BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW

SUMMARY OF LITIGATION CONCERNING PROVISIONAL BALLOTS IN THE 2004 ELECTIONS

Ohio

Sandusky County Democratic Party et al. v. Blackwell, No. 04-7582 (N.D. Ohio, filed Sept. 27, 2004) (Carr, J.); Nos. 04-4265 and 4266 (6th Cir. Oct. 26, 2004) (Bogg, C.J., Gilman, J., and Weber, D.J., sitting by designation)

- Complaint: This action for declaratory and injunctive relief challenged the Ohio Secretary of State's directive concerning provisional ballots, particularly those cast in the wrong precinct. The complaint alleged that Directive 2004-33 violated HAVA because (1) it limited the right to cast a provisional ballot to those Ohio voters who moved from one precinct to another; (2) it deprived a voter who arrives at the wrong precinct within the county of his residence of the right to cast a provisional ballot and to have that ballot counted; (3) it violated HAVA's mandate that pollworkers notify voters of their right to cast a provisional ballot if they affirm that they are registered and eligible to vote in the jurisdiction; (4) it prevented the counting of provisional ballots cast by voters who first attempt to vote at the wrong polling place but then cast a provisional ballot at the proper polling place; and (5) it required pollworkers to confirm an individual's eligibility to vote before allowing that individual to cast a provisional ballot.

- District Court Ruling: On October 14, 2004, Judge James Carr granted Plaintiffs' motion for a preliminary injunction, ruling that (1) HAVA creates private rights to vote by provisional ballot enforceable under 42 U.S.C. § 1983; (2) the plaintiffs had standing to enforce those rights; (3) Directive 2004-33 violates HAVA in all respects challenged by the plaintiffs. The court ordered Ohio's Secretary of State to prepare a new directive that (1) allows an individual to cast a provisional ballot in her county of residence regardless whether she is in the correct precinct, and (2) requires election officials to count provisional ballots cast in the wrong precincts by individuals who are eligible and registered to vote in the county.

- Sixth Circuit Ruling: On October 23, 2004, the Sixth Circuit issued an order affirming the district court's rulings that HAVA's provisional ballot provisions are enforceable under § 1983, that plaintiffs had standing, and that voters must be allowed to cast provisional ballots even if they appear to vote in the wrong precincts. The court reversed the portion of the injunction requiring Ohio to count provisional ballots cast out of precinct. On October 26, the court issued its opinion, holding that HAVA's requirement that election officials count provisional ballots cast by individuals "eligible under State law to vote" refers to persons "eligible to vote *in this specific election in this specific polling place*." 2004 WL 2384445, at *10. The court reasoned that Ohio law stipulates "where a voter is eligible to cast a ballot" – in the polling place associated with the precinct where the voter resides. *Id.* at *11 (citing Ohio Rev. Code Ann. § 3503.01). It further found that HAVA was intended neither to override state precinct-based voting requirements nor to impose any requirements as to which ballots must be counted as valid.

- Plaintiffs and counsel: Sandusky County Democratic Party; Ohio Democratic Party; Farm Labor Organizing Committee; North Central Ohio Building and Construction Trades Council; and Local 245 International Brotherhood of Electric Workers, represented by Fritz Byers, Richard Kerger, Michael O'Grady, Rory Callahan, and Samuel Bagenstos (on appeal).

- Intervenors: Individual voters Noe, Wolfe and Arnold intervened as defendants. The intervenors argued that (1) voters do not have a right to sue under HAVA; and (2) HAVA does not preempt precinct-based election systems.

- *Amici curiae* in the Sixth Circuit:

    - The U.S. Department of Justice filed an *amicus* brief in support of Secretary of State Blackwell arguing that (1) HAVA does not create a private right enforceable by individuals under 42 U.S.C. § 1983; and (2) HAVA does not override the states' abilities to enforce their precinct-based election systems by refusing to count provisional ballots cast in the wrong precincts.

    - Republican Congressional Representatives Chabot, Portman, Gillmor, Boehner, LaTourette, Pryce and Regula filed an *amicus* brief in support of Secretary of State Blackwell arguing: (1) HAVA was not intended to regulate how states count provisional ballots (though the law does require states to allow provisional ballots to be cast at the polls); and (2) the District Court's order would undermine precinct-based voting by encouraging voters to cast provisional ballots, which in Ohio do not include local and congressional district races, rather than provisional ballots. They attached a letter from Senator Christopher (Kit) Bond (R.) stating that HAVA was not intended to eliminate precinct-based voting.

