

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

TOMMY RAY MAYS II and QUINTON
NELSON SR., individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

JON HUSTED, in his official capacity as
Secretary of State of Ohio,

Defendant.

CASE NO. 2:18-cv-1376

CLASS ACTION COMPLAINT

COMPLAINT

NATURE OF ACTION

1. Ohio systematically disenfranchises eligible voters who are arrested after the absentee ballot request deadline and detained through Election Day by refusing to provide these eligible voters with access to the ballot—access that it can and does provide voters unable to vote in person by reason of unforeseen hospitalization.

2. Depriving these individuals of their fundamental right to vote violates the First and Fourteenth Amendments to the United States Constitution.

3. Plaintiffs, on behalf of themselves and all others similarly situated, bring this action for declaratory and injunctive relief, including immediate injunctive relief in time for the November 6, 2018, general election, pursuant to Rules 23, 57, and 65 of the Federal Rules of Civil Procedure; 28 U.S.C. §§ 1331, 1343(a), 2201, and 2202; and 42 U.S.C. § 1983.

JURISDICTION AND VENUE

4. This action arises under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a), and 42 U.S.C. § 1983.

5. This Court has jurisdiction to grant both declaratory and injunctive relief, pursuant to 28 U.S.C. §§ 2201 and 2202.

6. This Court has personal jurisdiction over the Defendant, Ohio Secretary of State Jon Husted, whose principal office is in Columbus, Ohio.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because (1) Plaintiffs are residents and registered voters in this District; (2) Defendant performs his official duties in this District; and (3) a substantial part of the events or omissions giving rise to the claim occurred and are continuing to occur in this District.

8. Additionally, this action should be assigned to the Eastern Division of the Southern District of Ohio because Defendant Husted has his principal office in Columbus, Ohio.

PARTIES

9. Plaintiff TOMMY RAY MAYS II is a registered Ohio voter, a U.S. citizen, a resident of Dayton, Ohio for more than thirty days, and over eighteen years old. Plaintiff Mays has not voted in the general election to be held on November 6, 2018 and had intended to vote in person on Election Day. Plaintiff Mays was arrested at 7:05 P.M. on Saturday November 3, 2018, and is currently being held as a pretrial detainee on misdemeanor charges at the Montgomery County Jail in Dayton, Ohio. Plaintiff Mays' bail was set at \$10,000. Plaintiff Mays is eligible to vote. Due to his detention, Plaintiff Mays is unable to cast an absentee or in-person ballot in the November 6, 2018 election.

10. Plaintiff QUINTON NELSON SR. is a registered Ohio voter, a U.S. citizen, a resident of Dayton, Ohio for more than 30 days, and over eighteen years old. Plaintiff Nelson has not voted in the general election to be held on November 6, 2018 and intended to vote in person on Election Day. Plaintiff Nelson was arrested at 10:08 P.M. on Friday November 2, 2018, and is currently being held as a pretrial detainee on misdemeanor charges at the Montgomery County Jail in Dayton, Ohio. Plaintiff Nelson's bail was set at \$10,000. Plaintiff Nelson is eligible to vote. Due to his detention, Plaintiff Nelson is unable to cast an absentee or in-person ballot in the November 6, 2018 election.

11. Defendant JON HUSTED is the Ohio Secretary of State. In his capacity as Secretary of State, Defendant Husted oversees the elections process. This includes appointing the members of boards of elections in each of Ohio's eighty-eight counties, Ohio Rev. Code § 3501.05(A), issuing directives and advisories that instruct boards on how to conduct elections, *id.* § 3501.05(B), "preparing rules and instructions for the conduct of elections," *id.* § 3501.05(C), and compelling county election officers to observe of the requirements of state election laws, *id.* § 3501.05(M). His principal office is in Columbus, Ohio.

FACTUAL ALLEGATIONS

Plaintiffs and Class Members Have the Right to Vote

12. Plaintiffs and members of the putative class have the right to vote regardless of being held in detention in Ohio county jails.

13. The Ohio Constitution states that every citizen who meets the residency requirements and registers to vote thirty days before an election "has the qualifications of an elector, and is entitled to vote at all elections." Ohio Const. Sec. 1, Art. V.

14. Individuals who are convicted of a misdemeanor offense or who are in jail on pending charges, whether misdemeanor or felony, do not lose their right to vote under Ohio law. Ohio Rev. Code § 3509.08(A).

