove barriers in the way of its citizens' right to vote to further its equity objectives; and,

WHEREAS, as federal courts have recognized, the establishment of so-called "uniform" procedures across the State that fail to take into account the unique needs of individual counties results in inequity and hurts the ability of citizens in large counties to vote. See, e.g., *Vanzant v. Brunner*, S.D.Ohio Case No. 1:10-cv-596; and,

WHEREAS, the right to vote is a constitutional right expressly stated in the 14<sup>th</sup> Amendment to the United States Constitution and strengthened with additional amendments thereafter: (a) the 15<sup>th</sup> Amendment to the United States Constitution provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude;" (b) the 19<sup>th</sup> Amendment to the U.S. Constitution provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex;" (c) the 24<sup>th</sup> Amendment to the United States Constitution provides that the "right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax;" and (d) the 26<sup>th</sup> Amendment to the United States Constitution provides that the "right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age;" and,

WHEREAS, Cuyahoga County provides many services to its citizens, including health and human services programs, homeless services programs, economic development programs, and educational programs; and,

WHEREAS, as a chartered county with home rule powers, County Council finds it necessary for the County to provide services to its citizens to facilitate their ability to vote; and,

WHEREAS, as a chartered county, Cuyahoga County is constitutionally entitled to rights and privileges, including a First Amendment right to communicate with its citizens and share information with them on how to vote and what forms to use when they want to apply to receive their ballots by mail; and,

WHEREAS, Senate Bill 205 restricts speech based on the identity of the speaker by not prohibiting individuals and private corporations from exercising their First Amendment right to communicate through sending applications to vote by mail, including postage-prepaid return envelopes, while attempting to restrict the ability of home rule entities from exercising the very same speech; and,

WHEREAS, the County Council finds it necessary to invoke the County's home rule powers and its constitutional First Amendment rights to establish a program to assist its citizens in exercising their right to vote through voter registration as well as mailing applications for voting by mail to its citizens, with postage-prepaid return envelopes.

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of the County departments.

**NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** Title 12 of the Cuyahoga County Code is hereby enacted, and it shall read as follows:

**Title 12: Voting Rights**

**Chapter 1201: Voting Rights Program**

**Section 1201.01. Establishment**

There is hereby established the Cuyahoga County Voting Rights Program, which shall be administered by the County Executive through any appropriate departments, offices, and other agencies of county government.

**Section 1201.02. Program Benefits**

Notwithstanding any State law, regulation, or other directive to the contrary, the Cuyahoga County Executive is hereby expressly authorized to undertake all acts

necessary to promote voter participation and access to the ballot in Cuyahoga County by all citizens, including, but not limited to the following:

- a. Promoting and implementing voter registration at all levels of citizen interaction with County government, including through services provided by any division in the Department of Health and Human Services; and
- b. Promoting early voting and maximizing voter participation through voting by mail in Cuyahoga County, including, but not limited to, mailing applications to vote by mail, with postage-prepaid return envelopes, to all registered voters in Cuyahoga County.

**SECTION 2.** Section 1101.03 of the Cuyahoga County Code is hereby amended to add Section 1101.03(K) as follows:

**K. Voting Rights and Access to the Ballot.** Cuyahoga County will act to protect its citizens' right to vote. The County will promote voter registration at all levels of citizen interaction with County Government. The County will also promote early voting programs, including voting by mail programs. When deemed necessary and appropriate, the County's Department of Law will seek court intervention to protect access to the ballot by the County's citizens.

**SECTION 3.** It is necessary that this Ordinance become immediately effective for the usual daily operation of the County and the reasons set forth in the preamble. Provided that this Ordinance receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

**SECTION 4.** It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Ms. Simon, seconded by Mr. Miller, the foregoing Ordinance was duly enacted.

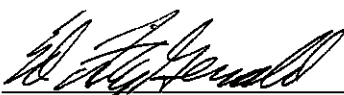


Yeas: Miller, Brady, Germana, Conwell, Jones, Hairston, Simon and Connally

Nays: Greenspan, Gallagher and Schron

  
\_\_\_\_\_  
County Council President

4-8-14  
Date

  
\_\_\_\_\_  
County Executive

4/14/14  
Date

  
\_\_\_\_\_  
Clerk of Council

4/8/2014  
Date

First Reading/Referred to Committee: March 11, 2014

Committee(s) Assigned: Committee of the Whole

Additional Sponsorship Requested: April 1, 2014

Journal CC014

April 8, 2014

# Exhibit 2

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

OHIO STATE CONFERENCE OF THE	:	Case No. 2:14-cv-00404
NATIONAL ASSOCIATION FOR THE	:	
ADVANCEMENT OF COLORED	:	
PEOPLE, et al.,	:	Judge Peter C. Economous
	:	Magistrate Norah McCann King
Plaintiffs,	:	
	:	
v.	:	
	:	
JOHN HUSTED, et al.,	:	
	:	
Defendants.	:	

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**DECLARATION OF**  
**MARK J. SALLING**

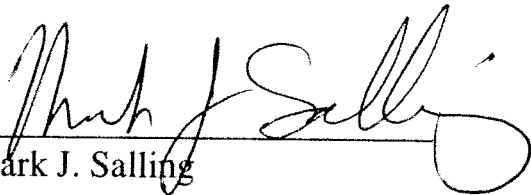
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Mark J. Salling, under 28 U.S.C. 1746, declares as follows:

1. I have personal knowledge of all facts recited herein.
2. I am currently a Senior Research Associate at Cleveland State University Maxine Goodman Levin College of Urban Affairs, and Director of Northern Ohio Data and Information Service.
3. Cuyahoga County retained me to independently examine the impact of the State of Ohio's voting restrictions imposed in Senate Bill 238 and Directive 2014-17.
4. Attached as Exhibit A is a true and accurate copy of my curriculum vitae.
5. Attached as Exhibit B is a true and accurate copy of the report I prepared, summarizing the methodology utilized and the results of my examination.

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

Executed on this 8<sup>th</sup> day of July, 2014.

  
Mark J. Salling

**MARK J. SALLING, Ph.D., GISP<sup>1</sup>**  
May 2014

**EDUCATION**

Ph.D. (Geography) 1982, Kent State University

Dissertation: Poverty and the Decision to Move: An Analysis of Public Housing for the Poor

M.A. (Geography) 1974, University of Cincinnati

B.A. (Geography) 1970, Kent State University

**ACADEMIC & PROFESSIONAL POSITIONS**

1982-present--- Director, Northern Ohio Data & Information Service, Senior Research Associate, and College Fellow, Maxine Goodman Levin College of Urban Affairs, Cleveland State University (<http://urban.csuohio.edu/nodis/>)

2002-2012 Williamson Family Fellow and Director of Research, The Center for Community Solutions, Cleveland, OH (<http://communitysolutions.com/>)

1981-1982----- Director, Base Resource Division, Graphco, Cleveland, OH.

1979-1982----- Research Consultant/Methods & Data Specialist, Capone-White & Associates, Cleveland Heights, OH.

1976-1981----- Planner and Senior Data Specialist, Northeast Ohio Areawide Planning Agency, Cleveland, OH.

1976----- Planning Assistant, Medina County Planning Commission, Medina, OH.

1976----- Temporary Instructor, Geography, Kent State University, Trumbull Branch.

1975-1976----- Teaching Fellow, Department of Geography, Kent State University.

**PROFESSIONAL AFFILIATIONS, AWARDS, SERVICE**

Urban & Regional Information Systems Association (URISA - <http://www.urisa.org/>):

- Managing Editor, Proceedings of the annual conference 1986-2004.
- Past member, URISA Board of Directors, 2002-2005
- Member, Core Committee, GISCorps (<http://www.giscorps.org/>)
- Recipient, URISA 1988 and 2000 Service Awards

Member, Ohio Geographically Referenced Information Program Council, representing universities (<http://ogrip.oit.ohio.gov/>)

Ohio's Liaison to the U.S. Census Bureau's Redistricting Data Program

Chairman and Key Person, Cleveland Census Statistical Areas Committee (CenSAC)

Member, Association of Public Data Users (APDU - <http://apdu.org/>)

Past Recipient, Visiting Fellowship, National Center for Geographic Information and Analysis (NCGIA), 1994.

Affiliated Scholar, Center for Election Integrity, Cleveland State University (<http://urban.csuohio.edu/cei>)

**PRIMARY AREAS OF RESEARCH AND TEACHING EXPERIENCE**

Urban Social Geography	Research/Computer Methods
Urban Poverty, Mobility	Geographic Information Systems (GIS)
Demography	Demographic Forecasting
Redistricting	

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<sup>1</sup> Geographic Information System Professional, certified by the GIS Certification Institute (<http://www.gisci.org/>).

## **RESPONSIBILITIES**

### **NODIS Director**

Management- staff consisting of professional programmers, researchers, GIS specialists, information specialist, and several students; provide research, data, and GIS services to University and community data users.

Teaching----- courses taught: Urban Spatial Structure, Urban Geography, Graduate Research Methods, Introduction to Geographic Information Systems, GIS Capstone Seminar, Demography, and Computers for Urban Studies Students.

Research----- demographic and urban analysis; research includes analyses of redistricting outcomes and the use of GIS in the process, urban neighborhood economic structure, environmental equity (spatial association of toxic releases and demographic populations), the application of GIS to urban land redevelopment, and the use of GIS for social indicators and related areas.

Technical Assistance---- presentations on GIS, demographic trends, urban issues; employed GIS methods to provide a common database for redistricting in the State of Ohio; provide leadership in local Census data and geography issues.

## **PUBLICATIONS and PRESENTATIONS**

### **Written:**

**Salling**, Mark, "Redistricting Congressional Districts in Ohio, An Example of a Partisan Process with Long-Lasting Consequences," in Miller, William J. and Jeremy D. Walling, eds. 2013, The Political Battle over Congressional Redistricting. Lanham, MD: Lexington Books.

Stephanie Ryberg, Mark **Salling**, and Gregory Soltis, "Putting Artists on the Map: The Geography of Artists in Cuyahoga County, Ohio," Journal of Urban Affairs, Vol. 35, Issue 2, May 2013, pp. 219-245. Online at <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-9906.2012.00623.x/pdf>.

**Salling**, Mark and Norman Robbins, "Do White, African American, and Hispanic/Latino EIP Voters Differ from Election Day and Vote by Mail Voters in Income?" Northeast Ohio Voter Advocates, August 2012.

Norman Robbins and Mark **Salling**, "Racial and Ethnic Proportions of Early In-person Voting in Cuyahoga County, General Election 2008, and Implications for 2012," Northeast Ohio Voter Advocates, July 2012.

**Salling**, Mark, "Public Participation Geographic Information Systems for Redistricting A Case Study in Ohio," Journal of the Urban and Regional Information Systems Association, Vol. 23: Issue 1, 2011, pp. 33-40.

**Salling**, Mark, "GIS Will Affect the Political Landscape for the Next Decade and Beyond," GIS Professional, Issue 242, March/April 2011, pp. 1-3.

Joe Ahern and Mark **Salling**, "Racial/Ethnic Health Disparities in Northeast Ohio," Planning & Action, The Center for Community Solutions, Vol. 63, No. 4 (July), 2010, pp. 12-15.

**Salling**, Mark, "Ohio's Use of Geographic Information Systems to Demonstrate Public Participation in the Redistricting Process," Duke Journal of Constitutional Law & Public Policy, Vol. 5, 2010, pp.112-123.

**Salling**, Mark, and Jenita McGowan, "Census 2010 and Human Services and Community Development," Planning & Action, The Center for Community Solutions, Vol. 63, No. 2 (March), 2010, pp. 1-4.

Xiaoxing Z. He, Ellen Cyran, and Mark **Salling**, "National trends in the United States of America physician assistant workforce from 1980 to 2007," Human Resources for Health. Vol. 7:86, November 26, 2009.

Joe Ahern and Mark **Salling**, "A Statewide FBO/NPO Digital Inventory: Is it Feasible?" Planning & Action, The Center for Community Solutions, Vol. 62, No. 3 (August), 2009, pp. 9-10.

Joe Ahern and Mark **Salling**, "Survey Provides Insights into the Health of Ohioans," Planning & Action, The Center for Community Solutions, Vol. 62, No. 2 (May), 2009, pp. 15-16.

James Wyles and Mark **Salling**, "Districting Competition Tutorial Using ArcGIS 9.3 and Districting Wizard," Prepared for Ohio Secretary of State Jennifer Brunner, <http://www.sos.state.oh.us/SOS/Upload/redistrict/tutorial.pdf>, April 2009.

Mark **Salling**, Joe Ahern, George Coulter, and Rich Marountas, "New Study Shows County's Workforce Characteristics," Planning & Action, The Center for Community Solutions, Vol. 62, No. 1 (February), 2009, pp. 7-11.

Mark **Salling**, Ellen Cyran, Sharon Bliss, and Rich Marountas, "The Changing Face of Socioeconomic Conditions in Northeast Ohio," Planning & Action, The Center for Community Solutions, Vol. 61, No. 6 (November/December), 2008, pp. 14-17.

Mark **Salling**, "Beware of the Data. New Data from the Census Bureau's 2007 American Community Survey are Out and Still Coming," Planning & Action, The Center for Community Solutions, Vol. 61, No. 5 (September/October), 2008, p. 14.

Mark **Salling**, "More Persons Attending College and Getting Degrees, 2000 to 2007 The Cleveland-Akron-Elyria Region Doing Well," unpublished report available at <http://nodisnet1.urban.csuohio.edu/nodis/publications.shtml>, September 23, 2008.

Mark **Salling**, "Changes in Poverty and Educational Attainment, 2000 to 2007 Poverty Rates Increasing for those with College Education, Too," unpublished report available at <http://nodisnet1.urban.csuohio.edu/nodis/publications.shtml>, September 2, 2008.

Coulter, George, Mark **Salling**, and Rich Marountas, "A Major Study of the County's Workforce is in Progress," Planning & Action, The Center for Community Solutions, Vol. 61, No. 4 (July/August), 2008, pp. 6-9.

Brudney, Jeffery, Mark **Salling**, and Kym Hemley, "The Point – and Counterpoint -- of Agency Collaboration: A Critical Review and a Local Funder's Experience," Planning & Action, The Center for Community Solutions, Vol. 61, No. 3 (May/June), 2008, pp. 6-9.

Marountas, Richard, and Mark **Salling**, "New Economic Indicators Report: Employment and Productivity in Northeast Ohio, 2000-2007, Indicators of Industry Sustainability," Planning & Action, The Center for Community Solutions, Vol. 61, No. 2 (April), 2008, pp. 5-9.

**Salling**, Mark, and M. Egan, "Health Needs Analysis, Assessment Looks at the Region," Planning & Action, The Center for Community Solutions, Vol. 61, No. 1 (February), 2008, pp. 9-14.

Mark **Salling**, "Ohio Continues to Lag in Population Growth and Comments on Prospects for the Future: An Analysis of 2007 State Population Estimates," unpublished report available at <http://nodisnet1.urban.csuohio.edu/nodis/publications.shtml>, January 2, 2008.

Mark **Salling**, "Hispanics and Asians Increase in Numbers in Cuyahoga County An Analysis of 2007 County Population Estimates," unpublished report available at <http://nodisnet1.urban.csuohio.edu/nodis/publications.shtml>, August 7, 2008.

