

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

UNITED STATES STUDENT ASSOCIATION  
FOUNDATION, as an organization and representative of  
its members, AMERICAN CIVIL LIBERTIES UNION  
OF MICHIGAN, as an organization and representative of  
its members, AMERICAN CIVIL LIBERTIES UNION  
FUND OF MICHIGAN, as an organization and  
representative of its members, and MICHIGAN STATE  
CONFERENCE OF NAACP BRANCHES, as an  
organization and representative of its members

Case No. 2:08-cv-14019-SJM-RSW

Hon. Stephen J. Murphy

Plaintiffs,

v.

TERRI LYNN LAND, Michigan Secretary of State, and  
CHRISTOPHER M. THOMAS, Michigan Director of  
Elections, FRANCES MCMULLAN, City Clerk for the  
City of Ypsilanti, Michigan, in their official capacities,

Defendants.

LISA A. BLEHM

Intervening Plaintiff,

v.

TERRI LYNN LAND, Michigan Secretary of State;  
CHRISTOPHER M. THOMAS, Michigan Director of  
Elections; and REBECCA LAKIN, City Clerk for the  
City of Standish, Michigan, in their individual and  
official capacities; and BOARD OF ELECTION  
COMMISSIONERS FOR THE CITY OF STANDISH,  
MICHIGAN; and BOARD OF ELECTION  
INSPECTORS, PRECINCT 2, CITY OF STANDISH,  
MICHIGAN

Defendants.

**COMPLAINT AND JURY  
DEMAND OF INTERVENING  
PLAINTIFF LISA A. BLEHM**

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**COMPLAINT OF INTERVENING PLAINTIFF LISA A. BLEHM**

Plaintiff in Intervention Lisa A. Blehm (“Intervening Plaintiff” or “Blehm”), through her undersigned attorneys, for her Complaint against Defendants Michigan Secretary of State Terri Lynn Land and Michigan Director of Elections Christopher M. Thomas (hereinafter collectively referred to as the “State Defendants”), and against Defendants Rebecca Lakin, City Clerk for the City of Standish, Michigan; the Board of Election Commissioners for the City of Standish, Michigan; and the Board of Election Inspectors, Precinct 2, City of Standish, Michigan (hereinafter collectively referred to as the “Standish Defendants”), states as follows:

**SUMMARY OF ACTION**

1. This is an action seeking declaratory and injunctive relief, nominal and other appropriate compensatory damages, and attorney fees for Defendants’ improper and unlawful disfranchisement of Blehm on November 4, 2008. In violation of state and federal law and through policies and practices employed by the Michigan Department of State and the City of Standish, Michigan, Defendants prevented Blehm from voting in the November 4, 2008 Election. This action also seeks a declaratory judgment prohibiting Defendants from engaging in future similar actions which violate federal laws protecting the rights of Plaintiff Lisa A. Blehm and other similarly situated individuals to vote.

**PARTIES, JURISDICTION AND VENUE**

2. Intervening Plaintiff Lisa A. Blehm is a life-long resident of Standish, Michigan located in Arenac County. She has resided at her current residence in Standish, Michigan, with her husband since August 2006.

3. Defendant Terri Lynn Land (“Land”) is the Secretary of State of the State of Michigan and is sued in her individual and official capacities. Her official residence is at

Treasury Building, 1st Floor, 430 West Allegan, Lansing, MI 48918. In her capacity as Secretary of State, Defendant Land is the chief election officer of the state and has supervisory control over local election officials. Mich. Comp. Laws § 168.21. She is responsible for administering all statewide elections; for issuing instructions and promulgating rules for the conduct of elections; for publishing manuals of instructions on election administration for use at polling places; for prescribing uniform forms, notices, and supplies for use in the conduct of elections and regulations; and for training and instructing township, city, and village clerks with respect to election administration, among other things. *Id.* § 168.31. She is also responsible for coordinating the requirements of Michigan election law and federal law, including the Help America Vote Act of 2002 (“HAVA”) and National Voter Registration Act of 1993 (“NVRA”). *Id.* § 168.509n. In addition, she is charged with establishing and maintaining a statewide qualified voter file, as well as a computer system that allows each county, city, township, or village access to that file. *Id.* § 169.509r(1).