The League of Women Voters of Ohio et al. v. Blackwell, No. 04-07622 (N.D. Ohio, filed Oct. 5, 2004) (Carr, J.), Nos. 04-2307 and 4293 (6th Cir.) (Boggs, C.J., Gilman, J., and Weber, D.J., sitting by designation)

- Complaint: This lawsuit challenged two directives (2004-07 and 2004-33) issued by the Ohio Secretary of State that (1) refused to count provisional ballots cast by first-time voters who registered by mail after Jan. 1, 2003 and failed to provide identification with their registration forms or at the polls, and (2) refused to allow voters who appeared to vote in the wrong precinct but in the correct county to cast provisional ballots or to have their ballots counted. The complaint alleged that the directives violated HAVA, the Constitution, and Ohio law. It sought injunctive relief requiring election officials to count provisional ballots (1) cast by voters who cannot meet the identification requirements but whose eligibility can be verified through some other means, such as a signature match, and (2) cast by voters who vote in the county of their residence. Plaintiffs moved for a preliminary injunction only on their HAVA claims.

- District Court ruling: After interpreting Directive 2004-07 to require election officials to count provisional ballots cast by first-time voters who cannot show identification but who orally provide a numerical identifier (including the last four digits of their social security numbers), the District Court held that the directive does not violate federal law. With respect to plaintiffs' challenge to Directive 2004-33, the District Court denied injunctive relief, holding that the outcome would be controlled by that in *Sandusky*, *supra*.

- Sixth Circuit ruling: In an order dated October 27, 2004, the Sixth Circuit held that the case was moot since the matter was completely determined by its decision in *Sandusky*, *supra*. (The

plaintiffs appealed only the court's denial of injunctive relief with respect to Directive 2004-33.)

- Plaintiffs and counsel: The League of Women Voters of Ohio; Ohio AFL-CIO; People for the American Way Foundation; ACORN; Ohio Council 8, AFSCME; The Coalition of Black Trade Unionists; A. Philip Randolph Institute; The Coalition of Homelessness and Housing in Ohio, and Project Vote. The plaintiffs were represented by the Brennan Center for Justice at NYU School of Law; Manatt, Phelps & Phillips, LLP; Donald J. McTigue; and the Advancement Project.

- Intervenors: The same defendant-intervenors in *Sandusky,* individual voters Noe, Wolfe and Arnold, also intervened in this case.

Schering v. Blackwell, No. 04-755 (S.D. Ohio, filed Nov. 2, 2004) (Watson, J.)

- Complaint: A Republican voter residing in Cincinnati brought this action alleging that Blackwell violated the Equal Protection Clause, as interpreted in *Bush v. Gore*, by failing to provide sufficient guidance to ensure the "uniform and consistent counting of … potentially determinative provisional ballots." The complaint alleged that the guidelines in Directive 2004-48, governing the counting of provisional ballots, are "vague, incomplete, and insufficient to assure uniform evaluation and counting of provisional ballots throughout the state." It sought a declaration that Directive 2004-48 is constitutionally deficient and an injunction requiring the Secretary to issue uniform standards, rules and procedures for evaluating and counting provisional ballots.

- Plaintiff and counsel: Plaintiff Audrey Schering is represented by Seiger, Tigges, Little & Lindsmith, LLP.

- Intervenor: On November 15, 2004, the Ohio Democratic Party moved to intervene as a plaintiff in the action, citing its organizational interest in the counting of provisional votes for its nominees and its representative interest in the counting of provisional votes cast by Democratic voters. The Party, which is represented by Donald J. McTigue, sought the same form of relief as Schering.

- Status: The case has not been prosecuted.

***Ohio ex rel. Mackey* et al. *v. Blackwell* et al.**, No. ____ (8th Dist. Ct. App., Cuyahoga County, filed Nov. 29, 2004).

- Complaint: This complaint for a writ of mandamus seeks to prohibit election officials in Cuyahoga County, Ohio from invalidating provisional ballots on the grounds that (1) the voter's name does not appear in the county's electronic database, unless officials have diligently searched the original paper registration records and determined that there is no voter registration card for the voter; (2) there is no signature by the voter or a pollworker on the provisional ballot envelope and the voter had already signed the poll book or a sticker provided by election officials; or (3) the provisional ballot lacks either a Provisional Voter Statement of Affirmation or a HAVA sticker, when the voter had already signed the poll book or the envelope. The complaint alleges violations of Ohio's election law, the Voting Rights Act (§ 1971(a)(2)(B)), HAVA, and the Fourteenth Amendment to the U.S. Constitution.