Mark **Salling**, "Brief Description and Analysis of the Census Bureau's 2006 Population Estimates for Incorporated Places: Cleveland and Other Ohio Cities," unpublished report available at <http://nodisnet1.urban.csuohio.edu/nodis/publications.shtml>, June 28, 2008.

**Salling**, Mark, E. Cyran, S. Bliss, R. Marountas, "The Changing Face of Socioeconomic Conditions in Northeast Ohio," Planning & Action, The Center for Community Solutions, Vol. 60, No. 6 (November/December), 2007, pp. 14-17.

Mark **Salling**, "An Analysis of Services Provided by Faith-Based Organizations to Cleveland's Ward 17 Community," unpublished report available at <http://nodisnet1.urban.csuohio.edu/nodis/publications.shtml>, January 30, 2007.

**Salling**, Mark, George Zeller, and Rich Marountas, "The State Of Poverty in Ohio, 2007," Ohio Association of Community Action Agencies and The Center for Community Solutions, June 2007.

**Salling**, Mark, "GISCorps Helps United Nations High Commission for Refugees Map Resources for Refugees in Cairo, Egypt," URISA News, Urban and Regional Information Systems Association, No. 219 (May/June), 2007, p. 10.

**Salling**, Mark, "The Role of Faith-Based Organizations in Providing Social and Health Services to Cleveland's Ward 17 Community," Planning & Action, The Center for Community Solutions, Vol. 60, No. 3 (April), 2007, pp. 1-4.

Walton, B.M., M. **Salling**, and J. Wolin. "Biological Integrity of Urban Streams: Toward Resolving Multiple Dimensions of Urbanization," Landscape and Urban Planning, 2007, 79, pp. 110-123.



**Salling**, M., and E. Cyran. "Using the Census Bureau's Public Use Microdata for Migration Analysis," Proceedings of the annual conference of the Urban and Regional Information Systems Association, Vancouver, BC, Canada, September 2006, pp.336-348.

**Salling**, M., and E. Cyran. "Estimates of the Number of Voters Whose Driver's License Address May Differ from Their Voting Address," Cleveland State University, Center for Election Integrity, Research Series, August 2, 2006.  
[<http://moritzlaw.osu.edu/electionlaw/litigation/documents/Moore-Reply-3-28-08-Ex3.pdf>]

**Salling**, Mark, "Applied Research Speaks to the Region's Issues in Human Capital," Planning & Action, The Center for Community Solutions, Vol. 59, No. 5 (July/August), 2006, p. 3.

Lenahan T. and M. **Salling**. "Persons with Disabilities by Race, Cuyahoga County, 2000," Public Health GIS News and Information, Centers for Disease Control, May 2006 (No. 70), pp. 23-25.

**Salling** Mark, "Children Living in Severely Distressed Neighborhoods and Poor Housing". Public Health GIS News and Information, Centers for Disease Control, January 2006 (No. 68), pp. 19-22.

Lenahan, Terry, Mark **Salling**, , Richard Marountas, Joe Ahern, and George Weiner, 2004/2005 Social Indicators: Youth Development, The Center for Community Solutions, March 2005.

Croner C.M., T.L. Lenahan, M.J. **Salling**, and G.D. Weiner, "Geographic Information Systems and Public Health: Accomplishments and Horizons," Proceedings GeoHealth 2004 [eds. Skelly C, White P], Institute of Environmental Science & Research, Porirua, New Zealand, November 2004, pp. 22-31.

**Salling** M.J., Lenahan T. Inadequate Prenatal Care: Summit County, Ohio, 1996 to 2001. Public Health GIS News Information, Centers for Disease Control, September 2004, Vol. 60, pp. 21-22.

**Salling**, Mark, "Where is the Prison Population in Ohio?" Planning & Action, The Center for Community Solutions, Vol. 57, No. 6 (September), 2004, pp. 8-10.

**Salling**, Mark, James Williamson, and Elton Turnage, "Some Factors Considered in Teen Pregnancy Rates in Cuyahoga County," Planning & Action, The Center for Community Solutions, Vol. 57, No. 5 (July/August), 2004, pp. 11-14.

Lenahan, Terry, George Weiner, Mark **Salling**, Richard Marountas, and Joe Ahern, 2003/2004 Social Indicators: Older Persons, The Center for Community Solutions, June 2004.

**Salling**, Mark, "New Housing Indicators Report Highlights Challenges and Opportunities," Planning & Action, The Center for Community Solutions, Vol. 57, No. 3 (April), 2004, pp. 16-20.

**Salling**, Mark, Richard Marountas, Terry Lenahan, George Weiner, and Joe Ahern, 2003/2004 Social Indicators: Housing, The Center for Community Solutions, April 2004.

**Salling**, Mark, Michael J.S. Tevesz, Roberta Steinbacher, Sharon Bliss, and Brian McNamara, "Sacred Landmarks as a Resource for Community Empowerment and Regional Development," Proceedings of the annual conference of the Urban and Regional Information Systems Association, Atlanta, GA. October 2003.

Weiner, George, Lucy Malakar, Terry Lenahan, Joe Ahern, Mark **Salling**, and Richard Marountas, 2003 Social Indicators: Community Health, Federation for Community Planning, December 2003.

Lenahan, Terry, Lucy Malakar, George Weiner, Joe Ahern, Mark **Salling**, and Richard Marountas, 2003 Social Indicators: Children and Families, Federation for Community Planning, October 2003.

**Salling**, Mark, "2003 Social Indicators: Education, Employment, and Income," Planning & Action, Federation for Community Planning, Vol. 56, No. 4 (May/June), 2003, pp. 16-18.

**Salling**, Mark, and Sharon Bliss, "Older Adult Profile: A Census Demographic Profile Report," prepared for Western Reserve Area Agency on Aging, May 2003.

**Salling**, Mark, Rich Marountas, Terry Lenahan, Joe Ahern, and George Weiner, 2003 Social Indicators: Education, Employment, and Income, Federation for Community Planning, April 2003.

**Salling**, Mark, "Cleveland Neighborhood Conditions and Trends," prepared for Cleveland City Council, May 2001.

**Salling**, Mark, "Estimating Low and Moderate Income Persons at the Census Block Level in the City of Cleveland," prepared for City of Cleveland, Department of Community Development, July 24, 2000.

Simons, Robert, and Mark **Salling**, "Using GIS to Make Parcel-Based Real Estate Decisions for Local Government: A Financial and Environmental Analysis of Residential Lot Redevelopment in a Cleveland Neighborhood," URISA Journal, Vol. 7, No. 1 (Spring), 1995, pp. 7- 19.

Bowen, William, Mark **Salling**, Kingsley Haynes, and Ellen Cyran, "Toward Environmental Justice: Spatial Equity in Ohio and Cleveland," Annals of the Association of American Geographers, Vol. 85, No. 4, 1995, pp. 641-663.

**Salling**, Mark, et.al., A Guide to State and Local Census Geography, U.S. Department of Commerce, Bureau of the Census, June 1993.

**Salling**, Mark, and William L. Mumbleau, "Introduction: A New Era for GIS in URISA," Proceedings, Volume II, Urban and Regional Information Systems Association Conference, Washington, D.C. July, 1992.

Tobin, J., and Mark **Salling**, "NODIS Procedures for Demographic Analysis," Proceedings, SAS Users Group International, Ninth Annual Conference, Hollywood, FL. March 1984.

Henry, N.H., J.W. Frazier, M. Budin, and Mark **Salling**, "Applications of Geography to Housing Problems," Chapter 5 in Applied Geography, Selected Perspectives, (J. Frazier, ed.), Prentice-Hall, Inc. Englewood Cliffs, N.J. 1982.

**Salling**, Mark, and M.E. Harvey, "Poverty, Personality, and Sensitivity to Residential Stressors," Environment and Behavior, Vol. 13, No. 2 (March), 1981, pp.131-163.

**Salling**, Mark, and T. Bier, "Factors Affecting the Geographic Distribution of Mortgage Loans in Cuyahoga County, Ohio," Proceedings, Applied Geography Conference, (J.W. Frazier and B.J. Epstein, eds.), Vol. 3, Kent, Ohio. 1980.

**Salling**, Mark, "Regionalization at the Areawide Planning Level: the Merger of Subjective and Objective Methods," Proceedings, Applied Geography Conference, (J. Frazier and B.J. Epstein, eds.), Vol. 1, Binghamton, N.Y. 1978.

**Salling**, Mark, "Residential Preferences in Three Neighborhoods of Different Racial Composition," East Lakes Geographer, Vol. 11, June, 1976, pp. 91-109.

Presented:

“Community Mapping Initiatives in Cleveland, Ohio,” presented with Wansoo Im at GIS-Pro 2013, the annual conference of the Urban and Regional Information Systems Association, Providence, RI, September 17, 2013.

“Urban Geography 101: What do you know about Cleveland and the Region?” presented at the Community Forum of First Unitarian Church of Cleveland, Shaker Heights, Ohio, March 3, 2013.

“GIS and Democracy, How GIS Affects the Political Landscape,” presented at GIS-Pro 2012, the annual conference of the Urban and Regional Information Systems Association, Portland, OR, October 2, 2012.

“Some Data on Representational Fairness, One Person, One Vote, and Public Participation Redistricting,” presented at the Symposium on Baker v. Carr After 50 Years: Appraising the Reapportionment Revolution, Case Western Reserve University School of Law, Cleveland, Ohio, November 4, 2011

“Putting Artists on the Map: A Study of Artists’ Housing and Neighborhoods in Cuyahoga County, Ohio,” with Kristin L. Tarajack-Puch. presented at the Urban Affairs Association annual conference. New Orleans, LA., March 19, 2011.

“How Will Geographic Information Systems be Used for Redistricting: A Case Study in Ohio,” presented at presented at GIS-Pro 2010, the annual conference of the Urban and Regional Information Systems Association, Orlando, FL, September 29, 2010.

“An Analysis of Health Disparities in Northeast Ohio Using the 2008 Ohio Family Health Survey,” with Joseph Ahern and Terese Lenahan. presented at presented at GIS-Pro 2010, the annual conference of the Urban and Regional Information Systems Association, Orlando, FL, September 29, 2010.

“Anticipating Census 2010...Some Data on Population Change Affecting Redistricting in Ohio.” presented at the “Redistricting Forum Redrawing the Boundaries: An Ohio Discussion,” March 1, 2010. Columbus, Ohio.

“The Uses of Geographic Information Systems for Redistricting and a Case Study in Ohio,” presented at the “Symposium on Drawing Lines: The Future of Redistricting in America,” February 26, 2010. Duke University School of Law, Durham, NC.

“The 2008 Ohio Family Health Survey: Initial Analyses of Cuyahoga County,” with Joe Ahern, presented to the Community Partners and Friends of The Center for Community Solutions, Cleveland, Ohio, July 15, 2009.

“The 2008 Ohio Family Health Survey: Initial Analyses of Ohio and Cuyahoga, Lorain, and Summit Counties,” with Timothy Sahr, Heather Beaird, and Joe Ahern, presented to the Summit County Healthy Connections Network, Akron, Ohio, April 23, 2009.

“Ohio Redistricting Competition: Competition Rules and Scoring,” with James Wyles, presented for Ohio Secretary of State Jennifer Brunner’s Districting Competition, Columbus, Ohio, April 10, 2009.

“2008 Ohio Family Health Survey: Profile of the Uninsured in Cuyahoga, Lorain, and Summit Counties,” with Joe Ahern, presented to The Center for Community Solutions Human Services Institute, Cleveland, Ohio, March 13, 2009.

“Using Social Indicators and Related Data for Grant Applications,” presented to The Center for Community Solutions Human Services Institute, Cleveland, Ohio, March 13, 2009.

“Challenges Related to Multiple Estimates of the Census Bureau’s American Community Survey,” presented at the 2009 annual conference of the National Association of Planning Councils, Austin Texas, March 2, 2009.

“Cuyahoga County Workforce Indicators,” with Joe Ahern and George Coulter, presented to The Center for Community Solutions - Partners and Friends, Cleveland, Ohio, February 27, 2009.

“The Point of Partnering? Achieving Service Outcomes through Agency Collaboration,” annual conference of The Center for Community Solutions’ Human Services Institute, Cleveland, Ohio, March 28, 2008.

“Income of Older Persons in Ohio,” Ohio AARP Conference on Sensible Solutions for Retirement Security: A Public Policy Discussion, New Philadelphia, Ohio, March 20, 2008.

“Some Recent Data on the Economic Health of the Region,” with George Zeller, Partners and Friends of The Center for Community Solutions, Cleveland, Ohio, November 15, 2007.

“Some Recent Data on the Economic Outlook for Cuyahoga County Based on the American Community Survey,” presented to Cuyahoga County Commissioners and department heads, Cleveland, Ohio, September 19, 2008.

“Implications of Geocoding Methods, Geographic Reference Files, And Population Estimates for Community Health Indicators,” with Chris Kippes, David Bruckman, Ellen Cyran, and Urban and Elizabeth Larkin, Centers for Disease Control and Prevention 2007 Assessment Initiative Annual Conference, Atlanta, Georgia, August 23, 2007.

“Implications of Geocoding Methods, Geographic Reference Files, And Population Estimates for Community Health Indicators,” with Chris Kippes, David Bruckman, Ellen Cyran, and Urban and Elizabeth Larkin, Urban and Regional Information Systems Association conference on GIS in Public Health, New Orleans, Louisiana, May 21, 2007.

“Foreign Migration: What Census Data Tell Us,” annual conference of The Center for Community Solutions’ Human Services Institute, Cleveland, Ohio, March 23, 2007.

“GIS as a Tool for Political Geography and Analysis,” Conference on Computer-Assisted Reporting, Cleveland, Ohio, March 9, 2007.

“What We Are Learning from Recent Census Data,” with Michael Finney, New Member Orientation, Ohio Legislative Service Commission, Columbus, Ohio, November 29, 2006.

"Sprawl, Taxes and the Cost of Ohio's Competitiveness," presented to New Member Orientation, Ohio Legislative Service Commission, Columbus, Ohio, November 29, 2006.

"Using the Census Bureau's Public Use Microdata for Migration Analysis," with Ellen Cyran, annual conference of the Urban and Regional Information Systems Association, Vancouver, BC, Canada, September, 2006.

"The Use of Geographic Information Systems (GIS) to Reveal Inordinate Public Health Burden in Cleveland's African American Neighborhoods," with C.M. Croner, T.L. Lenahan, G.D. Weiner, and C. Kippes, American Public Health Association 133<sup>rd</sup> Annual Meeting, Philadelphia PA., December 13, 2005.

"The Use of GIS for Social and Health Community Indicators," presented at the annual conference of the Urban and Regional Information Systems Association, Kansas City, Missouri, October, 2005.

"The Public Health Burden of Cleveland's African American Community," with C.M. Croner, and T.L. Lenahan Annual Meeting of the Association of American Geographers, Denver CO., April 6, 2005.

"What Have We Learned about Ohio from Recent Census Data?," with Michael Finney, presented to the New Member Orientation of the Ohio Legislature, Columbus, Ohio, November 17, 2004.

"Ecological Quality of Urban Streams: Resolving Multiple Dimensions of Urbanization," with B.M. Walton and J. Wolin. Symposium on Great Lakes Water Quality, Headwater Streams Section. Cleveland Museum of Natural History. October 2004.

"Updating the Census Bureau's School District Boundaries Using Geocoded Voter Registration Addresses," presented to the 2004 Ohio GIS Conference, Columbus, Ohio, September 30. 2004.

"Social Indicators Data for Community Development Corporations," workshop presentation at the Ohio CDC Association, 2004 annual conference, Cleveland, Ohio. September 29, 2004.