15. Upon information and belief, a substantial number of the individuals booked into Ohio county jails on or after the weekend before Election Day will be eligible to vote.

16. According to the Ohio Department of Rehabilitation and Correction, in 2016 the average daily jail population statewide was 19,209, with about 58% of that—11,123—being in pretrial detention.

17. Despite the fact that pretrial detainees and detainees with misdemeanor convictions are not disqualified from voting under Ohio law, these otherwise qualified electors are nonetheless restricted by Ohio election law and policies from exercising their right to vote.

Pretrial Detention in Ohio

18. There are seventy-two county jails in Ohio.¹

19. Over the course of 2015, approximately 52,056 individuals were admitted into jail in Franklin County, Ohio—an average rate of 142 admissions per day. The estimated average stay for an individual admitted into county jail in Franklin County is approximately fourteen days.²

20. Over the course of 2015, approximately 39,080 people were admitted into jail in Montgomery County, Ohio—an average rate of 107 admissions per day. The estimated average stay for an individual admitted into jail in Montgomery County is approximately eleven days.³

¹ ACLU OHIO, *Voting in Jail: An Organizer's Toolkit*, <https://www.acluohio.org/jailvoting> (last visited Nov. 2, 2018).

² VERA, *Incarceration Trends-Franklin County, OH*, <http://trends.vera.org/rates/franklin-county-oh?incarcerationData=all> (last visited Nov. 2, 2018).

³ VERA, *Incarceration Trends-Montgomery County, OH*, <http://trends.vera.org/rates/montgomery-county-oh?incarcerationData=all> (last visited Nov. 2, 2018).

In-Person Early Voting in Ohio

21. In-person early voting begins in Ohio the day after the close of registration and ends the Monday before Election Day.

22. In-person early voting in Montgomery County is available at 451 W. Third Street, Dayton, OH 45422.⁴ The Montgomery County early voting location is 0.5 miles from the Montgomery County Jail.⁵

Ohio Absentee Voting Request Procedures for Jailed and Confined Electors

23. Ohio law and practice provides five methods of absentee voting: (1) voting remotely by mail; (2) voting early, in person, at the board of elections or other designated location; and methods for those in three special circumstances; (3) overseas uniformed military; (4) individuals in unforeseen hospitalization; and (5) those subject to “disability or confinement.” Ohio Rev. Code §§ 3509.01; 3509.02; 3509.08; 3509.10.

24. Section 3509.08(A) of the Ohio Revised Code provides that any qualified elector who, “on account of the elector’s confinement in a jail or workhouse . . . awaiting trial on a felony or misdemeanor, will be unable to travel from the elector’s . . . place of confinement to the voting booth in the elector’s precinct on the day of . . . [the] election may make application in writing for an absent voter’s ballot to the director of the board of elections of the elector’s county.”

25. Once an elector’s local county board of elections receives a timely application, it can mail the ballot to the voter’s designated mailing address. Ohio Rev. Code § 3509.04(B). Alternatively, if the voter is disabled or confined, the board can send two board employees (one

⁴ MONTGOMERY COUNTY BOARD OF ELECTIONS (Nov. 2, 2018), <https://www.mcboe.org/>.

⁵ Driving Directions from the Montgomery County Board of Elections to the Montgomery County Jail, GOOGLE MAPS (Nov. 2, 2018), <https://tinyurl.com/y6vrtcg2>.

representing each of the two major political parties) to deliver the ballot to the elector and return the completed ballot to the board before the polls close on Election Day. *Id.* §§ 3509.05; 3509.08.

26. If an ill or confined elector chooses to return the ballot by mail, the voted ballot must bear a postmark of no later than the day before the election and be received by the board of elections within 10 days after Election Day. *Id.* § 3509.05(B)(1).

27. However, Ohio law requires that absentee ballot applications submitted by those who are experiencing an illness or detained in jail must be received by the board of elections before “twelve noon of the third day before the day of the election at which the ballot is to be voted.” *Id.* at § 3509.08(A). The Secretary of State has specified that this means in-person requests for absentee ballots must be received by the county board by close of business on the Friday immediately preceding the election, and mailed absentee ballot requests must be received by the county board of elections by noon on the Saturday prior to the election.⁶ For the 2018 general election, absentee ballot requests submitted in-person had to be received by close of business on November 2, 2018 and mailed requests had to be received by 12:00 p.m. on Saturday, November 3, 2018.