- Plaintiffs and counsel: Individual voters Perris J. Mackey and Colleen Pirie, and People for the American Way Foundation (PFAW), represented by Leslie M. Huff and PFAW.

Michigan

Michigan State Conference of NAACP Branches et al. v. Land, No. 04-10267 (E.D. Mich. filed Oct. 1, 2004), *consolidated with* ***Bay County Democratic Party et al. v. Land***, No. 04-10257 (E.D. Mich. filed Sept. 29, 2004) (Lawson, J.); Nos. 04-2307 & 2318 (6th Cir. Oct. 26, 2004).

- NAACP Complaint: The NAACP plaintiffs challenged a directive issued by the Michigan Director of Elections that provided that provisional ballots shall not be counted if cast: (1) by first-time voters who registered by mail and do not provide identification; and (2) in the wrong precinct. The complaint alleged that both aspects of the directive violated HAVA's fail-safe voting provisions (which require states to count provisional ballots cast by persons who are eligible under state law to vote), the U.S. Constitution, and Michigan law. The complaint sought injunctive relief ordering the election officials (1) to count provisional ballots cast in the wrong precinct but in the correct city, township, or village, and (2) to count provisional ballots cast by voters who cannot meet the identification requirements but whose identify can be verified using some other method (such as signature matches).

- Democratic Party Complaint: The Democratic Party complaint alleged that the election officials' refusal to count provisional ballots cast in the wrong precinct violated HAVA.

- District Court decision: After extensive briefing and a full-day evidentiary hearing, on October 19, 2004, Judge Lawson (1) granted plaintiffs' motion for a preliminary injunction ordering the Michigan election officials to count all provisional ballots cast in the correct township, city, or village, regardless of precinct, and (2) denied plaintiffs' request to enjoin the officials from refusing to count provisional ballots cast by new voters who could not meet the identification requirements.

- Other relief obtained: Prior to the issuance of the court's order, the Michigan Director of Elections modified the portion of the directive relating to HAVA's identification requirements, allowing voters to provide identification up to six days after the election to have their provisional ballots counted. He also adopted an expansive list of acceptable identification.

- Sixth Circuit ruling: On October 26, 2004, the Sixth Circuit summarily reversed the preliminary injunction on the ground that the case was controlled by the court's decision in *Sandusky*, *supra*. The Sixth Circuit decision did not address the plaintiffs' argument that, under Michigan law as incorporated by HAVA, an individual's "eligibility" to vote turns on the city, township, or village and not the precinct in which she votes.

- Plaintiffs and counsel: (1) The Michigan State Conference of NAACP Branches, Project Vote, the Association of Community Organizations for Reform Now (ACORN), and the Ezekiel Project, represented by Brennan Center for Justice at NYU School of Law, Manatt, Phelps & Phillips; Morrison & Foerster LLP, and the Advancement Project; and (2) the Bay County Democratic Party and Michigan Democratic Party, represented by Pitt, Downey, McGhee & Palmer, LLP, and Samuel Bagenstos (on appeal).

- *Amicus curiae*: The U.S. Department of Justice filed an *amicus* brief in the district court arguing that (1) HAVA does not create private rights enforceable by individuals under 42 U.S.C. § 1983; and (2) HAVA does not override the states' abilities to enforce their precinct-based election systems by refusing to count provisional ballots cast in the wrong precincts. In the Sixth Circuit,

it filed an amicus brief asking the court to reverse the injunction based on the court's decision in *Sandusky*.

Florida

American Fed. of Labor & Congress of Indus. Orgs. et al. v. Hood, No. SC04-1921 (Fla. Sup. Ct., Oct. 18, 2004)

- Complaint: This action challenged a provision of Florida law (Fla. Stat. § 101.048) providing that a provisional ballot will not be counted unless election officials confirm that the voter is registered and that she is eligible to vote at the precinct where she cast the ballot. The complaint alleged that the statutory provision imposed an additional qualification on the right to vote in violation of the Florida Constitution.