4. Defendant Christopher M. Thomas (“Thomas”) is the Director of Elections in the State of Michigan and is sued in his individual and official capacities. His official residence is at Treasury Building, 1<sup>st</sup> Floor, 430 West Allegan, Lansing, MI 48918. Defendant Thomas is vested with the powers of the Secretary of State with respect to elections and is responsible for the supervision and administration of the election laws, under the supervision of the Secretary of State. *Id.* § 168.31.

5. Defendant Rebecca Lakin (“Lakin”) is the City Clerk for the City of Standish, Michigan and is sued in her individual and official capacities. Her official residence is at 339 East Beaver Street, P.O. Box 726, Standish, Michigan 48658. In her capacity as City Clerk, Defendant Lakin is responsible for receiving and processing voter registration applications for

residents of the City of Standish; preparing and transmitting the required disposition notices related to such applications; and keeping all original records relating to each registered elector in the City of Standish. MCL §§ 168.497, 168.499, 168.500b, 168.500c.

6. Defendant Board of Election Commissioners for the City of Standish, Michigan is responsible for a variety of duties in connection with the conduct of elections occurring within the City of Standish, Michigan, including but not limited to appointing and supervising local boards of precinct election inspectors. MCL §§ 168.25, 168.674.

7. Defendant Board of Election Inspectors, Precinct 2, City of Standish, Michigan, is responsible for a variety of duties in connection with the conduct of elections occurring within the City of Standish, Michigan, including but not limited to issuing ballots to voters of the precinct on Election Day and resolving challenges as to the eligibility or qualifications of voters appearing in the precinct on Election Day. MCL §§ 168.523, 168.523a, 168.678.

8. This Court has jurisdiction of this controversy pursuant to 28 U.S.C. § 1331; § 1343(3) and (4); and §2201(a). This suit is authorized by 42 U.S.C. §§ 1983 and 1973gg-9.

9. This Court is the proper venue for adjudication of this dispute pursuant to 28 U.S.C. § 1391(b)(1) and (2).

#### **COMMON ALLEGATIONS**

10. Section 303(a) of the Help America Vote Act of 2002 (“HAVA”), 42 U.S.C. § 15483(a), mandated that all states develop and maintain a single, uniform computerized voter registration database for administration of all federal elections by January 1, 2006.

11. Michigan has maintained a statewide voter registration database, known as the Qualified Voter File (the “QVF”), since the 1998 election cycle. The QVF was established and is

maintained by the Michigan Secretary of State and links local election officials throughout the state to a fully automated, interactive statewide voter registration database.

12. Pursuant to Section 8 of the NVRA, a voter may not be removed from the official list of eligible voters unless (1) the voter has requested removal; (2) the voter has died; (3) state law requires removal by reason of criminal conviction or mental incapacity; (4) the voter has confirmed in writing that he has moved outside the jurisdiction maintaining the specific voter list, or (5) the voter both (a) has failed to respond to a cancellation notice issued pursuant to the NVRA *and* (b) has not voted or appeared to vote in the two federal general elections following the date of notice. 42 U.S.C. § 1973gg-6.

***The Defendants' Immediate Purging of Voters Presumed to Have Changed Residence Based on Information that the Voter Has Applied for an Out of State Driver's License***

13. Michigan's Election Law contains several sections addressing protocol related to registered voters who change residence. In addition, the Secretary of State has developed a voter registration module detailing various data entry procedures related to the QVF.

14. The Voter Registration Module instructs that, whenever a clerk receives "reliable information" that a registered voter has moved to another jurisdiction, the voter's status is changed to "Verify," and a precinct list code is added to alert poll workers to verify the voter's residence in the jurisdiction before issuing a ballot.

15. The clerk also generates and sends out a residency confirmation notice ("Notice") to the voter.

16. If the Notice is returned as undeliverable, the voter's status is changed to "Challenge - Residency."

17. The voter's status will be changed to "Cancel" on the QVF only if the voter confirms that he or she has moved out of the jurisdiction or there has been no response from the

voter after the second November federal general election after the Notice was sent. Persons listed with a “Canceled” status in the QVF are not included on the official list of eligible voters in the jurisdiction.