"Visualizing Health Inequalities with GIS: Exploring Geospatial Issues with IHS Area Planning Officers and Statisticians," with C.M. Croner, D. Taylor, T.L. Lenahan, and E. Arias DHHS Indian Health Service Area Planning Officers/Statisticians Conference, Washington, D.C., September 23, 2004.

"Geographic Information Systems: Revealing Public Health Inequalities in African American Communities," with C.M. Croner, T.L. Lenahan, and G.D. Weiner, 1<sup>st</sup> Annual Conference on Race, Ethnicity and Place, Howard University, Washington D.C., September 17, 2004.

"Using Social Indicators for Grantmaking," with Edwin Balzerzak, workshop sponsored by the Ohio Grantmakers Forum, Cleveland, Ohio. September 28, 2004.

"Geographic Information Systems and Public Health: Accomplishments and Horizons," with C.M. Croner, T.L. Lenahan, and G.D. Weiner, GeoHealth 2004: Surveillance and Intervention, Wellington, New Zealand, November 23-25, 2004.

"Geographic Information Systems: Revealing Public Health Inequalities in African American Communities," with C.M. Croner, T.L. Lenahan, 1st Annual Conference on Race, Ethnicity and Place, Howard University, Washington D.C. September 17, 2004.

"Geographic Information Systems and African American Health: Visualizing Disease Burden," with C.M. Croner, T.L. Lenahan, E. Cyran, B. McNamara, L. Malakar, C. Kippes, and R. Marountas, 21st Annual Historical Black Colleges and Universities Summer Faculty GIS Workshop, National Capital Planning Commission, Washington, D.C., July 21, 2004.

"Assessing Biological Integrity within Substantially Urbanized Catchments," with B. M. Walton and J. Wolin, presented at the Symposium on Urbanization and Stream Ecology, Melbourne, Australia. December, 2003.

"Sacred Landmarks as a Resource for Community Empowerment and Regional Development," presented at the annual conference of the Urban and Regional Information Systems Association, Atlanta, Georgia. October, 2003.

"Using Geographic Information Systems to Target Elevated Lead Blood Levels in Children," presented at the annual conference of the Urban and Regional Information Systems Association, Atlanta, Georgia. October, 2003.

"GIS Certification: A Status Report," presented to the 2003 Ohio GIS Conference, Columbus, Ohio. September 18, 2003.

"Some Thoughts on Social Indicators," presented to the National Association of Planning Councils, Monterey, California. May 10, 2003.

"Census 2000: Good News for Northeast Ohio's Economy?," presented at the Census 2003 Forum, Maxine Goodman Levin College of Urban Affairs, Cleveland State University, Cleveland, Ohio. May 2, 2003.

"Race, Hispanic/Latino Ethnicity, Ancestry, and the Foreign-born Population, Some Demographic Data from the Census," presented to the 2003 Health and Human Services Institute, Federation for Community Planning, Cleveland, Ohio. March 21, 2003.

"Changing Demography of Ohio's House Districts," with Mittie Olion Chandler, presented to the Ohio Urban University Program Annual Forum, Columbus, Ohio. March 27, 2003.

"Demographic Change in Ohio: What Have We Learned for the 2000 Census?," with Michael Finney, presented to the New Member Orientation of the Ohio Legislature, Columbus, Ohio. October 18, 2002.

"Application of Geographic Information Systems and a Street-length-based Estimation Methodology to Develop a Redistricting Database," presented to the annual conference of the Urban and Regional Information Systems Association, Long Beach, California. October 2001.



"Use of Geographic Information Systems in the Analysis and Reporting of Child Mortality Statistics," with Cindie Carroll-Pankhurst, presented to the National Conference of County Boards of Health, Cleveland, Ohio. July 2001.

"GIS Customization of a Water Distribution Model Application for Hydraulic Modeling," with Ellen Cyran, Lindle Wilnow, and Pierre Haddad, presented at the conference on Public Works/Geographic Information Systems, Chicago, Illinois. May 7, 2001.

"What Can the 2000 Census Tell You About Your Community?," presented to The Neighborhood & Community Press Association (NCPA) of Greater Cleveland, Cleveland, Ohio. April 28, 2001.

"Using Geographic Information Systems for Community Economic Development," presented at the Emerging Leadership conference of the National Coalition of Community Economic Development, Washington, D.C. February 18, 2001.

"Demographic Trends and Patterns in Ohio," presented to the New Member Orientation Program of the Ohio General Assembly, Columbus, Ohio. November 28, 2000.

"Geographic Information Systems," in "Electronic Records: Access and Use" panel discussion at Midwest Archives and Mid-Atlantic Regional Archives Conference, Cleveland, Ohio. October 21, 2000.

"A Progress Report on Using Geographic information Systems to Prepare for Elections in the 21<sup>st</sup> Century," presented at the Ohio GIS annual conference, Columbus, Ohio. October 28, 1999.

"Modeling Neighborhood Economic Transformation," presented at the annual conference of the Urban and Regional Information Systems Association, Chicago, Illinois. August 11, 1999.

"Using Geographic information Systems to Prepare for Elections in the 21<sup>st</sup> Century," presented at the GIS/LIS annual conference, Cincinnati, Ohio. November 29, 1997.

"Applying Geographical Information Systems (GIS) Technology in Devising Effective Student Recruitment Strategies," panel at the 36th annual forum of the Association for Institutional Research, Albuquerque, New Mexico. May 6, 1996.

"Development of an Implementation Plan for Sharing Geographic Information in Greater Cleveland," presented to the Applied Geography Conference, Akron, Ohio. October 14, 1994.

"Using GIS to Make Micro-Level Real Estate Decisions: A Financial and Environmental Analysis of Residential Lot Redevelopment in a Cleveland Neighborhood," with Robert Simons, presented at the annual conference of the Urban and Regional Information Systems Association, Milwaukee, Wisconsin. August 11, 1994.

"Census 2000: Saving the Data - For Whom?" presented at the annual conference of the Urban and Regional Information Systems Association, Atlanta, Georgia. July 26, 1993.



"The Geography of Environmental Equity in Ohio: A Descriptive Analysis," with W. Bowen, presented at the annual conference of the Association of American Geographers, Atlanta, Georgia. April 9, 1993.

"The Geography of Environmental Disadvantage in Cuyahoga County, Ohio: A Descriptive Analysis," with W. Bowen, presented at the annual conference of the East Lakes Region of the Association of American Geographers, Youngstown, Ohio. November 2, 1991.

"NORGIN: Development of a GIS Project in the Cleveland Area," presented to the AM/FM-IKO & URISA Great Lakes Conference, Columbus, Ohio. June, 1991.

"Implementing A Departmental Computing System for Novice, PC, and Mainframe Users," presented to the annual conference of the Urban and Regional Information Systems Association, Ft. Lauderdale, Florida. August, 1987.

"A Method for Projecting Population for Census Tracts in a Declining City," presented to the annual conference of the Urban and Regional Information Association, Ft. Lauderdale, Florida. August, 1987.

"Developing an Arson Early Warning System from Public Records," presented to the annual conference of the Urban and Regional Information Systems Association, Ottawa, Ontario. July 1985.

"Dissemination of a Dynamic Database in Cleveland, Ohio," presented to the annual conference of the Urban and Regional Information Systems Association, Seattle, Washington. August, 1984.

"Development and Application of a Research-Oriented Geographic Information System," presented to the annual conference of the Urban and Regional Information Association, Seattle, Washington. August, 1984.

"NODIS Procedures for Demographic Analysis," with J. Tobin, presented to SAS User's Group International, Hollywood, Florida. March, 1984.

"From Arson To Enterprise Zones: Applications of a Cleveland Based Geographic Information System," presented to the Applied Geography Conference, Toronto, Ontario. March, 1983.

"Home Mortgage Investment Patterns in the Cleveland Region," with T. Bier, presented to the Applied Geography Conference, Binghamton, New York. Fall 1979.

"Poverty, Personality, and Residential Mobility," presented to the East Lakes Meetings of the Association of American Geographers, Ann Arbor, Michigan. October, 1976.

"Residential Preferences in Three Neighborhoods of Different Racial Composition," presented to the East Lakes Meetings of the Association of American Geographers, Saint Catherine, Ontario. October, 1975.

"The Direction of Urban Transportation Network Extent: A Relationship, Model, and Case Study," presented to the Ohio Academy of Science, Marietta, Ohio. April, 1972.

The Use of Early In-Person Voting Opportunities  
In the 2008, 2010, and 2012 General Elections  
In Ohio's Largest Urban Counties  
Comparisons by Race and Hispanic/Latino Ancestry

July 7, 2014

Mark J. Salling, PhD, GISP  
Research Fellow  
Maxine Goodman Levin College of Urban Affairs  
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**Purpose of Study**

Data on voters from five of Ohio largest counties in 2008, 2010, and 2012 general elections are used to estimate the use of early in-person voting (EIP), voting by mail, and voting on Election Day for racial and Hispanic groups of voters. Comparisons of when voting occurred are made for Election Day, in-person voting the Sunday before the election, in person voting during the so-called "Golden Week", other early-in person voting, and early voting by mail. These are referred to as methods of voting in this analysis.

To estimate the race and ethnicity of voters it is assumed that African Americans, Whites, other races, and Hispanics voted in proportion to their percentage of voting age population in the census block in which they live. Data for Cuyahoga, Franklin, Hamilton, Lucas, and Summit counties are analyzed. These counties account for 36.8 percent of the state's 2010 voting-age population.<sup>1</sup>

**Findings**

Data from the following tables are discussed:

1. Table 1: Votes by Race/Ethnicity, Election, Method, and County – provides estimated votes by race and Hispanic ethnicity, election year, method, and county.
2. Table 2: Percentage of Votes by Race and by Election Day, Early In-Person, and Mail Voting - shows the percentage distributions of these votes for all 5 counties and all early in-person methods combined.
3. Table 3: Percentage of Votes by Race/Ethnicity, Method, and County, Three Elections Combined (2008 Franklin excluded) - provides percentages by method and race/ethnicity for each county.
4. Table 4: Percentage of Votes by Race and Election Day, Early In-Person, and Mail Voting, Three Elections Combined (2008 Franklin excluded) - includes racial/ethnicity percentages

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<sup>1</sup> Though the author hoped to include Montgomery County, which is larger in voting-age population than Lucas County, the data could not be obtained in time to include it. In addition, data for the 2008 general election in Franklin County was also not available for this analysis.

for Election Day, EIP, and voting by mail for each of the three elections, with the 5 counties combined.

5. Table 5: Percentage of Votes by Race/Ethnicity and Method, Three Elections Combined (2008 Franklin excluded) - provides the same percentage distribution as in Table 4, but lists each of the individual EIP methods (Sunday before Election Day, Golden Week, and other EIP).
6. Table 6: Test of Proportions – addresses the question of whether the percent of votes for each racial minority group is different than for White voters using each method.
7. Table 7: Voter Participation Rates (based on voters used in the analysis and persons age 18 and older in the 2010 Census of Population)

Overall, excluding unavailable results for 2008 in Franklin County, the analysis shows that African Americans are more likely to vote in-person, whether on Election Day or in early voting opportunities, than by mail.<sup>2</sup> While they composed 22 percent of voting-age population and an estimated 20.3 percent of voters in the combined three elections in those five counties (again excluding the 2008 election in Franklin County), African American voters accounted for 38.0 percent of all early in-person voting (Table 4).<sup>3</sup> They took particular advantage of voting the first week of early voting when persons could both register and vote on the same day, commonly referred to as “Golden Week”. Voting that week by African Americans comprised almost half (48.3%) of all early in-person votes (Table 5). Only 18.1 percent of votes by mail were made by African Americans. Their preference for, or dependence on, early voting opportunities is reflected in the fact that, while an estimated 66 percent of all votes by Whites were cast on Election Day in these three elections (excluding Franklin in 2008), only 61.7 percent of voting African Americans went to the polls that day. A disproportionate number of African Americans used early voting --- 13.5 percent versus 7.2 percent for all voters (Table 4).

Other non-White voters also took advantage of early in-person voting. While White voters accounted for only 5.3 percent of all such voters in those elections, early in-person voting non-White, non-Black voters accounted for 8.6 percent. And nine percent (9.0%) were Hispanic/Latino voters (regardless of race). Overall, 65 percent of all voters voted on Election Day, 7.2 percent used in-person early voting, and 27.8 percent voted by mail (Table 4).

The results from the 2008 and 2012 presidential elections are very similar.<sup>4</sup> However, the 2010 election had many fewer voters and far fewer early in-person votes in particular (Table 1). The 2008 and 2012 elections had 9.1 and 9.0 percent of votes cast in early in-person periods,

<sup>2</sup> All noted differences in percentages are statistically different at the 0.05 or 0.01 confidence level. Table 6 provides a summary of comparisons between White and minority voting groups.

<sup>3</sup> Differences between total counts of votes between the official counts reported by the Ohio Secretary of State and those reported here are presumably largely due to non-geocoded voter addresses (locating addresses by census block) in this analysis. Other possible minor differences are likely due to different data provided by the BOEs to the SOS and for this study. Table A1 provides geocoding results and Table A2 compares total votes reported by the SOS and those used in this analysis. Overall, excluding the 2008 results for Franklin County, there is a 6.9 percent difference between the SOS total votes in the three combined elections and the total votes used in the analysis.

<sup>4</sup> Again, these results exclude data for Franklin County in 2008.

respectively, compared to only 2.4 percent of the votes in 2010 (Table 2). Absentee voting by mail in 2008 and 2012 accounted for roughly a quarter of the votes (24.2% and 27.3%, respectively), while nearly a third (32.4%) were cast by mail in 2008.

Racial differences between the 2008 and 2012 presidential elections and the midterm 2010 are also apparent (Table 6). African American voters heavily used early in-person voting opportunities in both 2008 and 2012 (17.3% and 16.1% of their votes, respectively), but only 4.1 percent of Black votes were cast early and in-person in 2010. The use of early in-person voting among other non-White and Hispanic voters also exceeded that of White voters in the presidential elections. Differences were substantially less in the 2010 election (though still statistically significantly different).

These results vary only moderately by county. The pattern of African Americans disproportionately using early in-person voting is found consistently across counties and elections (2008 election in Franklin County unknown). Non-African American and Hispanic minority voters also used early in-person voting more than White voters in all five counties overall.

#### Specific Early In-Person Voting Periods

Ohio Senate Bill 238, passed in February 2014, changes early in-person voting for the 2014 general election in Ohio. This change includes the elimination of voting on the Sunday before the election and reduces the early voting period from 35 days to 29 days before Election Day. In addition, the bill also eliminates the so-called Golden Week, the first week of voting in which voters can register and vote on the same day. Therefore, this analysis also examines the potential effect of those changes on voting in the five urban counties, and finds that, on an average daily basis, there was more voting by all groups in Golden Week and the Sunday before the election than on other early voting days. Not including the 2008 election in Franklin County (and using only geocoded addresses), there was an average of 23,794 votes cast on the Sunday before the election and 12,280 cast on the average day of Golden Week, compared to an average of 8,512 ballots cast in person during other early voting days.

In Cuyahoga County, voter participation rates, when measured as the percentage of 2010 persons age 18 and older, are similar for African American and White voters – 53.4 percent and 55.7 percent, respectively – when all three election years are combined (Table 7). Participation rates were higher for both groups in the presidential election years - approximately 61 percent in 2012 and approximately 62 percent in 2008. The 2010 rates were 36.3 percent for African Americans and 43.2 percent for Whites.