- Florida Supreme Court decision: In an opinion dated October 18, 2004, the Florida Supreme Court held that injunctive relief was not appropriate because "the precinct-specific provision in section 101.048 is a regulation of the voting process, not a qualification placed on the voter." As a time, place and manner restriction, the provision did not impose an unreasonable burden on the right to vote.

- Plaintiffs and counsel: American Federation of Labor and Congress of Industrial Organizations; American Federation of State, County and Municipal Employees, AFL-CIO; Service Employees International Union; Florida Public Employees Council 79, AFSCME, AFL-CIO; and SEIU 1199 Florida, represented by Altshuler, Berzon, Nussbaum, Rubin & Demain and Patterson & Traynham.

Florida Democratic Party v. Hood, No. 4:04-395 (N.D. Fla. Oct. 21, 2004) (Hinkle, J.)

- Complaint: This complaint challenged Secretary of State Glenda Hood's announcement that provisional ballots will only be counted if cast in the correct precinct, as well as her issuance of a pollworker instructions manual that included an instruction not to accept any provisional ballots from voters who appear to vote at the wrong precinct. The complaint alleged that, under HAVA, provisional ballots must be counted if cast in the correct county, regardless of whether they were cast at the correct precinct.

- District Court decision: The court issued an injunction requiring poll workers to accept provisional ballots regardless of where they are cast, but held that Florida need not count any ballots determined to have been cast at the wrong precinct. The court reasoned that "[t]he purpose of HAVA's provisional voting section is not to eliminate precinct voting, but instead to ensure that voters are allowed to vote (and to have their votes counted) when they appear at the proper polling place and are otherwise eligible to vote." The court interpreted HAVA's language requiring states to count a provisional ballot "if the individual is eligible under State law to vote" to mean "in this election at this polling place." Plaintiff has appealed the decision.

- Plaintiff and counsel: The Florida Democratic Party was represented by Stearns, Weaver, Miller, Weissler, Alhadeff, & Sitterson, P.A.

- *Amicus Curiae*: On October 19, 2004, the U.S. Department of Justice filed an *amicus* brief making the same arguments it made in the Michigan and Ohio cases.

Iowa

Brooks v. Culver, No. 5411 (Iowa Dist. Ct., Polk County, filed Oct. 25, 2004) (Gamble, J.).

- Complaint: Following the Iowa Attorney General's issuance of an opinion, summarized below, relating to provisional ballots cast in the wrong precinct, plaintiffs filed this action seeking a declaratory judgment that Iowa law precludes the counting of provisional ballots cast in the wrong precinct and that this law is not affected by HAVA.

- Outcome: On Oct. 28, Secretary of State Culver and the Attorney General instructed county officials by letter to segregate provisional ballots case in the correct county but wrong precinct and not to count them initially. If the margin of victory in any federal race proved close enough for such ballots to be potentially determinative, the issue of their validity could then be litigated. This suit has not been prosecuted since.

- Plaintiffs and counsel: Plaintiffs Brooks, Schultz, Isaacson, Poncin and Havlicek are individual voters represented by Nyemaster, Goode, West, Hansell & O'Brien, P.C.

Attorney General Advisory Letters

- Registration Forms: In an October 20, 2004 advisory letter to Iowa Secretary of State Culver, Iowa Attorney General Thomas J. Miller opined that HAVA does not require states to reject a registration form simply because the applicant did not check the citizenship box on the top of the form (assuming that the applicant has elsewhere signed a statement affirming his citizenship). State law implementing HAVA and establishing different requirements for registering to vote in state and federal elections is invalid because it violates the purpose of HAVA (to maximize the franchise, within parameters set by state law), as well as the Voting Rights Act of 1964. However, HAVA still requires states to notify applicants who forget to check the citizenship box that their form is technically incomplete and provide them with an opportunity to file a new form.

- Provisional Ballots: In an October 22, 2004 advisory letter, Iowa Attorney Miller opined that HAVA requires that provisional ballots be counted (with respect to federal races, not state and local races) if they were cast in the correct county, regardless of whether they were cast in the proper precinct. Although poll workers may not withhold a provisional ballot from a voter at the wrong precinct, they should initially attempt to direct voters to their proper precincts.

  In an October 26, 2004 letter to Attorney General Miller, Deputy Assistant United States Attorney General Bradley J. Schlozman expressed his department's legal opinion that HAVA does not preempt states' precinct-based election systems.