28. This deadline means that no individual who is arrested on or after close of business the Friday evening before Election Day and kept in custody through Election Day will be able to request an absentee ballot through the standard procedure.⁷

⁶ OHIO SECRETARY OF STATE, *Ohio Election Official Manual*, Ch. 5, § 1.04(A), https://www.sos.state.oh.us/globalassets/elections/directives/2017/dir2017-10_eom.pdf (last visited Nov. 5, 2018).

⁷ Moreover, due to the necessary delays involved in processing mail coming in and out of county jails and detention centers, the effective deadline for detained voters to send an absentee ballot request so that it arrives by the statutory deadline is likely considerably earlier than Saturday. This makes it likely that many people arrested in the days preceding the Friday before the election were also unable to vote using the standard procedures.

29. However, Ohio law creates an exception to this deadline for individuals who are hospitalized, or whose minor children are hospitalized, due to an accident or unforeseeable medical emergency after the deadline to request an absentee ballot has passed. *Id.* § 3509.08(B).

30. These individuals are afforded a special absentee ballot request application that can be submitted any time after 12:00 p.m. on the Saturday immediately preceding the election and before 3:00 p.m. on Election Day. *Id.*

31. In such emergency circumstances, if the applicant is confined in a hospital in the county in which they are a qualified elector, the applicant can choose to have two election officials deliver their absentee ballot and return that ballot by the close of polls on Election Day. They may also choose to have a family member pick up their absentee ballot from the board, deliver it to them in person, and it return for them to the board. Ohio Rev. Code § 3509.08(B); *see also supra* note 6 at 5-12.

32. For applicants who are confined in a hospital outside the county where the applicant is a qualified elector, the director shall arrange for delivery of an absent voter's ballot by mail, which the applicant then returns by mail. In this case, the same postmark deadline of the day prior to the Election applies, and the ballot must be received by 10 days after Election Day. Ohio Rev. Code § 3509.08(B).

33. The emergency absentee procedures for individuals who experience unforeseen hospitalization described above are not available to pretrial detainees and detainees with misdemeanor convictions who are arrested and confined after the regular absentee ballot request deadline has passed and eligible to vote.

34. These late-jailed electors, whose fundamental right to vote is not invalidated by their detention, have no means to access the ballot on or before Election Day.

35. A 2014 analysis by Mark Salling, Phd, the Director of the Northern Ohio Data and Information Service, concluded that in the 2012 general election, between 438 and 479 voters registered in Ohio were unable to cast ballots because they were in jail the weekend and Monday before the election.

36. On October 16, 2018, counsel for the plaintiffs sent a letter to Defendant Husted alerting him that Ohio's current election system denies individuals who come within the proposed class of their right to vote and proposing several alternative means of ensuring these individuals are able to vote in the November 6, 2018 election. Ex. A (10/16/18 Letter to Sec'y Husted).

37. On November 1, 2018, counsel for the plaintiffs had a teleconference with attorneys for Defendant Husted. The attorneys indicated that Ohio election law provides no mechanism for late-jailed eligible voters to vote, and that only litigation could achieve that result.

38. The deadline to request an absentee ballot thus disenfranchises eligible electors who are arrested and held in detention on the weekend before Election Day.

Defendants Improperly Burdened Plaintiffs' and Class Members' Fundamental Right to Vote in the 2018 General Election

39. On and after November 2, 2018, Defendant has denied and will continue to deny eligible voters held in detention the opportunity to vote in the 2018 general election.

40. The deadline to request an absentee ballot in Ohio was Friday, November 2, at the close of business in person and receipt by Saturday, November 3 at 12:00 p.m. via mail.

41. The general election will be held on November 6, 2018.

42. As a result of their confinement, Plaintiffs and class members will be unable to vote in person during the remaining period of early voting or on Election Day.

43. Plaintiffs and class members were arrested and placed in detention after the deadline for requesting absentee ballots had passed. They cannot request an absentee ballot by

mail, and state law precludes them from having an absentee ballot delivered to them by election officials or a family member.

