

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of the 15th day of June 2009 by and between League of Women Voters of Ohio, League of Women Voters Toledo-Lucas County (collectively, the “Leagues”), Darla Stenson, Charlene Dyson, Anthony White, Deborah Thomas, Leonard Jackson, Deborah Barberio, Mildred Casas, Sadie Rubin, Lena Boswell, Chardell Russell, Dorothy Cooley, and Lula Johnson-Ham (“Individual Plaintiffs”) and Jeanne White (“Intervenor”, and together with the Leagues, and the Individual Plaintiffs, the “Plaintiffs”), and the Secretary of State of Ohio, Jennifer Brunner, (“Defendant”, and together with Plaintiffs, “the Parties”).

I. RECITALS

A. WHEREAS, Plaintiffs brought suit against the Secretary of State and the Governor in the United States District Court for the Northern District of Ohio (the “Litigation”) alleging, *inter alia*, that Ohio’s voting system arbitrarily denies its citizens the right to vote or burdens the exercise of that right based on where they live; and is so unfair as to deny or severely burden Ohioans’ fundamental right to vote; and

B. WHEREAS, the Plaintiffs’ claims include the following allegations, which the League asserts illustrate constitutional violations of the Equal Protection and Due Process Clauses of the United States Constitution:

- Voters in the 2004 presidential election were forced to wait from two to twelve hours to vote because of inadequate allocation of voting machines;

- Voting machines in the 2004 presidential election were not allocated proportionately to the voting population, causing more severe wait times in some counties than in others;
- Long wait times in the 2004 presidential election caused some voters to leave their polling places without voting in order to attend school, work, or to family responsibilities or because a physical disability prevented them from standing in line.
- Inadequate provision of voting machines in the 2004 presidential election caused 10,000 Columbus voters not to vote;
- Poll workers received prior to the 2004 presidential election inadequate training, causing them to provide incorrect instructions and leading to the discounting of votes.
- In some counties in the 2004 presidential election poll workers misdirected voters to the wrong polling place, forcing them to attempt to vote multiple times and delaying them by up to six hours.
- Provisional balloting was not utilized properly in the 2004 presidential election, causing 22% of provisional ballots cast to be discounted, with the percentage of ballots discounted reaching 39.5% in one county.
- In the 2004 presidential election voters with disabilities who required assistance were turned away.
- In the 2004 presidential election, registered voters were denied the right to vote because their names were missing from the rolls;

- In the 2004 presidential election, voters encountered non-functioning and malfunctioning voting equipment and

C. WHEREAS, the Plaintiffs have alleged that the Secretary had failed prior to the 2004 presidential election to promulgate and maintain uniform rules, standards, procedures, and training of election personnel throughout Ohio contributing to these circumstances; and

D. WHEREAS, the United States Court of Appeals for the Sixth Circuit held in *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 478 (6th Cir. 2008) that the League's allegations that Ohio utilizes "non-uniform rules, standards, and procedures" that result in "massive disenfranchisement and unreasonable dilution of the vote" state a constitutional claim of violations of the Equal Protection and Due Process Clauses of the United States Constitution, and

E. WHEREAS, the Plaintiffs seek declaratory and injunctive relief to require Defendants to correct these alleged Constitutional violations, and

F. WHEREAS, the Plaintiffs and Defendant met in mediation on February 23, 2009, and again on March 2, 2009 before mediator Judge David A. Katz; and

G. WHEREAS, the Parties have resolved their differences in the manner set forth in this Settlement Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and representations set forth below, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties having resolved their differences in the manner set forth in this agreement in order to eliminate any potential unequal application of election administration and to promulgate uniform rules,

standards, procedures and training of election officials throughout the state, the Parties agree as follows:

II. AGREED UNDERTAKINGS OF THE SECRETARY OF STATE

A. The Secretary of State agrees to administer elections in the State of Ohio in a constitutional manner. Nothing in this agreement, however, serves as an acknowledgement that any action of the State of Ohio in the conduct of any election has been unconstitutional.

B. The Secretary of State agrees to perform the “Agreed Undertakings” set forth in Exhibit B during the term of this Settlement Agreement, which shall expire on January 11, 2015 (the “Term”). During the Term, the Secretary may seek to modify any obligation described in the Agreed Undertakings only upon first demonstrating to the court good cause for the proposed modification.