  On October 28, 2004, Attorney General Miller instructed county officials by letter to segregate provisional ballots case in the correct county but wrong precinct and not to count them initially.

Missouri

Hawkins v. Blunt, No. 04-4177 (W.D. Mo. Oct. 12, 2004) (Dorr, J.)

- Complaint: Individual voter plaintiffs who had cast provisional ballots in the wrong precincts filed this action to ensure that their ballots would be counted. Plaintiffs argued that defendants' policy of not counting provisional votes cast in the wrong precinct violated HAVA, which allows

voters to cast provisional ballots and have them be counted, whether or not they are at the correct polling place.

- District Court Decision: After plaintiffs filed suit and the court enjoined defendants from certifying the election results, defendant Kansas City Board of Elections met and determined that, under state law, the individual plaintiffs' ballots (and any others cast in the same circumstances) should be counted because there was no evidence that anyone tried to direct them to the correct precinct. Defendant Secretary of State agreed. The court endorsed this interpretation of state law, requiring a provisional ballot cast in the wrong precinct to be counted unless a pollworker directed the voter to the correct precinct. This interpretation "avoids direct conflict with" HAVA, whereas a "purely literal" interpretation refusing to count any provisional ballots cast in the wrong precinct would lead to the "illogical result" of "negat[ing]" the provisional ballot procedure. After interpreting the state law so as to grant plaintiffs much of the relief they sought, the court removed its earlier injunction, rejecting plaintiffs' argument that, under HAVA, states must count provisional ballots cast in the wrong precinct even if the voters were first informed of their correct precincts.

- Plaintiffs and counsel: Individual voters Hawkins, Morahan, and Schilling, and the Missouri Democratic Party were represented by Stinson, Morrison, Hecker LLP and Haar & Woods, LLP.

- *Amicus curiae*: A group of residents, after unsuccessfully attempting to intervene as defendants, filed an *amicus* brief arguing that the requested relief would dilute their voting rights, lead to confusion and fraud, and, because officials from only one county and were named as defendants, violate their equal protection rights by leading to inconsistent rules.

New Mexico

Vigil-Giron v. Kunko, No. 4/28888 (N.M. Sept. 28, 2004) (Maes, C.J., Minzner, J., Serna, J., and Quinn, J.) (Fitch, J., dissenting), *consolidated with* ***New Mexico Public Interest Research Group Education Fund, Inc., d/b/a New Voters Project v. Kunko***, No. 4-2888 (N.M., filed Sept. 15, 2004).

- Petitions: Secretary of State Vigil-Giron petitioned the New Mexico Supreme Court for a writ of mandamus ordering defendant Kunko, Chavez County Clerk, to obey her directive that voters who registered via third-party registrars (such as ACORN) be treated as having registered "in person" and therefore be allowed to vote without presenting identification at the polls. In effect, petitioner asked the court to overturn a stipulated writ of mandamus signed by state Judge Currier in *Decker v. Kunko*, No. 2004-00553 (N.M. Dist. Ct., 5th Jud. Dist. Sept. 10, 2004), requiring identification of all first-time registrants who did not register at the county clerk's office. New Mexico PIRG also filed a petition for a writ of mandamus seeking the same relief.

- Decision: The court issued the requested writ of mandamus, finding, by a 4-1 vote, that the state legislature did not intend to require identification from voters registered by third parties.

- Related case: This issue first arose in a suit by Republican voters in Bernalillo challenging the Secretary of State's interpretation of the identification requirement. *Larranaga v. Herrera*, No. 2004-5391 (N.M. Dist. Court, 2d Jud. Dist., filed Aug. 20, 2004) (Thompson, J.). After holding a hearing on plaintiffs' motion for a preliminary injunction, the court issued an order on September 8, 2004 denying the defendants' motion based on a balance of harms analysis. The *Decker* suit discussed above was filed thereafter.

- Amicus curiae: The Mexican American Legal Defense and Educational Fund filed an *amicus* brief in support of the New Mexico Secretary of State, arguing that Latinos would be disproportionately impacted by the stricter identification requirements ordered by Judge Currier.

Colorado

Colorado Common Cause v. Davidson, No. 04-7709 (Colo. Dist. Court, Dist. of Denver, Oct. 18, 2004) (Hoffman, J.)