18. The notice and retention procedures are required by both the NVRA and the Michigan Election Law. See MCL §168.509aa; see also 42 U.S.C. §1973gg-6.

19. While mandated by these statutes, however, this procedure is not followed under circumstances where the Defendants receive notice from a cooperating state motor vehicle licensing bureau that an individual has surrendered his or her Michigan driver’s license and applied for a driver’s license in another state.

20. Upon receipt of such information, the voter’s registration is immediately cancelled and the voter’s name is removed from the precinct list, which is the official list of eligible voters (the “Purging Procedure” or “Immediate Purging Practice”).

21. The Department further instructs the local city or township clerk to issue a “30-Day Notice of Cancellation (Out of State)” (“30-Day Notice”) to the affected voters.

22. The 30-Day Notice specifically informs the affected individuals that their registration will be canceled in 30 days unless they return the postage-paid return card attached to the 30-Day Notice.

23. The 30-Day Notice does not inform affected voters that their names have *already* been removed from the precinct voter rolls and that – unless their status is returned to “Active” – they are *already* unable to vote.

**Defendants’ Improperly and Illegally Disfranchised Plaintiff in the November 4, 2008 Election**

24. In or around September 2006, Blehm registered to vote using her home address in Standish, Michigan. Shortly thereafter, she received her voter identification card in the mail.

25. In 2007, her husband, who was in the United States Marine Corps, received orders to report to Dobbins Air Reserve Base in Marietta, Georgia. At that time, Blehm temporarily relocated to Marietta to be with her husband during his assignment. At all times, Blehm and her husband kept their home in Standish, Michigan and rented an apartment in Marietta, Georgia.

26. Shortly after Blehm arrived in Georgia, she obtained a Georgia driver's license. She understood that she needed a local license for the job she obtained in Georgia.

27. Blehm specifically declined to register to vote in Georgia, because she fully intended to maintain her permanent residency and voting status in Standish, Michigan. She and her husband were only in Georgia because of her husband's military orders.

28. In or around June 2008, after her husband's assignment in Georgia was complete, Blehm and her husband returned to their home and permanent residence in Standish, Michigan.

29. On November 4, 2008, Blehm went to her assigned polling place at Standish City Hall to vote in the general presidential election. After completing the application to vote, the poll worker told her that she was not registered to vote and that she would not be able to vote in the election. Blehm showed the poll worker her voter registration card and explained to her that she should, in fact, be on the rolls. The poll worker still refused to let her vote and stated that there was nothing that she could do because Blehm was not on the precinct list.

30. The poll worker did not notify Blehm of her right to cast a provisional ballot in the November 4, 2008, election, as required by Section 302(a)(1) of HAVA, and Blehm was unaware, at the time, of her right to be offered and to cast a provisional ballot under such circumstances.

31. Blehm returned home, extremely disappointed and upset to learn that she was apparently not on the voter rolls, knowing that she had previously registered to vote in 2006.

32. Blehm called the Election Protection hotline and learned about the possibility of casting a provisional ballot. She called City Clerk Rebecca Lakin's office to inquire about possibly casting a provisional ballot, but the representative told Plaintiff that it would be of no use to cast a provisional ballot because she was not registered to vote and, therefore, her provisional ballot would not count.

33. In any event, by the time she learned of the possibility of casting a provisional ballot, Blehm was unable, without undue hardship, to return to her polling place due to an intervening child care obligation.

34. On November 4, 2008, Blehm had in her possession and at her disposal a valid United States passport, her voter registration card, and a current utility bill bearing her name and home address in Standish, Michigan.

35. At no time did Blehm ever authorize, orally or in writing, the cancellation of her Michigan voter registration.

36. At no time after applying for her out-of-state driver's license in Georgia does Blehm ever recall receiving any notice from any Michigan election official requesting confirmation of her Michigan voter registration or notifying her of the cancellation of her Michigan voter registration. Though Blehm does not know whether Defendants in fact mailed her these notices, even if they were sent, Defendants' procedures nonetheless violated the notice and retention procedures required by Section 8 of the NVRA and Michigan Election Law.