C. Plaintiffs stipulate and agree that errors made by pollworkers shall not be deemed to constitute a breach of the Agreed Undertakings. The Plaintiffs further stipulate and agree that, so long as the Secretary of State performs the “Agreed Undertakings,” she is acting within the bounds of Ohio and federal law in the conduct of elections with respect to the areas of election administration addressed by the “Agreed Undertakings” and that, during the Term, the Plaintiffs shall not bring any claim against the Secretary of State alleging that such election administration is unconstitutional.

D. It is expressly agreed, and it is a material term to this Settlement Agreement, that this Settlement Agreement is entered into by the Secretary of State in her official capacity and is binding during the Term upon her successors.

III. ORDER ENFORCING SETTLEMENT AGREEMENT

A. Within two business days of execution of this Settlement Agreement, Plaintiffs shall file with the Court an Order Enforcing Settlement Agreement (the “Order”) in the form annexed as Exhibit A to this Settlement Agreement. All capitalized terms defined in the Order are to be given the same definitions in this Settlement Agreement.

B. With the exception of the Database Claims, this case is dismissed with prejudice upon the expiration of the Term. The Database Claims shall be dismissed with prejudice upon the expiration of the Term unless, as of the expiration of the Term, Plaintiffs have recommenced prosecution of the Database claims and those claims remain unresolved.

C. Nothing in this Settlement Agreement is or shall be deemed to be a waiver of any rights with respect to Plaintiffs’ Database Claims, as that term is defined in the Order. Similarly, nothing in this Settlement Agreement is or shall be deemed to be a waiver of any rights or defenses against the Plaintiffs’ Database Claims including lack of venue, lack of subject matter jurisdiction, or lack of standing of Plaintiffs to bring database claims.

IV. PAYMENT OF FEES

A. Within thirty calendar days of execution of this Settlement Agreement, Defendant shall pay Plaintiffs four-hundred and fifty thousand U.S. dollars (\$450,000) in complete settlement of Plaintiffs’ claims for legal fees, costs, and expenses with respect to the Settled Claims. Payment of the \$450,000 shall be made in a manner to be directed by Plaintiffs’ counsel.

V. GOVERNING LAW, JURISDICTION, ACTIONS TO ENFORCE THE SETTLEMENT AGREEMENT

A. This Settlement Agreement, the rights and duties of the Parties hereunder, and any dispute arising out of or relating to this Agreement, will be governed by and construed, enforced and performed in accordance with the laws of the State of Ohio, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction.

B. The Parties acknowledge and agree that the Hon. James G. Carr, Chief United States District Judge of the Northern District of Ohio, has and shall maintain continuing jurisdiction over this Settlement Agreement and that any claims arising out of or relating in any manner to this Settlement Agreement shall be properly brought only before Judge Carr in the United States District Court for the Northern District of Ohio. In the event that Judge Carr is unable, abstains from, or is otherwise unwilling to hear a claim, the parties consent to reassignment of this case to another judge sitting in the Western Division of the Northern District of Ohio.

VI. REPRESENTATIONS AND WARRANTIES

The Plaintiffs and Defendant each separately represent and warrant that:

A. they have been represented by counsel throughout the negotiation of this Settlement Agreement, that they have discussed the terms and conditions of this Settlement Agreement with their counsel, and that they understand the terms and conditions of this Settlement Agreement; and

B. no promise or inducement has been offered for this Settlement Agreement other than as expressly set forth in this Agreement; and

C. its signatory to this Settlement Agreement is legally competent to execute this Settlement Agreement, and has the legal authority to execute this Settlement Agreement.

D. Upon execution of this agreement, the Plaintiffs will dismiss the Governor from this litigation with prejudice.

VII. OTHER PROVISIONS

A. This Settlement Agreement, which includes its Exhibits, embodies Plaintiffs' and Defendant's complete and entire agreement with respect to the subject matter hereof. No statements or agreements, oral or written, made before the signing of this Settlement Agreement shall vary or modify the written terms hereof in any way whatsoever. No supplement, amendments, or modification of this Settlement Agreement shall be binding unless executed in writing by both parties hereto.