- Complaint: The complaint in this action challenged three Colorado statutory and regulatory provisions: (1) a blanket identification requirement applicable to all voters; (2) a provision that votes cast out-of-precinct will only be counted for president and vice president; and (3) a provision that provisional ballots will not be counted if the voter previously applied for an absentee ballot. Plaintiffs moved for an injunction against the enforcement of these provisions. The complaint argued that the identification requirement amounted to an unconstitutional barrier to racial and ethnic minorities, the homeless, disabled voters and others without identification or the means to secure identification. The complaint further argued that the precinct rule violated plaintiffs' state constitutional right to vote, and that this rule, along with the rule against provisional voting by voters who previously requested an absentee ballot, violated HAVA's provisions establishing a broad right to vote by provisional ballot.

- Decision: The court issued an injunction requiring the defendant to count provisional ballots cast by voters who previously requested absentee ballots (after verifying that the voters had not, in fact, cast absentee ballots), but denied the other requested relief on the merits. The court found that Colorado's rule against provisional voting by voters who had requested absentee ballots probably violated HAVA's requirement that provisional ballots be made available on request. The court found that Colorado's blanket identification requirement probably did not violate HAVA because it was consistent with the anti-fraud purpose of HAVA and because, unless specifically and clearly provided, HAVA does not prohibit the states from promulgating stricter anti-fraud rules than those in HAVA. The court further found that Congress, in passing HAVA, probably did not intend to force states to abandon their traditional precinct-based voting systems. (The court expressly limited this holding to Colorado, which had a longstanding precinct-based system explicitly recognized in the Colorado Constitution, and to the November election, in which HAVA's requirement that states develop state-wide voter lists was yet in effect.) With respect to plaintiffs' constitutional claims, the court found that precinct and identification requirements probably do not constitute significant burdens and would not have a disparate impact on protected groups.

- Plaintiffs and counsel: Plaintiffs Colorado Common Cause and three registered voters were represented by Kelly, Haglund, Garnsey and Kahn, LLC.

- Intervenors: Four Republican registered voters intervened as defendants seeking to uphold the Colorado law.

Rhode Island

Rhode Island Parents for Progress v. Rhode Island Board of Elections, C.A. 04-5902 (R.I. Super. Ct., filed Nov. 1, 2004) (Procaccini, J.)

- Complaint: This lawsuit challenged the Rhode Island Board of Elections' stated policy that provisional ballots cast by voters without identification would be accepted at the polls but not counted.

- Outcome: The court held oral argument on the day the complaint was filed, and during a recess in argument the Board of Elections held an emergency meeting and reversed its policy. As a result, provisional ballots cast by first-time voters who did not present identification were counted.

- Plaintiff and counsel: The Rhode Island Parents for Progress was represented by the Rhode Island affiliate of the ACLU.

Washington

Washington State Democratic Central Comm. v. King County Records, Elections, & Licensing Servs. Div., No. 04-2-36048-0 (Washington Super. Court, King County Nov. 12, 2004) (Lum, J.).

- Complaint: Plaintiffs brought this action for injunctive relief challenging defendants' policy of setting aside provisional ballots with questioned signatures without disclosing the voters' names or making any effort to contact them. Plaintiffs argued that the defendant's failure to contact voters violated the equal protection and due process protections of the Washington and United States Constitutions because (a) the policy left voters with no meaningful opportunity to defend their votes, (b) King County was contacting absentee voters with the same problem, and (c) other counties were contacting identically situated provisional voters. Plaintiffs further argued that the defendant's non-disclosure policy violated Washington's elections law.

- Decisions: On November 12, 2004, the court ordered defendant to disclose its list of provisional voters whose signatures had been questioned. The court rejected the defendant's argument that HAVA somehow protects the identity of provisional voters whose ballots were in question, finding that the only information HAVA protects is *how* provisional voters voted on candidates and issues. The court dismissed the remainder of the complaint without prejudice, finding that: (1) no further notice by defendant was necessary, as plaintiffs had undertaken to call all challenged voters, and (2) the constitutional issues raised were premature, as the fate of the challenged ballots was unclear. The court also noted doubts as to whether plaintiffs had standing to raise their constitutional claims and whether they had named the proper defendants.

- Plaintiffs and counsel: The Washington State Democratic Central Committee and David McDonald, an individual voter, were represented by Perkins Coie, LLP.

- Intervenor: The Washington State Republican Party intervened to seek a temporary restraining order prohibiting the defendant from counting provisional ballots brought in by third parties. The court denied the motion because the Republican Party did not offer any legal authority to support its position.