The non-White, non-Black voters in the county had higher participation rates than Whites and African Americans in all three elections, averaging 59.2 percent overall. Hispanics, on the other hand, voted less, averaging 41.5 percent for the combined three elections.

With that as context, we compare when these populations voted.

African Americans in Cuyahoga County used absentee voting by mail far less than their White counterparts. They clearly prefer to cast ballots in person, whether early or on Election Day.

Overall, 58.2 percent of their votes were cast on Election Day, significantly greater than the 56.2 percent of Whites who cast votes in those three elections (Table 3). Proportionally, African Americans used the Sunday before Election Day more than Whites (0.6% versus 0.2%), Golden Week (6.6% versus 1.7%), and other early voting days (4.9% versus 1.3%). Whites, on the other hand, extensively used the mail to cast votes. Two out of three White ballots were cast in this way, compared to less than 30 percent (29.7%) for African Americans, 36.2 percent for other races, and 33.0 percent for Hispanic voters, all of which are statistically less than the White percentage using the mail.

Statistically different proportions of when Whites and other minority groups voted in Cuyahoga County are found for each of the three elections (Table 6). Non-White, non-African American voters and Hispanic voters used Golden Week and other early in-person voting more than White voters in all three elections. Non-White, non-African American voters also disproportionately voted on the Sunday before Election Day in 2012 and 2008 when compared to White voters. They also used other early in-person voting days proportionately more than White voters in 2010.

Statistically significant differences with White voting are not found for Hispanics in the Sunday before Election Day voting in 2012 and 2010, though there is such a difference in the 2008 election. None of the minority groups used voting by mail more than White voters did in any of the elections.

Similar findings can be noted for the other urban counties examined in this study (see Table 6).

#### Additional Analysis for Cuyahoga County

The correlation between early voting opportunities taken by African Americans can be seen visually in Maps 1 and 2. Map 1 shows the percentage of the 2010 voting age population in Cuyahoga County that was African American (1 race category) by census block and the geographic distribution of voters casting in person votes on the Sunday before the election in 2012. Map 2 shows the African American (AA) population again, but with the distribution of voters voting in person during Golden Week. Map 3 shows the distribution of voters using the mail to cast votes.

Maps 1 and 2 provide a clear visualization of the geographic correlation between the residential concentration of African Americans of voting age and the use of both Sunday before Election Day and Golden Week during the 2012 election in the county. Map 3 clearly shows that the use of voting by mail was largely wide-spread across the county, but is relatively absent in the areas of higher percentages of African Americans, given the large numbers of such persons in such areas.

The conclusions from this visual analysis are confirmed using statistical correlation analysis. Using the census block summary level, we find that the correlation (Pearson's  $r$ ) between percent African American population 18 and older (1 race) and percent of votes cast that were made in person on the Sunday before Election Day in 2012 is 0.118 ( $p < 0.0001$ ). The correlation between percent AA and percent using Golden Week to vote is even stronger at 0.267 ( $p < 0.0001$ ). Meanwhile, correlations between percent White voting age population (18 and older, 1 race) and percent of votes on the Sunday before the election and during Golden Week are negative and highly statistically significant (-0.118 and -0.263, respectively; both with  $p < 0.0001$ ).

Correlations between neighborhood racial composition and use of balloting by mail show that census blocks with higher proportions of White voters are more likely to also have higher

proportions of voters using the mail to cast ballots (Whites:  $r = 0.344$ ,  $p < 0.0001$ ; AA:  $r = -0.317$ ,  $p < 0.0001$ ).

Hispanic neighborhoods also see few mail-in votes ( $r = -0.146$ ,  $p < 0.0001$ ). Voters in Hispanic neighborhoods also apparently do not use Golden Week or the Sunday before the election to cast in person votes, since correlations between percentage Hispanic and percent using these opportunities are negative ( $r = -0.035$  with  $p < 0.0001$  and  $-0.023$  with  $p < 0.0124$ , respectively).

The correlation analysis confirms the earlier conclusion that voters living in largely African American neighborhoods disproportionately use early in person voting, including Golden Week and the Sunday before the election. Those in White neighborhoods are more likely to cast their votes by mail than are those living in largely African American neighborhoods.

### **Conclusions**

This analysis clearly (and statistically significantly) shows that minorities, especially African Americans, disproportionately use early in-person voting opportunities compared to White voters. This is true for all five counties, though the results for counties other than Cuyahoga are more mixed for comparisons of Hispanics and other minorities to White voter balloting.

On the other hand, White voters disproportionately use absentee voting by mail.

Therefore, Ohio House Senate Bill 238, in reducing early in-person voting days and eliminating Golden Week and the Sunday before Election Day, will disproportionately affect and disadvantage racial and Hispanic minority voters.



Table 1: Votes by Race/Ethnicity, Election, Method, and County

		2012 Election					2010 Election					2008 Election (excludes Franklin)					All 3 Elections				
		Black	White	Other race	Hispanic	Total	Black	White	Other race	Hispanic	Total	Black	White	Other race	Hispanic	Total	Black	White	Other race	Hispanic	Total
Cuyahoga	Election Day	99,025	229,676	17,188	11,749	357,639	58,156	141,564	9,552	5,911	215,183	98,275	247,535	18,121	12,681	376,611	255,456	618,775	44,861	30,342	949,434
	Sunday before	1,574	1,344	152	81	3,151	118	86	10	4	218	1,003	626	84	49	1,762	2,695	2,057	246	134	5,131
	Golden Week	2,531	1,255	179	109	4,074	68	83	7	6	165	26,217	17,219	2,167	1,182	46,785	28,816	18,557	2,354	1,297	51,024
	Other in-person early	19,354	13,185	1,639	947	35,125	1,935	1,479	170	91	3,675	44	26	4	2	76	21,334	14,689	1,813	1,040	38,876
	Mail	46,825	156,125	9,940	5,747	218,637	38,966	141,838	8,519	4,862	194,184	44,499	149,740	9,551	5,544	209,334	130,289	447,703	28,010	16,153	622,155
	<b>Total</b>	<b>169,309</b>	<b>401,585</b>	<b>29,099</b>	<b>18,633</b>	<b>618,626</b>	<b>99,244</b>	<b>285,050</b>	<b>18,257</b>	<b>10,874</b>	<b>413,425</b>	<b>170,037</b>	<b>415,146</b>	<b>29,927</b>	<b>19,458</b>	<b>634,568</b>	<b>438,590</b>	<b>1,101,781</b>	<b>77,283</b>	<b>48,966</b>	<b>1,666,620</b>
Franklin	Election Day	47,751	230,233	20,630	8,920	307,533	32,773	162,531	13,395	5,637	214,336	NA					80,524	392,763	34,025	14,557	521,869
	Sunday before	1,127	2,035	286	149	3,597	182	384	39	18	624	NA					1,309	2,419	326	167	4,221
	Golden Week	3,515	5,719	736	396	10,366	192	658	67	28	945	NA					3,706	6,378	803	425	11,312
	Other in-person early	14,931	34,115	3,840	1,829	54,715	1,345	3,931	378	158	5,812	NA					16,276	38,046	4,218	1,987	60,527
	Mail	24,493	117,598	9,878	4,127	156,096	19,938	103,292	8,120	3,380	134,730	NA					44,431	220,890	17,998	7,508	290,827
	<b>Total</b>	<b>91,816</b>	<b>389,700</b>	<b>35,370</b>	<b>15,421</b>	<b>532,307</b>	<b>54,430</b>	<b>270,797</b>	<b>21,999</b>	<b>9,222</b>	<b>356,448</b>						<b>146,246</b>	<b>660,497</b>	<b>57,370</b>	<b>24,643</b>	<b>888,755</b>
Hamilton	Election Day	64,319	217,552	11,477	5,144	298,492	42,107	161,159	8,037	3,483	214,786	65,594	225,578	11,801	5,313	308,286	172,020	604,288	31,315	13,939	821,563
	Sunday before	522	508	46	20	1,097	No voting on Sunday before election					No voting on Sunday before election					522	508	46	20	1,097
	Golden Week	1,768	1,879	162	77	3,886	359	412	35	15	820	1,920	2,320	210	89	4,540	4,047	4,612	406	181	9,246
	Other in-person early	6,983	10,132	780	344	18,239	2,008	3,292	226	94	5,620	8,705	11,311	927	409	21,352	17,695	24,735	1,933	847	45,211
	Mail	16,989	63,856	3,198	1,379	85,422	10,803	44,453	2,089	904	58,249	14,757	59,818	2,961	1,272	78,808	42,549	168,127	8,248	3,555	222,479
	<b>Total</b>	<b>90,581</b>	<b>293,928</b>	<b>15,663</b>	<b>6,965</b>	<b>407,137</b>	<b>55,277</b>	<b>209,315</b>	<b>10,387</b>	<b>4,495</b>	<b>279,474</b>	<b>90,976</b>	<b>299,027</b>	<b>15,899</b>	<b>7,083</b>	<b>412,986</b>	<b>236,834</b>	<b>802,271</b>	<b>41,949</b>	<b>18,542</b>	<b>1,099,596</b>
Lucas	Election Day	19,384	108,661	6,293	5,592	139,930	13,035	79,357	4,262	3,627	100,281	17,759	105,967	6,027	5,447	135,201	50,178	293,986	16,583	14,666	375,412
	Sunday before	308	470	45	33	855	115	233	19	13	380	2,229	2,229	2,229	2,229	8,916	2,651	2,932	2,293	2,275	10,151
	Golden Week	1,401	1,892	168	141	3,603	143	380	23	19	565	400	610	58	46	1,114	1,944	2,882	250	206	5,282
	Other in-person early	5,156	9,624	775	617	16,172	1,225	2,591	181	143	4,140	5,880	9,566	818	629	16,893	12,260	21,782	1,774	1,389	37,205
	Mail	4,966	26,757	1,449	1,201	34,372	3,482	21,244	1,076	880	26,681	4,398	24,749	1,301	1,050	31,498	12,845	72,750	3,825	3,131	92,551
	<b>Total</b>	<b>31,214</b>	<b>147,404</b>	<b>8,729</b>	<b>7,584</b>	<b>194,932</b>	<b>17,998</b>	<b>103,805</b>	<b>5,562</b>	<b>4,682</b>	<b>132,047</b>	<b>30,666</b>	<b>143,122</b>	<b>10,433</b>	<b>9,401</b>	<b>193,622</b>	<b>79,879</b>	<b>394,331</b>	<b>24,725</b>	<b>21,666</b>	<b>520,600</b>
Summit	Election Day	17,818	148,379	5,886	1,933	174,016	13,172	114,352	4,353	1,405	133,282	15,665	143,233	5,475	1,810	166,183	46,655	405,964	15,714	5,147	473,480
	Sunday before	330	752	55	18	1,155	134	317	21	6	478	461	1,014	65	22	1,562	925	2,082	142	46	3,195
	Golden Week	1,722	2,699	194	66	4,682	183	768	32	11	994	1,105	2,131	136	50	3,422	3,010	5,599	362	127	9,098
	Other in-person early	5,383	13,865	796	269	20,313	2,032	6,100	313	105	8,550	7,588	18,579	1,099	376	27,642	15,003	38,544	2,208	749	56,504
	Mail	6,367	45,278	1,901	596	54,142	2,625	18,599	760	239	22,223	3,904	32,117	1,275	404	37,700	12,896	95,994	3,936	1,239	114,065
	<b>Total</b>	<b>31,620</b>	<b>210,973</b>	<b>8,833</b>	<b>2,882</b>	<b>254,308</b>	<b>18,146</b>	<b>140,136</b>	<b>5,479</b>	<b>1,765</b>	<b>165,526</b>	<b>28,722</b>	<b>197,074</b>	<b>8,050</b>	<b>2,662</b>	<b>236,509</b>	<b>78,489</b>	<b>548,183</b>	<b>22,362</b>	<b>7,309</b>	<b>656,343</b>
All 5 Counties	Election Day	248,297	934,501	61,474	33,337	1,277,609	159,244	658,962	39,600	20,063	877,868	197,293	722,313	41,424	25,251	986,281	604,833	2,315,775	142,498	78,650	3,141,757
	Sunday before	3,860	5,109	585	300	9,854	549	1,020	90	41	1,700	3,693	3,869	2,378	2,300	12,240	8,102	9,998	3,053	2,641	23,794
	Golden Week	10,937	13,445	1,440	790	26,612	944	2,302	165	78	3,488	29,642	22,280	2,571	1,367	55,861	41,523	38,027	4,176	2,236	85,962
	Other in-person early	51,807	80,921	7,830	4,006	144,564	8,545	17,393	1,268	591	27,797	22,217	39,482	2,848	1,416	65,963	82,569	137,796	11,946	6,012	238,323
	Mail	99,640	409,614	26,365	13,051	548,670	75,812	329,426	20,563	10,264	436,066	67,558	266,425	15,088	8,270	357,340	243,010	1,005,465	62,016	31,586	1,342,077
	<b>Total</b>	<b>414,541</b>	<b>1,443,590</b>	<b>97,695</b>	<b>51,484</b>	<b>2,007,309</b>	<b>245,094</b>	<b>1,009,103</b>	<b>61,685</b>	<b>31,038</b>	<b>1,346,920</b>	<b>320,402</b>	<b>1,054,370</b>	<b>64,310</b>	<b>38,604</b>	<b>1,477,685</b>	<b>980,037</b>	<b>3,507,062</b>	<b>223,689</b>	<b>121,126</b>	<b>4,831,914</b>

Table 2: Votes by Race/Ethnicity and by Election Day, Early In-Person, and Mail Voting

		2012 Election					2010 Election					2008 Election (excludes Franklin)					All 3 Elections				
		Black	White	Other race	Hispanic	Total	Black	White	Other race	Hispanic	Total	Black	White	Other race	Hispanic	Total	Black	White	Other race	Hispanic	Total
All 5 Counties	Early In-Person	66,604	99,475	9,855	5,097	181,031	10,038	20,715	1,522	710	32,985	55,551	65,632	7,798	5,083	134,064	132,194	185,822	19,175	10,890	348,080
	Percent Election Day	59.9%	64.7%	62.9%	64.8%	63.6%	65.0%	65.3%	64.2%	64.6%	65.2%	61.6%	68.5%	64.4%	65.4%	66.7%	61.7%	66.0%	63.7%	64.9%	65.0%
	Percent EIP	16.1%	6.9%	10.1%	9.9%	9.0%	4.10%	2.05%	2.47%	2.29%	2.45%	17.3%	6.2%	12.1%	13.2%	9.1%	13.5%	5.3%	8.6%	9.0%	7.2%
	Percent Mail	24.0%	28.4%	27.0%	25.3%	27.3%	30.9%	32.6%	33.3%	33.1%	32.4%	21.1%	25.3%	23.5%	21.4%	24.2%	24.8%	28.7%	27.7%	26.1%	27.8%

Table 3: Percentage of Votes by Race/Ethnicity, Method, and County, Three Elections Combined (2008 Franklin excluded)

		Percent of Period/Method				Percent of Race/Ethnicity Votes				
		Black	White	Other race	Hispanic	Black	White	Other race	Hispanic	Total
Cuyahoga	Election Day	26.9%	65.2%	4.7%	3.2%	58.2%	56.2%	58.0%	62.0%	57.0%
	Sunday before	52.5%	40.1%	4.8%	2.6%	0.6%	0.2%	0.3%	0.3%	0.1%
	Golden Week	56.5%	36.4%	4.6%	2.5%	6.6%	1.7%	3.0%	2.6%	1.1%
	Other in-person early	54.9%	37.8%	4.7%	2.7%	4.9%	1.3%	2.3%	2.1%	0.8%
	Mail	20.9%	72.0%	4.5%	2.6%	29.7%	40.6%	36.2%	33.0%	12.9%
	Total		26.3%	66.1%	4.6%	2.9%	100.0%	100.0%	100.0%	100.0%
Franklin	Election Day	15.4%	75.3%	6.5%	2.8%	55.1%	59.5%	59.3%	59.1%	58.7%
	Sunday before	31.0%	57.3%	7.7%	4.0%	0.9%	0.4%	0.6%	0.7%	0.5%
	Golden Week	32.8%	56.4%	7.1%	3.8%	2.5%	1.0%	1.4%	1.7%	1.3%
	Other in-person early	26.9%	62.9%	7.0%	3.3%	11.1%	5.8%	7.4%	8.1%	6.8%
	Mail	15.3%	76.0%	6.2%	2.6%	30.4%	33.4%	31.4%	30.5%	32.7%
	Total		16.5%	74.3%	6.5%	2.8%	100.0%	100.0%	100.0%	100.0%
Hamilton	Election Day	20.9%	73.6%	3.8%	1.7%	72.6%	75.3%	74.7%	75.2%	74.7%
	Sunday before	47.6%	46.3%	4.2%	1.8%	0.2%	0.1%	0.1%	0.1%	0.1%
	Golden Week	43.8%	49.9%	4.4%	2.0%	1.7%	0.6%	1.0%	1.0%	0.8%
	Other in-person early	39.1%	54.7%	4.3%	1.9%	7.5%	3.1%	4.6%	4.6%	4.1%
	Mail	19.1%	75.6%	3.7%	1.6%	18.0%	21.0%	19.7%	19.2%	20.2%
	Total		21.5%	73.0%	3.8%	1.7%	100.0%	100.0%	100.0%	100.0%
Lucas	Election Day	13.4%	78.3%	4.4%	3.9%	62.8%	74.6%	67.1%	67.7%	72.1%
	Sunday before	26.1%	28.9%	22.6%	22.4%	3.3%	0.7%	9.3%	10.5%	1.9%
	Golden Week	36.8%	54.6%	4.7%	3.9%	2.4%	0.7%	1.0%	0.9%	1.0%
	Other in-person early	33.0%	58.5%	4.8%	3.7%	15.3%	5.5%	7.2%	6.4%	7.1%
	Mail	13.9%	78.6%	4.1%	3.4%	16.1%	18.4%	15.5%	14.5%	17.8%
	Total		15.3%	75.7%	4.7%	4.2%	100.0%	100.0%	100.0%	100.0%
Summit	Election Day	9.9%	85.7%	3.3%	1.1%	59.4%	74.1%	70.3%	70.4%	72.1%
	Sunday before	28.9%	65.2%	4.4%	1.4%	1.2%	0.4%	0.6%	0.6%	0.5%
	Golden Week	33.1%	61.5%	4.0%	1.4%	3.8%	1.0%	1.6%	1.7%	1.4%
	Other in-person early	26.6%	68.2%	3.9%	1.3%	19.1%	7.0%	9.9%	10.3%	8.6%
	Mail	11.3%	84.2%	3.5%	1.1%	16.4%	17.5%	17.6%	17.0%	17.4%
	Total		12.0%	83.5%	3.4%	1.1%	100.0%	100.0%	100.0%	100.0%
All 5 Counties	Election Day	19.3%	73.7%	4.5%	2.5%	61.7%	66.0%	63.7%	64.9%	65.0%
	Sunday before	34.1%	42.0%	12.8%	11.1%	0.8%	0.3%	1.4%	2.2%	0.5%
	Golden Week	48.3%	44.2%	4.9%	2.6%	4.2%	1.1%	1.9%	1.8%	1.8%
	Other in-person early	34.6%	57.8%	5.0%	2.5%	8.4%	3.9%	5.3%	5.0%	4.9%
	Mail	18.1%	74.9%	4.6%	2.4%	24.8%	28.7%	27.7%	26.1%	27.8%
	Total		20.3%	72.6%	4.6%	2.5%	100.0%	100.0%	100.0%	100.0%



Table 4: Percentage of Votes by Race and Election Day, Early In-Person, and Mail Voting, Three Elections Combined (2008 Franklin excluded)

		Percent of Period/Method				Percent of Race/Ethnicity Votes				
		Black	White	Other race	Hispanic	Black	White	Other race	Hispanic	Total
All 5 Counties	Percent Election Day	19.3%	73.7%	4.5%	2.5%	61.7%	66.0%	63.7%	64.9%	65.0%
	Percent EIP	38.0%	53.4%	5.5%	3.1%	13.5%	5.3%	8.6%	9.0%	7.2%
	Percent Mail	18.1%	74.9%	4.6%	2.4%	24.8%	28.7%	27.7%	26.1%	27.8%
	Total	20.3%	72.6%	4.6%	2.5%	100.0%	100.0%	100.0%	100.0%	100.0%

Table 5: Percentage of Votes by Race/Ethnicity and Method, Three Elections Combined (2008 Franklin excluded)

		Percent of Period/Method				Percent of Race/Ethnicity Votes				
		Black	White	Other race	Hispanic	Black	White	Other race	Hispanic	Total
All 5 Counties	Election Day	19.3%	73.7%	4.5%	2.5%	61.7%	66.0%	63.7%	64.9%	65.0%
	Sunday before	34.1%	42.0%	12.8%	11.1%	0.8%	0.3%	1.4%	2.2%	0.5%
	Golden Week	48.3%	44.2%	4.9%	2.6%	4.2%	1.1%	1.9%	1.8%	1.8%
	Other in-person early	34.6%	57.8%	5.0%	2.5%	8.4%	3.9%	5.3%	5.0%	4.9%
	Mail	18.1%	74.9%	4.6%	2.4%	24.8%	28.7%	27.7%	26.1%	27.8%
	Total	20.3%	72.6%	4.6%	2.5%	100.0%	100.0%	100.0%	100.0%	100.0%

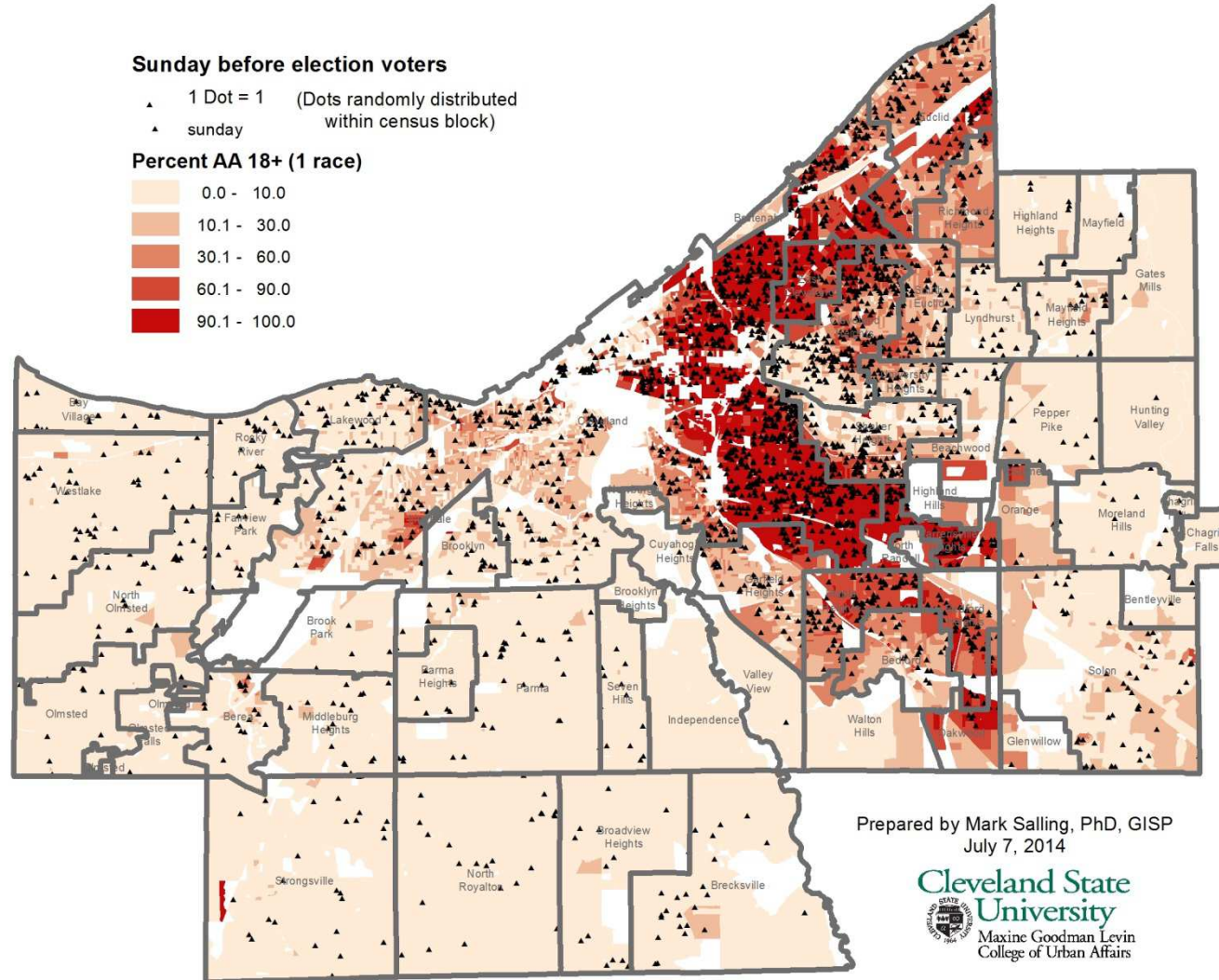
Table 6: Table 6: Test of Proportions (Is the percent of votes for that group, in that period, different than for White voters in that period?)

		2012 Election			2010 Election			2008 Election		
Compared to White Voting Proportion:		Black	Other race	Hispanic	Black	Other race	Hispanic	Black	Other race	Hispanic
Cuyahoga	Election Day	**	**	**	**	**	**			**
	Sunday before	**	**		**			**	**	**
	Golden Week	**	**	**	**			**	**	**
	Other in-person early	**	**	**	**	**	**	**	**	**
	Mail									
Franklin	Election Day					*	*	NA	NA	NA
	Sunday before	**	**	**	**			NA	NA	NA
	Golden Week	**	**	**	**			NA	NA	NA
	Other in-person early	**	**	**	**	**		NA	NA	NA
	Mail							NA	NA	NA
Hamilton	Election Day									
	Sunday before	**	**		No voting on Sunday before election			No voting on Sunday before election		
	Golden Week	**	**	**	**	**	*	**	**	**
	Other in-person early	**	**	**	**	**	**	**	**	**
	Mail									
Lucas	Election Day									
	Sunday before	**	**		**			**	**	*
	Golden Week	**	**	**	**			**	**	**
	Other in-person early	**	**	**	**	**		**	**	**
	Mail									
Summit	Election Day									
	Sunday before	**	**		**	*		**	**	*
	Golden Week	**	**	**	**			**	**	**
	Other in-person early	**	**	**	**	**	**	**	**	**
	Mail									
	Note:	** =	Statistically significant at the 0.01 level							
		* =	Statistically significant at the 0.05 level							
		NA =	Data not available for analysis							

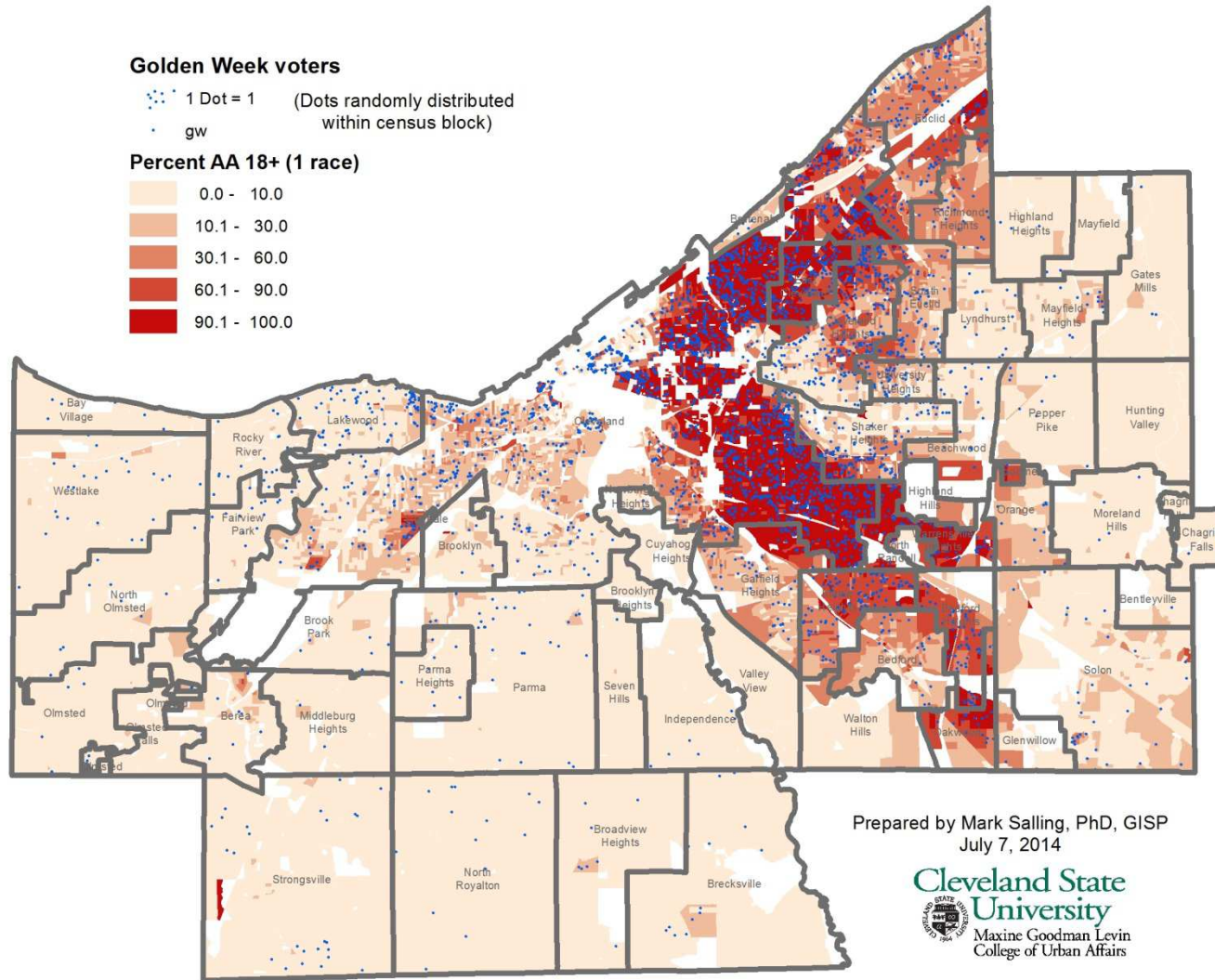
Table 7: Voter Participation Rates (based on voters used in the analysis and persons age 18 and older in the 2010 Census of Population)