B. All representations, warranties, agreements, covenants and obligations herein are material, shall be deemed to have been relied upon by other Parties, and shall survive the date of the execution of this Agreement

C. Any notice to be provided in connection with this agreement shall be delivered in writing to:

for Plaintiffs the Leagues:

Jon Greenbaum
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue, Suite 400
Washington, DC 20005

for Plaintiff-Intervenor Jeanne White:

Matt Zimmerman
Electronic Frontier Foundation
454 Shotwell St.
San Francisco, CA 94110

for Defendants:

Attorney General Richard Cordray
c/o Assistant Attorney General Richard N. Coglianesi
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

- D. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to be one and the same instrument.
- E. With the exception of documents that concern any claim about the Statewide Voter Registration Database, any litigation held by the Court, the Secretary of State and county boards of elections may have placed on records as a result of this litigation is withdrawn and the Secretary and Boards of Elections are free to handle those records pursuant to their relevant records retention schedules and Chapter 149 of the Ohio Revised Code.

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SIGNED and SEALED:

League of Women Voters of Ohio

By: Meg H. Flack

Name: Meg G. Flack

Title: President

Date: June 14, 2009

League of Women Voters Toledo-Lucas County

By: _____

Name: _____

Title: _____

Date: _____

Individual Plaintiffs

By: _____

Name: _____

Title: Counsel to Darla Stenson, Charlene Dyson, Anthony White, Deborah Thomas, Leonard Jackson, Deborah Barberio, Mildred Casas, Sadie Rubin, Lena Boswell, Chardell Russell, Dorothy Cooley, and Lula Johnson-Ham

Date: _____

Intervenor Jeanne White

By: _____

Name: _____

Title: Counsel to Jeanne White

Date: _____

SIGNED and SEALED:

League of Women Voters of Ohio

By: _____

Name: _____

Title: _____

Date: _____

League of Women Voters Toledo-Lucas County

By: Peg Hull Smith

Name: PEG HULL SMITH

Title: BOARD OF DIRECTORS, PAST PRESIDENT

Date: JUNE 14, 2009

Individual Plaintiffs

By: JR Scullion

Name: Jennifer R. Scullion

Title: Counsel to Darla Stenson, Charlene Dyson, Anthony White, Deborah Thomas, Leonard Jackson, Deborah Barberio, Mildred Casas, Sadie Rubin, Lena Boswell, Chardell Russell, Dorothy Cooley, and Lula Johnson-Ham

Date: 6/15/09

Intervenor Jeanne White

By: _____

Name: _____

Title: Counsel to Jeanne White

Date: _____

SIGNED and SEALED:

League of Women Voters of Ohio

By: _____

Name: _____

Title: _____

Date: _____

League of Women Voters Toledo-Lucas County

By: _____

Name: _____

Title: _____

Date: _____

Individual Plaintiffs

By: _____

Name: _____

Title: Counsel to Darla Stenson, Charlene Dyson, Anthony White, Deborah Thomas, Leonard Jackson, Deborah Barberio, Mildred Casas, Sadie Rubin, Lena Boswell, Chardell Russell, Dorothy Cooley, and Lula Johnson-Ham

Date: _____

Intervenor Jeanne White

By: Jeanne White

Date: June 12, 2009

Secretary of State of Ohio

By: Jennifer Brunner

Name: Jennifer Brunner

Title: Ohio Secretary of State

Date: June 15, 2009

Approved By Ohio Attorney General Richard Cordray

By: Richard N. Cogliandro

Name: Richard N. Cogliandro

Title: Principal Assistant Attorney General

Date: June 15, 2009

EXHIBIT A

further alleging in support of these claims alleged problems relating to voting machines and other voting technology. (All references hereafter to Plaintiffs includes Plaintiff-Intervenor White.)

The Court previously dismissed Plaintiffs' HAVA Claims. The Sixth Circuit Court of Appeals subsequently dismissed the Procedural Due Process claims. The District Court denied Defendants' motions to dismiss Plaintiffs' Equal Protection and Substantive Due Process claims and the Sixth Circuit affirmed that denial.