37. After receiving information that Blehm applied for a Georgia driver's license, Defendants unlawfully changed Blehm's voting status to "Cancel" on the QVF — without



confirming that she had changed her residence for voting purposes, without sending her the residency confirmation notice required by Section 8 of the NVRA and the Michigan Election Law, and without waiting the period of two federal general election cycles.

38. On or about November 19, 2008, Blehm visited a Secretary of State Branch Office and obtained a replacement Michigan driver's license. At that time, Blehm also re-registered to vote and was issued a registration receipt.

**The Defendants' Position and Stated Intent to Maintain the Present Procedure**

39. By correspondence dated July 8, 2008, counsel for the Plaintiffs and Blehm notified the Defendants that the Cancellation and Purging Procedures violate federal law, and urged the Defendants to discontinue such practices and to take remedial action to re-enfranchise affected voters.

40. Thomas, on behalf of the State Defendants, responded by letter dated August 29, 2008. As to the Immediate Purging Practice, the State Defendants affirmed that voter registrations are indeed cancelled in this manner, and that the onus lies with the voter to "correct the record," stating that the change of address for purposes of a driver license constitutes a change of address for voter registration under federal law.

41. On or about October 31, 2008, after reviewing this Court's October 13, 2008, order granting in part and denying in part the motion for preliminary injunction brought by the original Plaintiffs in this action, the State Defendants purportedly issued a directive to local clerks, instructing them to reinstate and return to "Active" status in the QVF any voters whose registrations had been canceled because they applied for an out-of-state driver's license and who requested a ballot, claiming that they never intended to give up their voting rights in Michigan.

42. In spite of the State Defendants' purported October 31, 2008, directive, the Standish Defendants nevertheless refused to allow Blehm to vote in the general presidential election on November 4, 2008.

43. In addition, in spite of their purported October 31, 2008, directive, State Defendants have continued to reaffirm publicly that the Cancellation Procedure is a valid and effective form of voter registration list maintenance, that it is fully compliant with the NVRA and other relevant federal and state election laws, and that they intend to keep removing voters from the rolls pursuant to this procedure, unless otherwise instructed by the courts.

44. Absent the requested declaratory and injunctive relief, Blehm and other similarly situated individuals who, for a variety of legitimate reasons, apply for driver's licenses in other states while desiring to maintain their permanent residency in Michigan, face the real danger of being turned away when seeking to exercise their fundamental right to vote in their jurisdiction of permanent residency.

**COUNT I**  
**(Violation of the NVRA -- Purging Procedure)**

45. Intervening Plaintiff repeats and re-alleges the preceding allegations as though fully set forth herein.

46. 42 U.S.C. § 1983 authorizes suits for the deprivation of a right secured by the Constitution or the laws of United States caused by a person acting under the color of state law.

47. Section 11(b) of the NVRA likewise creates a private right of action for parties who are aggrieved by a violation of the Act. 42 U.S.C. § 1973gg-9(b).

48. Section 8(d) of the National Voter Registration Act ("NVRA"), 42 U.S.C. § 1973gg-6(d), grants a right to voters by expressly prohibiting states from removing a voter's name from the voting rolls until the voter confirms his or her change of address in writing or the

period of two federal general election cycles has expired, in the event that a notice was sent and the voter failed to respond to it (the “NVRA Safeguards”).

49. On July 8, 2008, counsel for Plaintiffs provided Defendant Thomas with written *ante litem* notice that the Purging Procedure was in violation of the NVRA. To date, the violation has not been corrected. Inasmuch as this is a Complaint in Intervention, no further *ante litem* notice is required of Blehm. *ACORN v. Miller*, 129 F.3d 833, 837-38 (6<sup>th</sup> Cir. 1997).