CLASS ACTION ALLEGATIONS

44. Plaintiffs as proposed representatives of the putative class bring this action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2) on behalf of themselves and all others similarly situated as members of the following proposed class:

All individuals arrested and held in detention in Ohio on or after close of business for the county election board on the Friday prior to the Election who (1) are eligible to vote in Ohio and are registered to do so, (2) did not vote absentee in person or by mail prior to their detention, (3) were provided neither an absentee ballot nor transportation to a voting center nor access to any other method of voting while held in detention, and (4) will remain in detention through close of polls on Election Day.

45. Plaintiffs satisfy the numerosity, commonality, typicality, and adequacy requirements set forth in Fed. R. Civ. P. 23(a).

46. The plaintiff class is so numerous that individual joinder of all class members is impracticable. Fed. R. Civ. P. 23(a)(1). Upon information and belief, the proposed class includes more than 400 members, based upon an estimate of the number of registered voters who were unable to vote due to incarceration in the 2012 election.

47. There are questions of law and fact common to all members of the plaintiff class, Fed. R. Civ. P. 23(a)(2), which include but are not limited to:

- a. Whether Defendant has prohibited eligible voters detained in Ohio county jails from exercising the fundamental right to vote or impermissibly burdened that right;
- b. Whether Ohio law governing absentee voting by individuals held in pretrial detention or in detention for a misdemeanor conviction, Ohio Rev. Code § 3509.08, violates the First Amendment of the U.S. Constitution;

c. Whether Ohio law governing absentee voting by individuals held in detention, Ohio Rev. Code § 3509.08, violates the Fourteenth Amendment of the U.S. Constitution;

d. Whether declaratory relief is appropriate to hold that the application of Ohio election law to disenfranchise qualified electors who are jailed the weekend before Election Day and remain confined through Election Day is unconstitutional; and

e. Whether immediate and permanent injunctive relief are appropriate to require Defendant Husted to direct members of all County Boards of Elections in Ohio to provide a reasonable and practicable means of voting for all confined eligible voters, at least equivalent to that provided for late-hospitalized persons pursuant to Ohio Rev. Code § 3509.08(B).

48. The named plaintiffs' claims are typical of the claims of the plaintiff class. Fed. R. Civ. P. 23(a)(3).

49. The named plaintiffs will fairly and adequately protect the interests of the plaintiff class. Fed. R. Civ. P. 23(a)(4). There are no conflicts between the named plaintiffs and plaintiff class members. Plaintiffs and their counsel, Campaign Legal Center, MacArthur Justice Center, and Demos, are qualified and experienced litigators and will vigorously and competently prosecute the case on behalf of the class.

50. A plaintiff class is appropriate under Federal Rule of Civil Procedure 23(b)(2) because Defendant has acted and refused to act on grounds that apply generally to the class, so that final injunctive and declaratory relief are appropriate respecting the class as a whole. A single injunction or declaratory judgment will provide relief to each member of the proposed plaintiff class. If the Court orders Defendant to ensure that jailed eligible voters be provided means to cast

a ballot at least equivalent to that provided for late-hospitalized persons pursuant to Ohio Rev. Code § 3509.08(B), that order would provide relief to every plaintiff class member and protect his or her fundamental right to vote. The claims of the named Plaintiffs and the proposed plaintiff class are capable of repetition and evading review because the nature of the claims is such that a claim arises predictably and yet stays live only within four days of the final opportunity to exercise the right to vote, and a person has no way of knowing whether they would have such a claim before that time.

FIRST CLAIM FOR RELIEF

Denial of the Fundamental Right to Vote in Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; 42 U.S.C. § 1983.

51. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

52. Qualified electors under Ohio law have been arrested and jailed, and will continue to be, between close of business the Friday before the Election and through Election Day.

53. These detainees retain their constitutional right to vote, but their confinement makes it impossible for them to exercise their right.

54. Ohio makes no provisions for these detainees to vote in person—there is no way for them to vote at their designated polling places during early voting or on Election Day.

55. Further, Ohio's law and policies make it impossible for these detainees to make a timely request for an absentee ballot.

56. Defendants' imposition of a severe and arbitrary burden and denial of these qualified electors' right to vote violates the Equal Protection Clause of the Fourteenth Amendment.

57. Ohio's statutory scheme and policies for absentee voting arbitrarily discriminate between two similarly situated categories of people in unexpected confinement who expected to be able to vote on Election Day. Allowing persons confined in hospitals to vote, while denying the vote to electors confined in jails and detention centers violates the Equal Protection Clause of the Fourteenth Amendment.