Plaintiffs and Defendants (the "Parties") have entered into a Settlement Agreement resolving the Constitutional Claims other than the Database Claims (the "Settled Claims"). A copy of the Settlement Agreement is annexed as Exhibit A to this Order.

Pursuant to the Settlement Agreement, the Parties agree to entry of this Order and agree that it may be entered without the Court making Findings of Fact and Conclusions of Law.

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. This Court has jurisdiction over the Parties and causes of action in this consent decree, provided however that, to the extent that the Database Claims are litigated, the Defendants reserve the right to contest jurisdiction with respect to those claims and the Plaintiffs reserve the right to oppose any jurisdictional arguments raised by Defendants.

2. This Order pertains solely to claims pending in *League of Women Voters of Ohio, et al. v. Brunner, et al.*, 3:05-CV-7309 (N.D. Ohio) (the "Litigation") and to the enforcement of the Settlement Agreement. Other than as set forth below with respect to the Litigation and the Settlement Agreement, the Plaintiffs waive their right to bring any claims that they could have brought against these Defendants in this case that have arisen before the execution of this agreement except as has been specifically preserved in the settlement agreement. The

Defendants, however, do not waive any defense they did or can raise in this Court against any surviving claim including lack of subject matter jurisdiction, improper venue, or lack of standing.

3. This Court shall have continuing jurisdiction to enforce this Order and the Settlement Agreement. Except with respect to the Database Claims to the extent that they are recommenced as set forth below, this Court's jurisdiction over this case, however, ends on January 11, 2015 at 12:01 a.m.

4. Except with respect to the Database Claims, the Settlement Agreement resolves the Constitutional Claims made by Plaintiffs in the Litigation. Nothing in this Order or in the Settlement Agreement shall be deemed in any way to constitute a waiver or compromise of Plaintiffs' Database Claims, which are preserved in full. Furthermore, nothing in this agreement shall in any way interfere with the Defendant's ability to claim this Court does not have jurisdiction to hear those claims or that the Plaintiffs lack standing to bring those claims.

5. Plaintiffs' Database Claims are hereby stayed and held in abeyance pending service and filing by the Defendant Secretary of the first status report. The Database Claims shall continue to be stayed and held in abeyance thereafter through the earlier of August 31, 2010 or the filing no earlier than January 15, 2010 with the Court of written notice from Plaintiffs that they wish to recommence proceedings on the Database Claims; absent an earlier written notice, Plaintiffs shall serve and file a report on August 31, 2010 concerning the status of and intentions concerning further prosecution of the Database Claims. Defendant Secretary is obligated to continue to preserve any and all relevant documents and information within her possession concerning Plaintiffs' Database Claims during the pendency of the stay. If the Plaintiffs determine they wish to prosecute any claim concerning the voter registration database, the Defendant Secretary has the right to immediately move to dismiss those claims. Plaintiffs agree

that they will not initiate any discovery on any issue concerning the voter registration database, until this Court resolves the Defendant's motion to dismiss.

6. The parties acknowledge that the Defendant Secretary's office is involved in a continuing effort, in cooperation with the Ohio Bureau of Motor Vehicles, to reexamine and refine the processes by which voter information contained in the statewide voter registration database is compared with information contained in the BMV driver's license database and the Social Security Administration database. To facilitate Plaintiffs' further assessment of the Database Claims and potential resolution of those claims, the Defendant Secretary's office shall serve and file status reports stating what steps, if any, the Defendant Secretary or others are taking to improve or change voter registration databases in Ohio. The first such status report shall be served and filed on or before December 31, 2009, with a subsequent report to be served and filed on June 30, 2010. The Plaintiffs agree that they will not present a claim for attorneys' fees for professional time accrued during the pendency of the stay of the Database Claims, provided, however, that Plaintiffs do not waive the right to seek fees for professional time that accrues during the pendency of the stay if (a) Plaintiffs exercise the option to recommence litigation on the Database Claims and (b) Plaintiffs are ultimately deemed entitled to recover attorneys' fees in connection with the Database Claims. Other than as provided under the Settlement Agreement, each Party shall bear its own costs, fees, and expenses with respect to the Settled Claims.

June __, 2009

Honorable James G. Carr
United States District Court, Chief Judge

EXHIBIT B