50. In violation of Section 8(d) of the NVRA, Defendants have removed Blehm’s name from the voting rolls without providing the requisite notice to her and without waiting the period of two federal general election cycles, after receiving information that Blehm had applied for a Georgia driver’s license. Defendants continue to immediately remove other similarly situated voters’ names from the voting rolls, without providing the requisite notice and without waiting the period of two Federal general election cycles, whenever Defendants receive information that affected voters have applied for an out-of-state driver’s license (the “Purging Procedure”).

51. The State Defendants and the Standish Defendants have individually and collectively, under color of state law, including, without limitation, employing the Purging Procedure, deprived Blehm of her rights under the NVRA, specifically including but not limited to her right to vote in the November 4, 2008, general election. Defendants acted knowingly, willfully, and maliciously, in violation of clearly established law. As a result of Defendants’ actions, Blehm has suffered injuries and is entitled to declaratory and injunctive relief, nominal and compensatory damages in an amount to be determined at trial, as well as to attorneys’ fees and costs.

52. Defendants' actions, including but not limited to their adherence to the Purging Procedure, threatens Blehm and other voters similarly situated to Plaintiff with real and immediate harm by the burdens placed on registration and voting and significantly increases the likelihood that they will again be turned away when seeking to exercise their fundamental right to vote in their jurisdiction of permanent residency in future elections.

**COUNT II**  
**(Violation of HAVA – Failure to Offer Provisional Ballot)**

53. Intervening Plaintiff repeats and re-alleges the preceding allegations as though fully set forth herein.

54. Section 302 of the Help America Vote Act ("HAVA), 42 U.S.C. § 15482, grants a right to any voter to cast a provisional ballot in any federal election in which she claims to be registered and eligible to vote, if her name is not included on the official list of eligible voters for the polling place in that election, or if an election official asserts that she is not eligible to vote.

55. In violation of Section 302 of HAVA, the Standish Defendants failed or refused to offer Blehm the opportunity to cast a provisional ballot in the November 4, 2008 general election when she appeared to vote and her name did not appear on the official list of eligible voters in her precinct.

56. The Standish Defendants have individually and collectively, under color of state law, deprived Blehm of her rights under HAVA, specifically including but not limited to her right to be offered and to cast a provisional ballot in the November 4, 2008, general election. Defendants acted knowingly, willfully, and maliciously, in violation of clearly established law. As a result of Defendants' actions, Blehm has suffered injuries and is entitled to declaratory and

injunctive relief, nominal and compensatory damages in an amount to be determined at trial, as well as to attorneys' fees and costs.

57. Defendants' actions, including but not limited to their failure to adhere to the provisional voting provisions of HAVA, threatens Blehm and other voters similarly situated to Plaintiff with real and immediate harm by the burdens placed on registration and voting and significantly increases the likelihood that they will again be turned away when seeking to exercise their fundamental right to vote in their jurisdiction of permanent residency in future elections.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

- 1) Declare the rights of the parties, including a declaration that the Purging Procedure violates Section 8(d) of the NVRA, 42 U.S.C. § 1973gg-6(d), and that the Standish Defendants' failure or refusal to offer Blehm the opportunity to cast a provisional ballot on November 4, 2008, violated Section 302 of HAVA, 42 U.S.C. § 15482;
- 2) Permanently enjoin Defendants from canceling or otherwise removing registered voters from the official list of eligible voters pursuant to the Purging Procedure or in any other manner that is inconsistent with federal law.
- 3) Enjoin Defendants to restore to "Active" or "Verify" status in the QVF all voters whose registrations (a) were cancelled pursuant to the Purging Procedure between January 1, 2006 and the present and (b) have not been reactivated by other means, unless Defendants have received a specific written request from an affected voter authorizing the cancellation of a particular registration, or the affected voter is presently no longer qualified to vote under Michigan law by reason other than a change of address;

- 4) Award Plaintiff nominal and other appropriate compensatory damages resulting from Defendants' improper and unlawful disfranchisement of Plaintiff in the November 4, 2008 Election;
- 5) Award Plaintiff attorneys' fees pursuant to 42 U.S.C. §§ 1973gg-9 and 1988; and
- 6) Award such other and further relief as this Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all issues in this case.

Respectfully submitted,

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Dated: January 29, 2009