58. Under the Fourteenth Amendment to the U.S. Constitution, the right to vote may not be denied or abridged without a compelling interest narrowly tailored to meet a governmental interest and absent the least restrictive means of achieving any such objectives.

59. Defendant's actions are not narrowly tailored to serve a compelling interest, nor is there a rational basis justifying Defendant's denial of the right to vote to those detained pretrial or on a misdemeanor. Defendant's actions likewise constitute a severe and unconstitutional burden on the right to vote.

60. Defendant's actions, taken under color of state law, deprive Plaintiffs and class members of rights, privileges, or immunities secured to them by the Constitution of the United States, in violation of 42 U.S.C. § 1983.

SECOND CLAIM FOR RELIEF

Violations of the First Amendment to the United States Constitution; 42 U.S.C. § 1983

61. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

62. Voting and participating in the electoral process is the ultimate form of political speech and association and is a fundamental right protected by the First Amendment.

63. Ohio's election law and policies impose severe and insurmountable burdens on the right to vote for Plaintiffs and all other late-jailed electors. These burdens violate the First Amendment.

DEMAND FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that the Court enter an order:

- (a) Certifying the plaintiff class as defined herein;
- (b) Declaring that Ohio laws and policies prohibiting late-jailed eligible electors from accessing the ballot violate the First and Fourteenth Amendments to the Constitution of the United States;
- (c) Temporarily and/or permanently enjoining Defendant from prohibiting or burdening late-jailed individuals' fundamental right to vote and requiring Defendant to provide such individuals with access to the ballot;
- (d) Requiring Defendant Husted to issue a directive:
 - i. notifying Ohio's eighty-eight county boards of elections that all eligible electors who are arrested and either placed in pretrial detention or detained on a misdemeanor conviction between the Friday prior to Election Day and the Tuesday of Election Day:
 - 1. have the right to vote; and
 - 2. may submit absentee ballot request forms through Election Day;
 - ii. instructing the county boards of elections to work with the sheriffs of their county to guarantee that:
 - 1. late-jailed detainees are informed that they can cast a ballot;
 - 2. absentee ballot applications are made available to these detainees;

3. jails transmit the applications expeditiously, so that anyone who applies for an absentee ballot is able to cast one; and

4. detainees receive absentee ballots in time and completed ballots are transmitted to election officials in time to be counted;

(e) Granting Plaintiffs' attorney's fees, costs, and litigation expenses pursuant to 42 U.S.C. § 1988; and

(f) Granting other and further relief that the Court may determine to be necessary or proper.

Dated: November 6, 2018

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Respectfully submitted,

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Attorneys for Plaintiffs

**motions for admission pro hac vice
forthcoming
†admitted to practice only in New York,
supervision by Danielle Lang, a member of
the D.C. Bar
‡admitted to practice only in Massachusetts;
practice limited pursuant to D.C. App. R.
49(c)(3)*



October 16, 2018

Secretary John Husted
Ohio Secretary of State
180 East Broad Street, 16th Floor
Columbus, OH 43215
jhusted@ohiosecretaryofstate.gov

VIA EXPRESS MAIL AND E-MAIL

Re: Ballot Access for Incarcerated Eligible Voters

Dear Secretary Husted:

Campaign Legal Center writes to inform you that Ohio's current election system denies people who are arrested and detained just before Election Day the right to vote in violation of the First and Fourteenth Amendments to the United States Constitution. The Supreme Court has held that denying access to the ballot for qualified electors who are held in pretrial detention violates the Equal Protection Clause. *O'Brien v. Skinner*, 414 U.S. 524 (1974); *Goosby v. Osser*, 409 U.S. 512 (1973). State and/or local officials may not take actions that prohibit or burden these electors' fundamental right to vote.

There are several ways for the Ohio Secretary of State and county elections officials to remedy this constitutional violation and ensure that incarcerated eligible voters are not disenfranchised, a few of which are outlined below. We request the opportunity to discuss these remedies with you so that these voters are not denied their fundamental right to vote in the November 2018 elections. If we cannot agree on a speedy remedy, we will consider all appropriate legal action, including potential injunctive relief for the November 2018 election.

I. Ohio's Absentee Ballot Application Deadline for Incarcerated Voters Unconstitutionally Deprives Late-Jailed Voters of their Right to Vote.