	2012					2010					2008					Average				
	Black	White	Other race	Hispanic	Total	Black	White	Other race	Hispanic	Total	Black	White	Other race	Hispanic	Total	Black	White	Other race	Hispanic	Total
<b>Cuyahoga</b>	61.9%	60.9%	66.8%	47.4%	63.3%	36.3%	43.2%	41.9%	27.6%	42.3%	62.1%	62.9%	68.7%	49.5%	65.0%	53.4%	55.7%	59.2%	41.5%	56.9%
<b>Franklin</b>	53.9%	60.6%	64.6%	44.0%	61.3%	31.9%	42.1%	40.2%	26.3%	41.0%	NA	NA	NA	NA	NA	42.9%	51.3%	52.4%	35.1%	51.2%
<b>Hamilton</b>	62.3%	66.8%	79.3%	52.3%	67.3%	38.0%	47.6%	52.6%	33.7%	46.2%	62.6%	68.0%	80.5%	53.2%	68.3%	54.3%	60.8%	70.8%	46.4%	60.6%
<b>Lucas</b>	52.9%	57.0%	71.6%	47.9%	59.1%	30.5%	40.1%	45.6%	29.6%	40.0%	52.0%	55.3%	85.6%	59.4%	58.7%	45.1%	50.8%	67.6%	45.6%	52.6%
<b>Summit</b>	57.4%	60.8%	79.1%	53.3%	61.6%	32.9%	40.4%	49.0%	32.6%	40.1%	52.1%	56.8%	72.1%	49.2%	57.3%	47.5%	52.7%	66.7%	45.1%	53.0%
<b>Total</b>	58.9%	61.5%	69.1%	47.2%	62.9%	34.8%	43.0%	43.6%	28.5%	42.2%	45.5%	44.9%	45.5%	35.4%	46.3%	46.4%	49.8%	52.7%	37.1%	50.4%

Map 1: Geographic Distribution of Percent African American, Age 18 and Older and Votes Cast In Person on the Sunday before Election Day, 2012

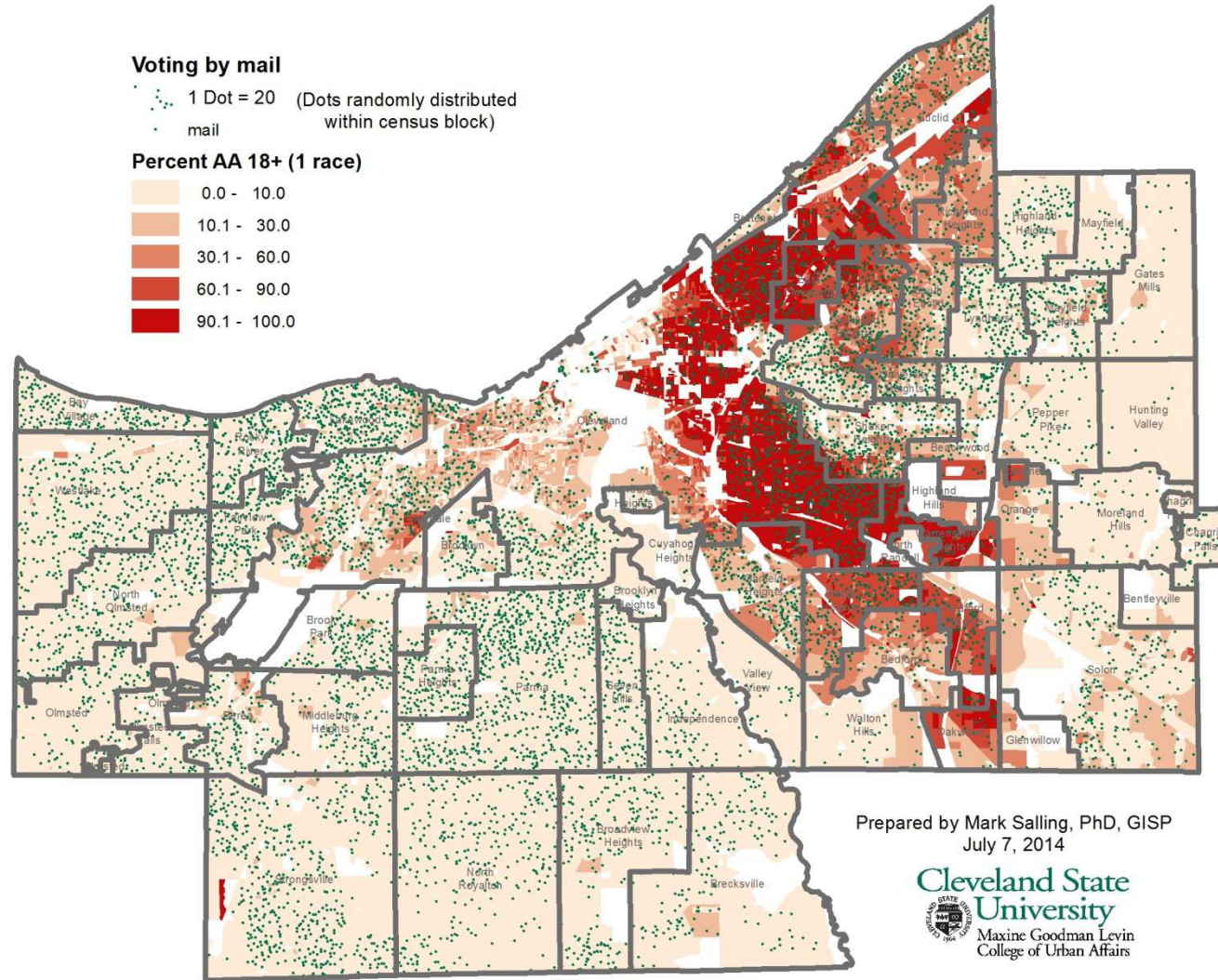


Map 2: Geographic Distribution of Percent African American, Age 18 and Older and Votes Cast In Person During Golden Week, 2012





Map 3: Geographic Distributions of Percent African American, Age 18 and Older and Votes Cast by Mail, 2012



# Exhibit 3

# Homeless Services in Cuyahoga County

## An Overview of Needs, Services, Trends and Funding

Advisory Board of the City of Cleveland/Cuyahoga County Office of Homeless Services

July, 2010

### Introduction

Cuyahoga County and its public and non-profit partners provide homeless individuals and families with a wide range of housing-focused services: from outreach to permanent housing. Recent economic changes make this mission a community priority.

**Priorities:** Cuyahoga County is refocusing its priorities from creating and sustaining shelter beds to **preventing homelessness and providing permanent housing**. This change has dramatic impact upon costs. Not only are shelters and transitional programs costly, but homeless persons use the most expensive elements of the health and human services system. Once homeless persons are housed, however, their housing costs and their use of expensive emergency services drop sharply.

**Funding:** The City of Cleveland/Cuyahoga County Office of Homeless Services (budget \$400,000) coordinates nearly \$31million in public funding (details p.3).

### Who are the Homeless?

**6,066 persons** were served by Cuyahoga County Homeless Service System in '09:

- 1,380 People in Families (471 adults, 909 children)
- 4,686 Singles

#### Women & Families

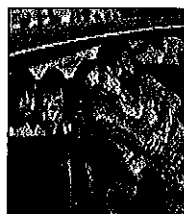
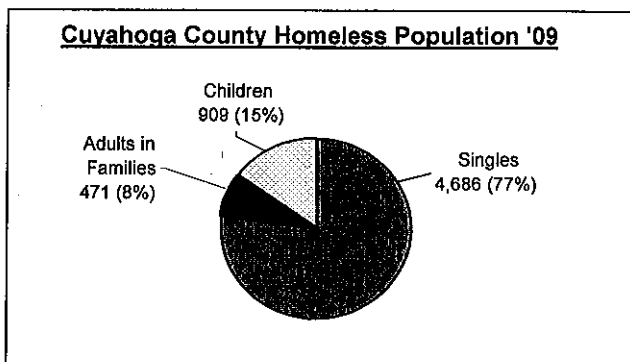
- 29% of single homeless people are women
- 22% of homeless persons are part of a family (9% of homeless households are families)
- Many other families are "doubled up" temporarily with family or friends, or move from place to place.

#### Ethnicity

- 14% White
- 72% African American
- 3% Hispanic
- 4% Several Ethnicities
- 7% Unknown

#### Special needs

- **Disability:** Over 50% of single homeless adults self-report as having a disability or special need: - Mental illness, - Alcohol or Drug Addiction, - Physical Disability, - HIV/AIDS, - Domestic Violence
- **Veterans:** Approximately 20% of homeless persons are veterans.
- **Chronically Homeless:** 25% of those who are homeless are long-term, or "Chronically Homeless". These individuals have been homeless for more than a year, or multiple times over several years.





## Cuyahoga County Homeless System of Services

The Office of Homeless Services (OHS) was created in 1992 by Cuyahoga County and the City of Cleveland. OHS coordinates the Cleveland/Cuyahoga County Continuum of Care, to develop a coordinated and comprehensive long-term approach to homelessness. Continuum providers plan, organize and deliver housing and services to either prevent homelessness or to assist people during homelessness and facilitate their move to stable housing.

The Office of Homeless Services has an Advisory Board made up community representatives, service providers, advocates and consumers that offers recommendations and support to OHS.

### Continuum of Care

Services range from street outreach to permanent housing, provided by an array of private organizations and faith communities. Key components include:

#### Homelessness Prevention

There are about 12,000 evictions each year in Cuyahoga County. The following services prevent homelessness or divert households away from shelter:

- Short-term rental and utility arrearages assistance to prevent imminent eviction
- Foreclosure prevention mortgage assistance
- Security deposits or first month's rent to help homeless families move to apartments
- Mediation programs to resolve landlord-tenant disputes and avoid evictions
- Legal services to assist indigent tenants in eviction proceedings
- Other innovative programs to prevent homelessness

#### Emergency Shelter

Facilities with temporary overnight sleeping accommodations and case management, with stays of less than 90 days. Shelters may be for the homeless in general or for specific populations of individuals and families.

#### Transitional Housing

Housing and supportive services provided for up to 24 months with the goal of preparing homeless individuals or families for independent living.

#### Permanent Supportive Housing

Long-term community based housing and supportive services for homeless persons with disabilities.

#### Public Housing

CMHA owns and manages property and administers rent subsidy programs to provide eligible low-income persons with safe, affordable housing. Other CMHA services include assistance with employment and other training needs and home ownership opportunities for qualified families.

#### Housing Choice Voucher Program

Housing Choice vouchers (formerly "Section 8 Program") from federal government may be used to subsidize rent in tenant selected private housing.

#### Permanent Housing

These programs assist eligible individuals and families to secure permanent homes through home ownership.

### Evolving Service Trends

Prominent changes in federal funding are driving change locally. New approaches draw upon *national best practices* aimed at reducing the occurrence and duration of homelessness. Cuyahoga County is working to create a system-wide approach to make these changes, lower the shelter census, and ultimately end homelessness in our community.

#### Housing First

- The Housing First model rapidly provides permanent housing and supportive services to avoid shelter entry or dramatically reduce shelter stays for homeless singles and families.
- The model looks primarily to community resources, rather than the homeless service system, to address the non-housing needs of homeless individuals.

#### HPRP: Homeless Prevention & Rapid Re-Housing

- Federal Stimulus funding has allowed Cuyahoga County to organize and fund an extensive Homeless Prevention and Rapid Re-Housing Program. The HPRP program prevents persons from becoming homeless, and helps those in shelters to quickly access permanent housing.

**“Upstream” Investment**

- Upstream investment in prevention saves money and helps reduce suffering. Those at risk of homelessness are frequent users of public systems of care, including mental health, public health, welfare, veterans, criminal justice, and child protective services. Homeless service providers become responsible for these individuals by default, when other systems shift the responsibility to serve them to these underfunded programs. (eg., releasing individuals from long-term incarceration with no housing plan or funds.)

**HUD HEARTH Act**

- This new Act represents the **most significant change in federal homeless policy in 20 years**. New tools and incentives for systems-change emphasize prevention, rapid re-housing, and permanent supportive housing. Future federal funding depends on individual provider and system-wide success. To maximize funding, Cuyahoga County must forge collaborative planning for a system-wide approach to leverage resources and cooperation among agencies, government, and the community.

**Annual Public Funding Streams\***

- The City of Cleveland/Cuyahoga Office of Homeless Services (budget \$400,000) coordinates almost \$31 million in public funding for homeless services.

Cleveland	Cuyahoga County	Metropolitan State	Metropolitan State	Permanent Programs	Other
\$1.5 million	\$2 million	\$4.5 million	\$9.5 million	\$15 million	\$12.5 million
<u>Federal:</u> HUD McKinney Vento funds, Substance Abuse & Mental Health Services Administration (SAMSHA), ADAMHS Board (also funded in part by state and county)  <u>County:</u> Levy	<u>Federal:</u> Homelessness Prevention and Rapid Rehousing (HPRP); Temporary Aid for Needy Families (TANF)	<u>Federal:</u> Emergency Shelter Grant to City of Cleveland; FEMA; McKinney Vento funding  <u>State:</u> Ohio Department of Development/ Housing Trust Fund  <u>County:</u> Levy (funds 3 shelters)	<u>Federal:</u> McKinney Vento funds  <u>State:</u> Ohio Department of Development/ Housing Trust Fund  <u>County:</u> Levy (funds 1 transitional housing program)	<u>Federal:</u> McKinney Vento, Substance Abuse & Mental Health Services Admin. (SAMSHA), Medicaid, Home Loan Bank, tax credits  <u>State:</u> Ohio Department of Development, Housing Trust Fund  <u>County:</u> Department of Development  <u>City:</u> CDBG City Home Funding	<u>Federal:</u> Medicaid health care for the homeless; Veterans services; HOPWA (Housing Opportunities for People with Aids)
	1,500 households	1,122 households (at a time)	868 households (at a time)	2,652 households	

\*Totals exclude veteran service funding

- Federal stimulus funding of \$14.5 million received for 2009-2012 to fund Homeless Prevention and Rapid Rehousing Project (HPRP).
- County levy funds 3 large emergency shelters and 1 transitional shelter

**Additional Resources**

- Cleveland/Cuyahoga Office of Homeless Services (216) 420-6844 [www.ohs.cuyahogacounty.us](http://www.ohs.cuyahogacounty.us)
- Coalition on Housing & Homelessness in Ohio (COHHIO) [www.cohhio.org](http://www.cohhio.org)
- National Alliance to End Homelessness [www.endhomelessness.org](http://www.endhomelessness.org)

# Exhibit 4



CUYAHOGA COUNTY  
BOARD OF ELECTIONS

Jeff Hastings  
Chairman

Inajo Davis Chappell

Robert S. Frost

Eben O. (Sandy) McNair, IV

Jane M. Platten  
Director

Pat McDonald  
Deputy Director

## MEDIA ADVISORY

**FOR IMMEDIATE RELEASE**

Friday, October 10, 2008

**Contact: Mike West**

**Phone: (216) 443-6640**

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### CUYAHOGA COUNTY BOARD OF ELECTIONS IS OPEN FOR VOTERS THIS WEEKEND

### VOTERS MAY TAKE ADVANTAGE OF SPECIAL VOTING HOURS UNTIL THE PRESIDENTIAL ELECTION

**(Cleveland)**– All registered voters may cast their ballots this weekend and every weekend until the November 4, 2008 Presidential General Election. The board is also open until 7 p.m. weeknights.

Extended hours for in-house voting:

- Saturday 9:00 a.m. to 1:00 p.m.
- Sunday 1:00 p.m. to 5:00 p.m.
- Monday - Friday 8:30 a.m. to 7:00 p.m.

This service is only available at the Cuyahoga County Board of Elections, 2925 Euclid Avenue, Cleveland, Ohio 44115.

Voters can avoid long lines on Election Day by voting at the Cuyahoga County Board of Elections, or sending for a Vote by Mail ballot.

Vote by Mail ballot applications may be obtained in person at the Board of Elections located at 2925 Euclid Avenue, Cleveland, at any branch of the public library system or through the Board's website:

[www.boe.cuyahogacounty.us](http://www.boe.cuyahogacounty.us).

Voters may call the Candidate/Voter Services Department at (216) 443-3298 with voting questions and for Vote by Mail ballot applications.

# # #



# Exhibit 5





**CUYAHOGA COUNTY  
BOARD OF ELECTIONS**

Jeff Hastings  
Chairman

Inajo Davis Chappell  
Member

Robert S. Frost  
Member

Eben O. (Sandy) McNair, IV  
Member

Jane M. Platten  
Director

Pat McDonald  
Deputy Director

## **November 2, 2010 General Election Dates and Deadlines for Voters**

### **Vote by Mail:**

- Voters are mailed ballot applications prior to each election. Voters who do not receive an application may obtain ballot applications from the Cuyahoga County Board of Elections website, [www.boe.cuyahogacounty.us](http://www.boe.cuyahogacounty.us), their local public library, or by calling the Voter Information Hotline at 216-443-3298.

### **September 28, 2010 - Vote by Mail opens:**

- After September 28, 2010 ballots will be mailed to voters who have requested a ballot.
- Beginning September 28, 2010, voters may vote early at the Cuyahoga County Board of Elections, 2925 Euclid Avenue, Cleveland, Ohio 44115, between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday.

### **October 2, 2010 - Extended hours for early voting begin:**

#### **Saturday**

- October 2nd 10 a.m. to 5 p.m.
- October 30th 10 a.m. to 5 p.m.

#### **Sunday**

- October 3rd 12 p.m. to 5 p.m.
- October 31st 12 p.m. to 5 p.m.

#### **Monday**

- November 1st the Board will remain open until 7 p.m.

### **October 4, 2010 - Close of registration:**

- Voter registration and change of address deadline for the November 2, 2010 General Election is at 9:00 p.m. Voters who have not registered, have moved, or have changed their name and not yet updated their registration, must do so by this date.

### **October 30, 2010 - Vote by Mail ballot application request deadline:**

- The Cuyahoga County Board of Elections must receive ballot application requests by noon on October 30, 2010 for voters to be eligible to Vote by Mail.

### **November 1, 2010 - Ballots mailed in the U.S. must be postmarked on or before this date.**

- Last day to vote early at the Board of Elections.

### **November 2, 2010 - Election Day - Polls open at 6:30 a.m. and close at 7:30 p.m.**

- Bring proper identification when voting: A current and valid photo identification card, driver's license or state issued identification; military identification, a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and current address.
- Voters need to know their ward, precinct, and voting location. Voters may check at: [www.boe.cuyahogacounty.us](http://www.boe.cuyahogacounty.us) or call the Voter Information Hotline at 216-443-3298.
- Voted ballots returned in person must be received at the Board of Elections by 7:30 p.m.
- Voted ballots **CAN NOT** be dropped off at a voting location.

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>RALPH VANZANT, et al.</b>	:	
	:	
<b>Plaintiff</b>	:	<b>Case No. 1:10-CV-00596</b>
	:	
<b>vs.</b>	:	<b>Judge Susan J. Dlott</b>
	:	
<b>JENNIFER BRUNNER</b>	:	
<b>OHIO SECRETARY OF STATE</b>	:	
	:	
<b>Defendant.</b>	:	

**DEFENDANT OHIO SECRETARY OF STATE JENNIFER BRUNNER’S  
MEMORANDUM IN OPPOSITION TO PLAINTIFFS’ MOTION FOR A  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

Ohio law permits any qualified elector to vote by absentee ballot (a process also referred to as early voting). The purpose of the law is to expand participation in voting. Consistent with that goal, some counties have taken the additional step of paying the postage for electors to mail their ballot application forms, their ballots, or both, to the county board of elections. Rather than applaud this innovation, Plaintiffs are seeking an injunction, the effect of which would be to suppress voting, impose dramatic costs on cash-strapped counties, and potentially create chaos in the election.

The Equal Protection Clause of the Fourteenth Amendment does not, indeed, *cannot*, compel absolute uniformity of treatment in every facet of life. “[U]navoidable inequalities in treatment, even if intended in the sense of being known to follow ineluctably from a deliberate policy, do not violate equal protection.” *Griffin v. Roupas*, 385 F.3d 1128, 1132 (7th Cir. 2004) (quoting *Apache Bend Apartments, Ltd. v. U.S. Through I.R.S.*, 964 F.2d 1556, 1569 (5th Cir.

1992)). The decision by some county boards of elections to pay the postage for voters to submit absentee ballots and/or absentee ballot applications in no way disenfranchises voters, nor does it implicate any constitutional protections. It is simply one of life's "unavoidable inequalities in treatment." The State can no more ensure absolute uniformity of all voting conditions than it can ensure comparable weather in all precincts. Plaintiffs can prevail on neither an Equal Protection nor a Due Process claim, and therefore the request for injunctive relief should be denied.

**II. STATEMENT OF FACTS**

Ohio law permits any qualified elector to vote by "absent voter's" ballot. R.C. 3509.02(A). The process for obtaining an absent voter's ballot works as follows: a person who wishes to vote an absent voter's ballot must make a written request to the county director of elections. R.C. 3509.03. Upon receipt of such a request, the director, after confirming that the requesting party is in fact a qualified elector, must deliver the ballot, by mail or hand delivery, to the elector. R.C. 3509.04. The elector marks the ballot, and then returns it by mail or hand delivery, to the board of elections within the time allowed by law. R.C. 3509.05.

In the interest of making voting easier, some counties are taking affirmative steps to promote absentee voting in the upcoming November 2, 2010 election:

\* On August 24, 2010, the Franklin County Board of Elections mailed applications for absentee ballots to all 637,980 registered electors in the county. [Plaintiffs' Exhibit A, Declaration of Matthew Damschroder, ¶ 3].

\* The Cuyahoga County Board of Elections intends to mail applications for absentee ballots to all qualified electors in the county. Along with the applications, Cuyahoga will include a postage-paid envelope for the elector to return the application to the Board of Elections. [Plaintiffs' Exhibit B, Declaration of Robert S. Frost, ¶¶ 3-4].



\* The Madison County Board of Elections intends to mail applications for absentee ballots to all qualified electors in the county. Madison County intends to pre-pay the postage for the elector to return the application to the Board of Elections. [Plaintiffs' Exhibit D, Declaration of Tim Ward, ¶¶ 3-4].

\* The Hamilton County Board of Elections intends to mail applications for absentee ballots to all qualified electors in the county. Unlike Cuyahoga and Madison Counties, Hamilton County will not pay the postage for the elector to return the absent voter application. [Plaintiffs' Exhibit C, Declaration of Alex Triantafilou, ¶¶ 3-4].

\* Montgomery County intends to mail applications for absentee ballots to all qualified electors in the county. [Plaintiffs' Exhibit E, Declaration of Greg Gantt, ¶ 3].

\* At least three counties are not proactively mailing absent voter ballot application forms to all qualified electors or paying the postage costs for electors to submit applications: Butler County; Highland County; and Lawrence County. [Plaintiffs' Exhibit F, Declaration of Tom Ellis; Exhibit G, Declaration of Kay Ayres; and Exhibit H, Declaration of Catherine Overbeck].

The counties also differ as to whether they will pay the postage for the elector to mail in the absent voter's ballot itself: Franklin and Cuyahoga Counties are sending postage pre-paid envelopes along with each ballot. [Exhibits A, ¶ 4 and Exhibits B, ¶ 5]. Hamilton, Montgomery, Butler, and Highland are requiring electors to pay their own postage to mail in absentee ballots. [Exhibits C, E, F, and G]. And splitting the difference, Lawrence County will not pre-pay the postage, but if a ballot arrives with insufficient postage, the Lawrence County Board of Elections will pay the deficiency. [Exhibit H, ¶ 5].

The question for this Court is whether these different methods of facilitating early voting

constitute an Equal Protection or Due Process violation, and if so, what remedy should the Court fashion.

### III. LAW AND ARGUMENT

Before issuing a motion for preliminary injunction, the Court must examine four factors:

- (1) Whether the movant has a “strong” likelihood of success on the merits;
- (2) Whether the movant would otherwise suffer irreparable injury;
- (3) Whether a preliminary injunction would cause harm to others; and
- (4) Whether the public interest would be served by the issuance of a preliminary injunction.

*McPherson v. Michigan High Sch. Athletic Ass’n*, 119 F.3d 453, 459 (6th Cir. 1997) (en banc); *Cabot Corp. v. King*, 790 F. Supp 153, 155 (N.D. Ohio 1992). The standard for granting a preliminary injunction is more “stringent” than that required for summary judgment. *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000). This is because “the preliminary injunction is an ‘extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied ‘only in [the] limited circumstances’ which clearly demand it.” *Id.* (quoting *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 811 (4th Cir. 1991)) (internal quotations omitted). While the failure to establish any single one of the four elements is enough to prevent such an extraordinary remedy from issuing, Plaintiffs have failed to meet any of the four prongs in the case at bar.

#### A. Plaintiffs Cannot Demonstrate a Strong Likelihood of Success on the Merits.

##### 1. The Proper Standard of Review Is “Rational Basis”

As a preliminary matter, in order to determine the likelihood of Plaintiffs succeeding on the merits, the Court must articulate the standard of review it will apply to the state actions under challenge. Rather than opine on the question, Plaintiffs attempt to cover all their bases by

arguing the early voting procedures serve no compelling state interest, lack any substantial relationship to an important state interest, and also are not rationally related to any legitimate state interest. (R. 3, Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction. 14).

State actions which expand the franchise, rather than infringe on voting rights, are presumed to be constitutional, and will be upheld so long as the distinctions they draw bear some rational relationship to a legitimate state end. *McDonald v. Board of Election Comm'rs*, 394 U.S. 802, 807-09 (1969). *Bush v. Gore*, 531 U.S. 98 (2000), the case upon which Plaintiffs' chiefly rely, did not change this rule; in fact, the Supreme Court in *Bush* did not discuss any level of applicable scrutiny. *Paralyzed Veterans of Am. v. McPherson*, 2008 U.S. Dist. LEXIS 69542 (Sept. 9, 2008 N.D. Cal.) at \*53 (quoting *Common Cause Southern Christian Leadership Conference of Greater Los Angeles v. Jones*, 213 F. Supp.2d 1106, 1109 (C.D. Cal. 2001)). However, subsequent cases (to the extent they are willing to apply *Bush v. Gore* at all<sup>1</sup>) have held that *Bush* applied the lowest level of scrutiny to the 14<sup>th</sup> Amendment claims presented in that case. *Paralyzed Veterans of Am. v. McPherson*, supra; *Gustafson v. Illinois Board of Elections*, Case No. 06-C-1159, 2007 U.S. Dist. LEXIS 75209 (Sept. 30, 2007, N.D. Ill.).

## **2. Plaintiffs' Cannot Prevail On Their Equal Protection Claim**

The claim in this case is not unique; an identical Equal Protection challenge to the manner of implementing early voting was rejected in *Gustafson v. Illinois Board of Elections*, 2007 U.S. Dist. LEXIS 75209 (Sept. 30, 2007, N.D. Ill.). The District Court provided a comprehensive analysis of the pertinent law, which makes the opinion a useful starting point.

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<sup>1</sup> Many courts take seriously the admonition in *Bush* that the decision has no application beyond its own unique facts and circumstances. See, e.g., *Wyatt v. Dretke*, 165 Fed.Appx. 335, 340 (5th Cir. 2006)(per curiam) (unpublished) ("on its face, the *Bush v. Gore* holding is limited to the facts at issue there – the 2000 presidential election") cert. denied sub nom. 548 U.S. 932 (2006); *Walker v. Exeter Region Co-op Sch. Dist.*, 157 F.Supp.2d 156, 159 n.6 (D.N.H. 2001), aff'd, 284 F.3d 42 (1st Cir. 2002).

*Gustafson* involved a challenge to the manner in which various county election boards were implementing Illinois' early voting law. Some counties offered early voting exclusively at one location, while other counties held polling at multiple sites. Two counties (Kane County and Rock Island County) operated mobile trolleys or "votemobiles" that moved to different sites around the county. One county (and the City of Peoria) mailed early voting notices to voters, while the other counties relied upon newspapers, websites, and signs at polling places to alert voters to the availability of early voting. The plaintiffs filed suit against the Illinois State Board of Elections, alleging that as a result of the wide variations in early voting availability, some voters had greater access to the polls than others (the same argument posited by Plaintiffs herein). By tolerating such differences, the *Gustafson* plaintiffs argued, the State was denying equal protection to its citizens.

As with Ohio's early voting law, the objection to Illinois' law was not what the statutory language commanded, but rather what it lacked, namely, any terms restricting the counties from implementing early voting in the ways they saw fit. *Gustafson* is best understood as a two-step inquiry: first, is the statute as written constitutional and second, if so, was it constitutionally proper for state officials to take no action once they saw divergent implementation schemes?

The District Court easily answered the constitutional challenge to the statute as written. The plaintiffs maintained the Illinois law was unconstitutional on its face because it "provide[d] no protections to ensure that the early voting right [would] be apportioned between different districts so as to ensure equal protection." But that formulation misstated the test. The statute was neutral on its face; its obvious purpose was to expand the availability of voting, and nothing in the statute itself manifested an intention to discriminate based on race, class, or geography. Likewise, however Plaintiffs feel about the manner in which the Ohio County Boards are

implementing early voting, they must concede that R.C. 3509.01 *et seq.* is neutral on its face.<sup>2</sup>

The remaining question, therefore, was whether the State Board of Elections was justified in allowing this situation to persist. The key to the District Court's analysis was the understanding that the law in question was designed to expand, not limit, the franchise.

Notably, the law in this instance does not remove the right to vote from any individual, and indeed expands the right for all Illinois voters. Plaintiffs argue that it expands the right for some more than others; however, this is an effect rather than a purpose of the law, and in any event goes toward questions of ease of voting rather than outright denial of any fundamental right.

*Id.* at \* 30. The District Court sought guidance from the Supreme Court's decision in *McDonald v. Bd. of Election Commissioners of Chicago*, which affirmed the provision of absentee ballots to some groups but not others. The Supreme Court in *McDonald* noted that:

It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots. Despite appellants' claim to the contrary, the absentee statutes, which are designed to make voting more available to some groups who cannot easily get to the polls, do not themselves deny appellants the exercise of the franchise; nor, indeed, does Illinois' Election Code so operate as a whole, for the State's statutes specifically disenfranchise only those who have been convicted and sentenced, and not those similarly situated to appellants.

394 U.S. 802, 807-8 (1969). Therefore, applying the Supreme Court's *Burdick* test,<sup>3</sup> the District Court found that the state's inaction imposed only a minimal burden on the plaintiffs' rights, and was thus permissible so long as it was "rationally related to a legitimate state interest." *Id.* (quoting *Hendrix v. Evans*, 972 F.2d 351 (7th Cir. 1992)). Stated differently, the burden rests with the plaintiff to show that "no set of circumstances exist under which the Act would be valid." *Id.* at \* 32, (quoting *U.S. v. Salerno*, 481 U.S. 739, 745 (1987)).

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<sup>2</sup> *Gustafson* took the analysis a step farther: Given the neutrality of the statute, an Equal Protection claim could only prevail if the plaintiffs could show a disparate effect that was "so clearly foreseeable" that one could infer intent. The Court found that the plaintiffs were unable to present evidence of any discriminatory impact. In this case, the plaintiffs have not even alleged that the statute itself is unconstitutional, so the Court need not address this issue.

<sup>3</sup> *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992).

The State Board's decision to take no action passed muster for many reasons, including but not limited to the fact that the State Board could reasonably have assumed from the language of the statute that the Illinois legislature had made a conscious choice to allow each voting district to tailor its approach to early voting depending on its needs and abilities. *Id.* at \* 33.

The logic of *Gustafson* translates easily to this case. Ohio's early voting statute is plainly intended to make voting more accessible, and does not (directly or indirectly) inhibit any qualified elector from casting a ballot. The actions taken by counties such as Madison and Cuyahoga, which provide pre-paid envelopes to return applications, ballots, or both, promote the legitimate goal of voter participation by making the process easier and cheaper for voters.

It is eminently reasonable for the Secretary to allow the counties to handle the distribution of absentee ballots differently, because the needs and abilities of the counties differ. Large, urban counties have a compelling interest in reducing congestion and long lines at polling places on November 2, and they have the financial resources to pay the postage for voters to mail in their ballots. (Increased use of early ballots also minimizes wear and tear on expensive voting machines and tends to result in fewer provisional ballots than in-person voting). Smaller counties, on the other hand, may either lack the money to pay voter postage, or simply deem it an unwise expenditure because long lines have not historically been a problem in those counties. The Equal Protection Clause does not mandate that the solution to one county's problems be applied in all counties.

Plaintiffs' Equal Protection claim is based primarily, if not exclusively, on the United States Supreme Court's ruling in *Bush v. Gore*, 531 U.S. 98 (2000). As the Court will certainly recall, the question in *Bush* was whether manual recounts of votes cast in the 2000 election in some but not all Florida counties, applying different standards to determine voter intent, violated

equal protection. What concerned the majority in that case was the absence of any standards governing what constitutes a “vote.” This case does not concern the substantive question of what constitutes a vote, but rather deals with the procedures employed by the county for conducting the voting, and in that arena, states are given great leeway to enact reasonable, even-handed legislation to ensure that elections are carried out in a fair and orderly manner. *Storer v. Brown*, 415 U.S. 724, 730 (1974); *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

Plaintiffs’ reliance on the Ohio Supreme Courts decision in *State ex rel. Skaggs v. Brunner*, 120 Ohio St.3d 506 (2008) is misplaced for exactly the same reason. The problem identified by the Supreme Court in *Skaggs* was the same as in *Bush v. Gore*: counties applying different standards to determine what constitutes a valid vote. The specific issue in *Skaggs* was that some counties were counting provisional ballots as valid votes even though they were lacking certain signatures on the ballot envelope, whereas other counties would not count the provisional ballot unless all the signatures were in order. The facts were different from *Bush*, but the motivating principle was the same.

Finally, Plaintiffs point to the District Court opinion in *League of Women Voters of Ohio v. Blackwell*, 432 F.Supp.2d 723 (N.D. Ohio 2005), even though that decision was reversed in part by the Sixth Circuit. 548 F.3d 463 (6th Cir. 2008). In that case, the League alleged that Ohio had systemically misallocated voting machines, causing some voters as long as twelve hours to vote, as a result of which, many people simply gave up and went home. The League also alleged that poorly-trained poll workers gave erroneous instructions, sending voters to the wrong precincts and causing provisional ballots to be rejected. And the League alleged that disabled voters were turned away from the polls, and voting machines malfunctioned by registering votes for a candidate other than the one selected. These allegations share a common

element: disenfranchisement. State action that systemically causes votes not to be counted, or puts an obstacle between some voters and a place in the polling booth, creates a potential Equal Protection problem. But as noted above, Ohio's early voting statute does not disenfranchise anyone. Making it easier for some people to cast a vote is not the same thing as making it harder for some people to vote. (*League* is also distinguishable because the only issue was whether the plaintiffs had stated a claim that could survive a Rule 12(B) motion to dismiss; here, the question is not whether the Complaint states the elements of a claim, but whether that claim has a substantial likelihood of success on the merits, a completely different inquiry).

Based on the clear law, as set forth above, Plaintiffs cannot show any likelihood of success on their Equal Protection claim, and so the motion for injunctive relief should be denied.

### **3. Plaintiffs Cannot Prevail On Their Due Process Claim**

Alternatively, Plaintiffs seek relief under the Due Process Clause of the 14th Amendment. It is certainly true that the Due Process Clause may be implicated "in the exceptional case where a state's voting system is fundamentally unfair." *League of Women Voters*, 548 F.3d at 478 (citing *Griffin v. Burns*, 570 F.2d 1065, 1078-79 (1st Cir. 1971)). For example, due process may be implicated if a state employs non-uniform rules, standards and procedures that result in significant disenfranchisement and vote dilution, or if the state significantly departs from previous state election practices. *Warf v. Bd. of Elections*, Case No. 09-5265, 2010 U.S. App. LEXIS 18231, 2010 FED App. 0279P (Sept. 1, 2010 6th Cir.) at \* 12-13 (citations omitted). But this is hardly that exceptional case.

Plaintiffs contend that Ohio's early voting "violates due process because it leads to a system of fundamental unfairness." [R. 3, Plaintiffs' Memorandum, p. 14]. This statement conflates two separate Due Process allegations. "A claim that the election process is



fundamentally unfair disenfranchises **all** voters, not just a segment of the population differentiated by age, or race, or some other characteristic.” *McClafferty v. Portage County Bd. of Elections*, 661 F. Supp. 2d 826, 838, n.11 (N.D. Ohio. 2009) (emphasis added). For example, in *Caruso v. Yamhill County*, 422 F.3d 848 (9th Cir. 2005), cert. denied, *Caruso v. Oregon*, 547 U.S. 1071 (2006) (a case relied upon by Plaintiffs), the appellate court held that there could be a substantive due process violation if the ballot language was so misleading as to deceive the voters in general about the subject of the measure under consideration.<sup>4</sup>

Perhaps the quintessential example of fundamental unfairness and widespread disenfranchisement is *Ury v. Santee*, 303 F.Supp. 119 (N.D. Ill. 1969). The First Circuit Court of Appeals summarized the facts of *Ury* as follows:

Two months before the scheduled town election, the incumbent trustees quietly proposed and passed an ordinance reducing the number of voting precincts from 32 to 6. When election day arrived, these precincts turned out to be entirely inadequate to the number of electors wishing to vote. Traffic jams ensued, people waited hours to reach the polls, some were forced to vote outside of voting booths, people in populous precincts could not vote, and other problems arose. Though the precise number of voters turned away was incapable of calculation, the federal court invalidated the entire confused election, holding that due process and equal protection deprivations had been made out by the plaintiff class of ‘all registered voters in Wilmette’ in that ‘hundreds of voters were effectively deprived of their right to vote’” and that voters in populous districts were discriminated against, with the effect either of changing the election results or rendering the results doubtful.

*Griffin v. Burns*, 570 F.2d at 1077-78. Obviously, nothing alleged in this case is remotely comparable to the circumstances in *Ury*. Simply stated, the “fundamental unfairness” line of substantive due process cases is irrelevant because the Plaintiffs have not alleged general disenfranchisement of all voters.

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<sup>4</sup> Ironically, the Ninth Circuit in *Caruso* rejected the substantive due process claim, finding that the ballot language would not have “infected the entire election with patent and fundamental unfairness.” 422 F.3d at 863-64 (quoting *Burton v. Georgia*, 953 F.2d 1266, 1271 (11th Cir. 1992)).

Rather, Plaintiffs are attempting to articulate a second form of due process claim: voter dilution. The concept of vote dilution as a constitutional injury has its roots in reapportionment cases where the Supreme Court held that malapportionment caused some votes to weigh less than other votes. *Dudum v. City & County of San Francisco*, Case No. C-10-00504, 2010 U.S. Dist. LEXIS 47020, at \* 15-16 (April 16, 2010, N.D. Ca.) (citing *Reynolds v. Sims*, 377 U.S. 533 (1964)). However, the principle of “one man, one vote” which underlies the “vote dilution” jurisprudence, extends beyond apportionment cases, because “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 v. Gore*, 531 U.S. 98, 104-05 (2000).

The reason *Bush v. Gore* presented a possible vote dilution problem is that Florida counties were applying inconsistent standards to determine *what actually constituted a valid vote*. The Florida Supreme Court had held that a “legal vote” was one in which there was a “clear indication of the intent of the voter,” *Gore v. Harris*, 772 So.2d 1243, 1261-62 (Fla. 2000), but never explained what would or would not constitute “a clear indication” of the voter’s intent. Lacking a uniform state standard, each county applied its own rules. More lenient counties certified more votes than did counties that applied more exacting standards, such that the more lenient counties exerted greater voting strength than their population would otherwise have suggested.<sup>5</sup> The Supreme Court held Florida had created a system of “uneven treatment” that resulted in the debasement of votes statewide.

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<sup>5</sup> Broward County used more lenient guidelines, and as a result, certified as valid votes three times the number of “undervotes” as were counted in Palm Beach County, causing Broward County voters to have greater voting strength than Palm Beach County voters. The election boards in Broward, Miami-Dade, and Palm Beach counties all included so-called “overvotes” in their tallies, which gave those counties greater voting strength than the other 64 Florida counties, which disallowed approximately 110,000 overvotes. And Miami-Dade arguably increased its strength relative to other counties by including in its certified total votes authenticated during a partial recount, which the other counties did not do.

*Bush v. Gore* is plainly inapposite: no one is disputing the validity of the absentee ballots in this case, or proposing inconsistent standards for certifying absentee ballots as valid votes. Nor is this a case in which some voters get preferential access to the ballot due to racial discrimination in violation of the Voting Rights Act. Plaintiffs have identified no authority for the proposition that counties unlawfully increase their electoral power and dilute votes in other counties by improving the efficiency or ease of voting. Therefore, Plaintiffs have no likelihood of success on the merits of their Due Process claim, so their motion for injunctive relief should be denied.

**B. Plaintiffs Failed To Establish That They Will Suffer Any Injury At All, Let Alone Irreparable Injury.**

The allegation of irreparable harm is purely speculative. Plaintiffs do not explain how, let alone muster proof that the actions they complain of “threaten of impair [their] constitutional right to vote.” [R. 3, Plaintiffs’ Memorandum, p. 16]. Plaintiffs are not being blocked from voting or denied the ballot. As for a claim of vote dilution, a showing of irreparable harm would require evidence that the *total* vote in Franklin or Madison Counties is in excess of what would have occurred in the absence of pre-paid postage, such that the vote in those counties disproportionately dwarves the vote in Lawrence or Highland County. It is not sufficient, by the way, simply to show that the number of absentee votes increases as a result of pre-paid postage, since an unknown number of those electors would still have voted absentee, or in person on election day, had the board of elections not pre-paid their postage. A claim of voter dilution should also be able to present some evidence of how many voters were unable to vote as a result of the fact that they did not receive applications in the mail, with return postage paid. Plaintiffs need to submit evidence, not simply assume a constitutional deprivation.

**C. The Issuance Of Injunctive Relief Will Cause Harm To Third Parties And Would Disserve The Public Interest.**

The remedy Plaintiffs' seek would cause enormous hardship throughout the state. Plaintiffs' underlying theory is that all 88 counties need to implement early voting in exactly the same way. Athens County is not going to mail applications to all its qualified electors; Franklin County has already done so. How can the Court equalize the treatment of these two populations?

One possibility would be to rule that all counties must abide by what Athens County has decided: no mailing out applications. That means Franklin County would have to void the applications it has already sent out *as well as the signed applications that have already been returned to the board of elections*. Down that road lies confusion – eligible voters awaiting absentee ballots that never arrive – and voter suppression. And how would the Franklin County Board of Elections distinguish between an application it sent out in its mass mailing – which would be void – and an application that a voter picked up at the board of elections, filled out at home, and returned by mail? An order commanding Franklin County to back up and handle absentee ballots the same way as Athens or Highland County would create chaos and confusion and be impossible to obey.

Equally harmful would be an order that all counties meet the standards set by Franklin County. For example, it would cost \$20,915.40 to send an absent voter application to every elector in Belmont County. [Defendant's Exhibit 1, Affidavit of William F. Shubat, ¶ 4]. Belmont County does not have adequate financial resources to mail applications to all electors. [*Id.*, ¶ 3]. Given its modest financial resources, the Belmont County Board of Elections has to choose between sending out applications or ensuring sufficient staffing for early voting and Election Day poll operations. [*Id.*, ¶ 5]. The same is true in Brown County, where the cost of mailing applications to all electors would be nearly \$13,000. [Defendant's Exhibit 2, Affidavit

of Kathy Jones, ¶¶ 3-5]. Statewide, the total cost to mail an application for absent voter ballot to every qualified elector in the 88 counties would be \$3,525,965.52. [Defendant's Exhibit 3, Affidavit of Veronica Sherman, ¶ 4]. The counties simply do not have money to make these mailings, and as the affidavits from Brown and Butler Counties make clear, if ordered to do so, elections officials would be forced to re-allocate money needed to conduct actual voting. Again, the result would be chaos and voter suppression.

Plaintiffs may simply abandon their claims with respect to the mailing of applications, and ask for relief to stop counties from pre-paying postage to return the ballots themselves – or an order compelling all counties to pay postage. The latter alternative has the same problem pointed out above, namely that it would impose tremendous costs on counties that barely have money to conduct the election as it is. And as for prohibiting all counties from pre-paying postage, such a ruling would transform the Equal Protection clause from a floor into a ceiling: it would make the poorest or least innovative county the standard to which every county must conform its conduct. The law does not demand such an outcome, nor should the courts wish to impose it.

Elections would be impossible if the courts demand absolute parity in all things among voters. Centralized polling places would be unlawful, because some voters live within walking distance of the polls while others have to travel by car many miles, possibly through heavy traffic. The Seventh Circuit captured the fundamental problem in *Griffin v. Roupas*, 385 F.3d 1128, 1132 (7th Cir. 2004):

[W]hile the specific in-equality of which the plaintiffs complain could be eliminated if instead of drawing the line at the county boundary the law said that anyone who lives more than, say, 30 miles from his polling place can get an absentee ballot, this would be as coarse a rule as the county-line rule. The length of time it takes to cover 30 miles depends on road and traffic conditions that vary dramatically across the state. Moreover--and demonstrating the ubiquity of

“discrimination” whenever lines have to be drawn--there is no relevant difference from the standpoint of hardship between a person who lives 29.9 miles from the polling place and a person who lives 30.1 miles from it. And how many people even know how many miles their home is from their polling place?

In the end, this entire Complaint is simply an objection to the fact that some voters are differently situated than others. This will always be the case, and the Constitution does not provide otherwise.

#### IV. CONCLUSION

For the aforementioned reasons, this Court should reject Plaintiffs’ request for a temporary restraining order and preliminary injunction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed electronically on this 13<sup>th</sup> day of September, 2010. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties of record.

/s/ Richard N. Coglianesse  
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