Ohio's exclusion of late-jailed voters from its emergency absentee ballot system, and its failure to offer an in-person voting option to such persons, unconstitutionally deprives eligible voters of their right to vote. Ohio law provides that absentee ballot applications from incarcerated eligible voters "shall not be valid if [they are] delivered to the director . . . after twelve noon of the third day before the election." Ohio Rev. Code Ann. § 3509.08(A). The statute lacks any exception for persons detained shortly before or after that deadline who remain in custody through Election Day, and we understand that Ohio does not ensure that alternative arrangements permit such persons to vote in-person on Election Day, such as through supervised transportation to the polls or a polling station at the jail. This means that anyone arrested starting (at least) on Friday prior to the election,¹ and detained through Election Day, is denied the right to vote, either absentee or in-person. This violates the First and Fourteenth Amendments. *See O'Brien*, 414 U.S. 524; *Goosby*, 409 U.S. 512.

This unconstitutional deprivation stands in contrast to how Ohio treats voters who experience an unforeseen medical emergency (or their child does) after the general absentee ballot deadline passes. Those voters are entitled to have a ballot delivered to them at the hospital so long as they make a request by 3:00 p.m. on Election Day. *See* Ohio Rev. Code Ann. § 3509.08(B)(2). There is no reason the same system cannot be applied to guarantee that late-jailed voters are afforded their constitutionally guaranteed right to vote.

Ohio may not exclude eligible voters from the franchise merely because their arrest date precludes them from meeting the generally applicable absentee ballot application deadline. The Constitution requires that the state make arrangements to permit these eligible voters to exercise their right to vote.

¹ In practice, eligible voters detained earlier in the week prior to Election Day are also deprived of the right to vote because they cannot guarantee that an absentee ballot application will reach the registrar's office by Saturday, or that the absentee ballot will be delivered to the detained person in time for her to return it by the postmark deadline of the Monday before Election Day. This is particularly problematic given slower mail processing times in jails, over which detained persons have no control.

II. Ohio Must Provide a Mechanism for Late-Jailed Voters to Vote in the November 2018 (and Future) Elections.

In light of the upcoming elections, it is imperative that the Secretary of State and local boards of elections address this constitutional violation immediately. There are several ways to do so. For example, Ohio could:

- Offer in-person voting to eligible voters at county and municipal jails, through limited purpose polling stations at the jails;
- Permit late-jailed voters to request that an emergency absentee ballot be delivered to them—the same mechanism Ohio utilizes to ensure those with medical emergencies retain their right to vote;
- Provide supervised transport to the appropriate polling station for voters whose arrest dates precluded an absentee ballot request; or
- Suspend bail obligations on Election Day to permit jailed voters the right to vote in-person on Election Day.

* * *

Ohio may not operate its election system in a manner that forecloses the ability to vote for those arrested shortly before Election Day. Rather, the state must ensure—whether through absentee or in-person voting—that these eligible voters are afforded their constitutional right to vote.

We would like to discuss these issues with you as soon as possible, in light of the upcoming election, and hope we can assist in fashioning a resolution to these issues without the need for litigation.

Respectfully submitted,



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cc: Damian Sikora, Section Chief, Office of the Attorney General
Board of Elections Members for Butler, Cuyahoga, Franklin, Hamilton,
Lorain, Lucas, Mahoning, Montgomery, Stark, and Summit Counties
(via e-mail)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Tommy Ray Mays II
Quinton Nelson Sr.

(b) County of Residence of First Listed Plaintiff Montgomery
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Naila Awan
Demos, 80 Broad Street 4th Floor, New York, NY 10004
(212) 485-6055

DEFENDANTS

Jon Husted, in his official capacity as Secretary of State

County of Residence of First Listed Defendant Franklin
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act		
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input checked="" type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983; U.S. Const. amends. I & XIV

Brief description of cause:

State election law and policies violate First and Fourteenth Amendments

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/06/2018

s/ Naila Awan

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

Tommy Ray Mays II and Quinton Nelson Sr.,
individually and on behalf of all others similarly
situated,)

Plaintiff(s))

v.)

Civil Action No. 2:18-cv-1376

Jon Husted, in his official capacity as Ohio Secretary of
State,)

Defendant(s))

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Jon Husted
Ohio Secretary of State
180 East Broad Street, 16th Floor
Columbus, Ohio 43215

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Naila Awan
Demos
80 Broad Street, 4th Floor
New York, NY 10004

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 2:18-cv-1376

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: