

3505.183. Any injunctive relief requiring counting of ballots in the upcoming 2012 elections should run against both the Secretary of State and the members of the County Boards. Thus, in addition to suing Secretary of State Jon Husted, Plaintiffs bring this case as a defendants' class action pursuant to Rule 23 of the Federal Rules of Civil Procedure against a proposed defendant class of all members of Ohio's County Boards of Elections. Given that Plaintiffs have moved the Court for preliminary injunctive relief (see Docket No. 4), Plaintiffs ask this Court at the same time to rule on this request for certification of a defendant class, to ensure the uniform implementation of any injunctive relief in all 88 counties during those upcoming elections.

Defendants Timothy M. Burke, Jeff Hastings, and Douglas J. Priebe (hereinafter "named County Defendants") are members of the proposed class of all members of County Boards of Elections. Complaint ¶¶22-25. The proposed defendant class satisfies the requirements of Rule 23(a) of the Federal Rules of Civil Procedure, because: (i) the class is so numerous that joinder of all County Board members is impracticable; (ii) there are questions of law or fact common to the class; (iii) the claims or defenses of the named County Defendants are likely typical of the claims or defenses of the class; and (iv) the named County Defendants will fairly and adequately protect the interests of the class. In addition, this action is appropriately certified as a defendants' class action pursuant to Rule 23(b)(1)(A), Rule 23(b)(1)(B), and Rule 23(b)(2).

First, the proposed defendant class is so numerous that separate joinder of each class member is impracticable. Each of Ohio's 88 County Boards of Elections has four members. Ohio Rev. Code §3501.06. Thus, the proposed class of members of County Boards of Elections consists of 352 individuals.

Second, there are questions of fact and law common to the claims and defenses of the named County Defendants and all members of the class of members of County Boards of Elections. These questions include, but are not limited to, the following:

- (a) Whether Ohio's provisional ballot counting statute, Ohio Rev. Code §3505.183(B)(4)(a)(ii), which requires members of County Boards of Elections not to open and count provisional ballots cast by individuals in an incorrect precinct as a result of poll worker error, is consistent with the U.S. Constitution and federal voting laws;
- (b) Whether Ohio's provisional ballot counting statute, Ohio Rev. Code §3505.183(B)(4)(a)(iii), which requires members of County Boards of Elections not to open and count provisional ballots in ballot envelopes that contain incomplete or incorrect ballot affirmations as a result of poll worker error, is consistent with the U.S. Constitution and federal voting laws;
- (c) Whether declaratory relief, holding unconstitutional the enforcement of Ohio Rev. Code §3505.183(B)(4)(a)(ii) and (iii) where the reasons for rejection of provisional ballots are attributable to poll worker error, is appropriate; and
- (d) Whether statewide uniform injunctive relief, requiring members of all County Boards of Elections, absent affirmative evidence that county poll workers have complied with their statutory duties, to open and count provisional ballots that are cast in incorrect precincts and in ballot envelopes that have incomplete or incorrect affirmations, is appropriate.

Third, the claims or defenses of the named County Defendants are identical to those of all class members. The named County Defendants, like every other member of the County Boards

of Elections across the State, are charged with following Ohio election law, and with implementing directives of the Defendant Secretary of State. Ohio Rev. Code §3501.11. The named County Defendants, like every other member of every County Board of Elections in Ohio, are required by Ohio law to reject provisional ballots cast by registered voters that are cast in an incorrect precinct, and to reject such ballots where the ballots' envelopes contain incomplete affirmations. Ohio Rev. Code §3505.183(B)(4)(a)(ii) and (iii); *State ex rel. Painter v. Brunner*, 128 Ohio St.3d 17, 941 N.E.2d 782 (2011). Thus, the defenses of the named County Defendants are typical of, and indeed identical to, those of class members, because the named County Defendants and all class members are all charged with implementing the same unconstitutional state law.

Fourth, the named County Defendants can fairly and adequately represent the interests of the class because their interests are identical to those of class members. As public officials, the named County Defendants will properly defend this action.

Certification of a defendant class at this time is appropriate under Rule 23(b)(1)(A) of the Federal Rules of Civil Procedure, because the prosecution of separate actions against the members of each Ohio county's Board of Elections could create a risk of inconsistent or varying adjudications concerning the counting of ballots by individual Boards of Elections that could establish incompatible standards of conduct. The uniform implementation of statewide ballot counting standards is constitutionally necessary to avoid equal protection violations. *Bush v. Gore*, 531 U.S. 98, 107 (2000); *see also Hunter v. Hamilton County Bd. of Elections*, 635 F.3d 219 (6th Cir. 2011); *Hunter v. Hamilton County Bd. of Elections*, No. 1:10CV820, 2012 WL 404786 (S.D. Ohio Feb. 8, 2012).

Certification of a defendant class action is also independently appropriate under Rule 23(b)(1)(B), because without any separately prosecuted actions against the members of the individual County Boards, any judgment in this action against the named County Defendants on a non-class basis would, as a practical matter, be dispositive of the interests of the other members of the proposed class. Constitutional equal protection principles require all members of County Boards of Elections to apply the same rules when providing and counting provisional ballots. *Bush*, 531 U.S. at 107. Even if this case were brought only against the three named County Defendants, County Boards of Elections across the State would risk running afoul of the Constitution were they to count ballots in a manner different from any court order in this case.

Finally, certification of a defendant class is independently appropriate under Rule 23(b)(2), because the predominant thrust of Plaintiffs' claims is that the provisional ballot-counting statute is unconstitutional and because Plaintiffs seek identical injunctive relief against each class member.

For these reasons, and for the reasons set forth in the accompanying Memorandum of Law, Plaintiffs respectfully request that the Court certify a defendant class of all members of Ohio's County Boards of Elections.

Dated: June 29, 2012

Respectfully submitted,

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**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR CERTIFICATION OF DEFENDANT CLASS**

Plaintiffs contend that Ohio's provisional ballot laws, which require the rejection of thousands of ballots cast by lawful voters in the upcoming November 2012 elections, violate the United States Constitution and federal voting laws. Ohio law delegates to the members of the 88 Ohio County Boards of Elections the duty to count and reject provisional ballots cast by Ohio voters. Ohio Rev. Code §3505.183. In addition to suing Ohio Secretary of State Jon Husted, the chief election official, who can appoint, remove and break tie votes of those Boards, Plaintiffs have brought this action against a proposed defendant class of "all members of County Boards of Elections" in Ohio. Plaintiffs respectfully request the prompt resolution of this motion along with Plaintiffs' motion for preliminary injunction (Docket No. 4), so that any potential injunctive relief will bind all members of the Boards, and to ensure that voters are subject to one uniform standard for the counting of provisional ballots statewide during the upcoming 2012 elections.

This case, a constitutional challenge to a state statute administered by local officials, presents the classic case for a defendants' class action. *See, e.g., CBS, Inc. v. Smith*, 681 F.Supp. 794, 801-02 (S.D. Fla. 1988) (certifying defendant class of all county Supervisors of Elections in Florida in constitutional challenge to state election law in connection with issuance of preliminary injunction against enforcement of law); *NBC, Inc. v. Cleland*, 697 F.Supp. 1204, 1215-17 (N.D. Ga. 1988) (certifying defendant class of all county Superintendents of Elections in Georgia in constitutional challenge to state election law); *Akron Ctr. for Reprod. Health v. Rosen*, 110 F.R.D. 576, 579, 583 (N.D. Ohio 1986) (certifying defendant class of city prosecutors in constitutional challenge to state abortion parental notification law; holding that "since all potential defendants are required to enforce the unconstitutional statute, certification of the defendant class is warranted").

Federal Rule of Civil Procedure 23(a) establishes four prerequisites to a class action: numerosity, commonality, typicality, and adequacy of representation. A class action can then be maintained under any of the three subparts of Rule 23(b). Under Rule 23(b)(1)(A), a class action may be maintained where “inconsistent or varying adjudications with respect to individual class members . . . would establish incompatible standards of conduct for the party opposing the class.” Independently, under Rule 23(b)(1)(B), a class action may be maintained where “adjudications with respect to individual class members . . . , as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.” Finally, under Rule 23(b)(2), a class action may alternatively be maintained where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” This case meets each of the requirements for a class action under Federal Rule of Civil Procedure 23(a), and a class should be certified under Rule 23(b)(1)(A), Rule 23(b)(1)(B), and Rule 23(b)(2).

BACKGROUND

In 2006, Ohio enacted one of the most complicated provisional ballot laws in the country, in response to the federal Help America Vote Act of 2002 (“HAVA”), 42 U.S.C. §15301 *et seq.*, which requires all states to permit individuals who do not appear on the official list of eligible voters for a polling place to cast a provisional ballot as a “fail safe” voting mechanism. 42 U.S.C. §15482(a), §15483(b)(2)(B). Ohio identified thirteen different circumstances in which voters are not permitted to cast regular ballots, and instead must use provisional ballots – only one of which is when the voter is not included in the precinct list. Ohio Rev. Code §3505.181(A)(1); *see also id.* §3505.181(A)(2)-(13).

Provisional ballots are not counted on election day. Instead, each Ohio County Board of Elections is responsible for “determin[ing] whether a provisional ballot is valid and entitled to be counted” several days after the election in which individuals have cast their ballots. Ohio Rev. Code §3505.183(B)(1), (E)(3). First, the Board is required to “examine [its] records and determine whether the individual who cast the provisional ballot is registered and eligible to vote in the applicable election.” *Id.* After determining that the ballot was cast by a registered voter, the Board is nonetheless required to reject the ballot in a number of circumstances, including:

- (ii) The individual named on the affirmation is not eligible to cast a ballot in the precinct or for the election in which the individual cast the provisional ballot.
- (iii) The individual did not provide all of the information required under division (B)(1) of this section in the affirmation that the individual executed at the time the individual cast the provisional ballot.

Ohio Rev. Code §3505.183(B)(4)(a)(ii), (iii); *see also id.* §3503.183(B)(3)(a)-(c) (provisional ballots may be counted only if “individual named on the affirmation is eligible to cast a ballot in the precinct and for the election in which the individual cast the provisional ballot”). Thus, when a registered voter is permitted to cast a provisional ballot that corresponds to a precinct that election officials later determine not to be that individual’s assigned precinct, the individual’s votes for every federal, state and local contest on that ballot must be rejected.

The Secretary implements Ohio election law by issuing Directives to the County Boards. Secretary of State Husted has issued Directives with respect to the counting of provisional ballots during the 2012 elections. *See, e.g.*, Directive 2012-01 (January 4, 2012) (available at <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2012/Dir2012-01.pdf>). The Ohio Secretary of State does not, however, directly participate in the counting of provisional ballots after election day. The Secretary may be called upon to break a tie vote by a Board of Elections. Ohio Rev. Code §3501.11(X).

ARGUMENT

A. The Proposed Defendant Class of County Board of Elections Members Satisfies The Requirements of Rule 23(a).

1. Numerosity. The members of the proposed class are “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). This Court has “found that as few as twenty-three class members could satisfy the requisite numerosity.” *Salvagne v. Fairfield Ford, Inc.*, 264 F.R.D. 321, 325 (S.D. Ohio 2009) (citing *Basile v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 105 F.R.D. 506, 508 (S.D. Ohio 1985)). Each of Ohio’s 88 counties has a Board of Elections with four members. Ohio Rev. Code §3501.06. Thus, the proposed class of all members of County Boards of Elections consists of 352 individuals. It would be impracticable to require joinder of all members of the class. *See CBS*, 681 F.Supp. at 802 (holding that “Defendant class of Supervisors of Elections for each of the 67 counties in Florida is so numerous that joinder of all members is impracticable”).

2. Commonality. The criterion of commonality is satisfied where the class representatives’ claims or defenses “depend upon a common contention . . . that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims [or defenses] in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). What matters for purposes of commonality is “the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.” *Id.* (internal quotation marks, italics, and citation omitted). “[F]or purposes of Rule 23(a)(2) even a single common question will do.” *Id.* at 2556 (internal quotation marks, brackets, and citation omitted). Here, there are questions of fact and law common to the claims and defenses of named Defendants Timothy M. Burke, Jeff Hastings, and Douglas J. Preisse (hereinafter “named County Defendants”) and all members of the class of

members of County Boards of Elections, and these questions can be resolved through common answers. These questions include, but are not limited to, the following:

- (a) Whether Ohio's provisional ballot counting statute, Ohio Rev. Code §3505.183(B)(4)(a)(ii), which requires members of County Boards of Elections not to open and count provisional ballots cast by individuals in an incorrect precinct as a result of poll worker error, is consistent with the U.S. Constitution and federal voting laws;
- (b) Whether Ohio's provisional ballot counting statute, Ohio Rev. Code §3505.183(B)(4)(a)(iii), which requires members of County Boards of Elections not to open and count provisional ballots in ballot envelopes that contain incomplete or incorrect ballot affirmations as a result of poll worker error, is consistent with the U.S. Constitution and federal voting laws;
- (c) Whether declaratory relief, holding unconstitutional the enforcement of Ohio Rev. Code §3505.183(B)(4)(a)(ii) and (iii) where the reasons for rejection of provisional ballots are attributable to poll worker error, is appropriate; and
- (d) Whether statewide uniform injunctive relief, requiring members of the County Boards of Elections, absent affirmative evidence that county poll workers have complied with their statutory duties, to open and count provisional ballots that are cast in incorrect precincts and in ballot envelopes that have incomplete or incorrect affirmations, is appropriate.

Because the named County Defendants and all members of the proposed Defendant Class have the statutory duty to implement Section 3505.183, the question of the statute's

constitutionality is of common interest to all class members, and the resolution of that common question will have the same impact on all class members.

3. Typicality. Typicality is easily satisfied in this case because the named Defendants have the identical public duties as the class members. In a defendant class action, “Rule 23(a)(3) will be satisfied if the defenses raised by [the representative defendants] are typical of those raised by the entire class.” *Alexander Grant & Co. v. McAlister*, 116 F.R.D. 583, 588 (S.D. Ohio 1987). A representative’s claims or defenses ““need not always involve the same facts or law”” as the claims or defenses of other class members, ““provided there is a common element of fact or law.”” *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007) (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 525 n. 31 (6th Cir. 1976)).

The named County Defendants, like every other member of the County Boards of Elections, are charged with following Ohio statutory law and Ohio law as interpreted by the Ohio Supreme Court, and with implementing directives of the Defendant Secretary of State. Ohio Rev. Code §3501.11. The named County Defendants, like every other member of every County Board of Elections in Ohio, are statutorily required to reject provisional ballots cast by registered voters that are cast in an incorrect precinct, and to reject such ballots where the ballot envelopes contain incomplete or incomplete affirmations. *Id.* §3505.183(B)(4)(a)(ii) & (iii); *see State ex rel. Painter v. Brunner*, 128 Ohio St.3d 17, 28, 32 (2011); *State ex rel. Skaggs v. Brunner*, 120 Ohio St.3d 506, 515-17 (2008). Thus, the defenses of the named County Defendants are typical of – and indeed identical to – those of class members, because the named County Defendants and all class members are charged with implementing the same unconstitutional state law. *See CBS*, 681 F.Supp. at 802 (typicality satisfied where Supervisor of Elections “empowered with the same election law enforcement and oversight functions as every other county Supervisor” in

Florida and thus defenses raised by named defendant were “surely typical of the defenses of the entire Defendant class”); *NBC*, 697 F.Supp. at 1216-17 (named Superintendent of Elections had same duty to enforce law as every member of class of Superintendents of Elections and so “[a]ny defenses asserted by the [named defendants] will be typical of the defenses of the defendant class”).

4. Adequacy. The adequacy inquiry under Rule 23(a)(4) is satisfied where, as here, the class representatives “have common interests with unnamed members of the class,” and “the representatives will vigorously prosecute the interests of the class through qualified counsel.” *Beattie*, 511 F.3d at 562-63 (quoting *In re American Med. Sys., Inc.*, 75 F.3d 1069, 1083 (6th Cir. 1996)). Because, as set forth above, the named County Defendants have “the same duties and responsibilities as all other” members of County Boards of Elections, the representatives have interests in common with – and indeed identical to – the proposed class members, and thus “can fairly and adequately protect the interests of the defendant class.” *NBC*, 697 F.Supp. at 1217; *see CBS*, 681 F.Supp. at 802. As public officers, the named County Defendants can be expected to properly litigate this action.

B. Certification of this Action is Proper Under Rule 23(b)(1)(A), Rule 23(b)(1)(B), and Rule 23(b)(2).

1. Rule 23(b)(1)(A). This action is properly maintained as a class action under Rule 23(b)(1)(A), because the prosecution of separate constitutional lawsuits against the members of each Ohio county’s Board of Elections could “create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct” for voters, as well as for the Secretary of State and members of the County Boards of Elections. Fed. R. Civ. P. 23(b)(1)(A); *see CBS*, 681 F.Supp. at 801-02 (defendant class action against Florida Supervisors of Elections properly certified under Rule 23(b)(1)(A));

NBC, 697 F.Supp. at 1217 (same for defendant class action against Georgia Superintendents of Elections); *cf. Planned Parenthood Ass'n of Cincinnati, Inc. v. Project Jericho*, 52 Ohio St.3d 56, 67 (1990) (defendant class properly certified under state law analogue to Rule 23(b)(1)(A)).¹ The uniform implementation of statewide ballot counting standards is constitutionally necessary to avoid equal protection violations. *Bush v. Gore*, 531 U.S. 98, 107 (2000); *see also Hunter v. Hamilton County Bd. of Elections*, 635 F.3d 219 (6th Cir. 2011); *Hunter v. Hamilton County Bd. of Elections*, No. 1:10CV820, 2012 WL 404786 (S.D. Ohio Feb. 8, 2012).

2. Rule 23(b)(1)(B). This action may independently be maintained under Rule 23(b)(1)(B), because “adjudications with respect to individual class members . . . , as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.” Fed. R. Civ. P. 23(b)(1)(B). Constitutional equal protection principles and Ohio law require all members of County Boards of Elections to apply the same rules when providing and counting provisional ballots. *Bush*, 531 U.S. at 107; Ohio Rev. Code §§3501.11, 3505.181-183. Even if this case were brought only against the three named county defendants, County Boards of Elections across the State would risk running afoul of the Constitution were they to count ballots in a manner different from any court order in this case. The case is therefore proper for certification as a class under Rule 23(b)(1)(B). *See Stewart v. Waller*, 404 F.Supp. 206, 213 (N.D. Miss. 1975) (certifying defendant class under Rule 23(b)(1)(B) of all municipal officials in municipalities affected by challenged state law requiring at-large municipal elections, because “invalidation of the system of at-large municipal elections would, as a practical matter, be

¹ Ohio’s class action rule mirrors Fed. R. Civ. P. 23. *See Planned Parenthood Ass’n of Cincinnati*, 52 Ohio St.3d at 62 n.5 (1990).

dispositive of the claims of all defendant class members”); *Pennsylvania Ass’n for Retarded Children v. Com. of Pa.*, 343 F.Supp. 279, 291-92 (E.D. Pa. 1972) (certifying defendant class under Rule 23(b)(1)(B) of school districts and local government entities known as “intermediate units” in suit challenging constitutionality of certain state statutes, because “as a practical matter, once the issues are decided against one school district within an intermediate unit, or one intermediate unit within the Commonwealth[,] all other districts or intermediate units will ultimately be bound by the result”).²

3. Rule 23(b)(2). This action may also independently be maintained under Rule 23(b)(2) because the predominant thrust of Plaintiffs’ claims is that the provisional ballot-counting statute is unconstitutional, and “the relief plaintiffs seek is identical as to each member of the defendant class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” *NBC*, 697 F.Supp. at 1217; see *Akron Ctr. for Reprod. Health*, 110 F.R.D. at 583 (“[S]ince all potential defendants are required to enforce the unconstitutional statute, certification of the defendant class [under Rule 23(b)(2)] is warranted.”).

“Where, as here, a statute with statewide application is challenged on the ground of its unconstitutionality, allowing the action to proceed against the class of officials charged with its

² In *Gaunt v. Brown*, 341 F.Supp. 1187, 1193 (S.D. Ohio 1972), this Court declined to certify a defendant class of members of County Boards of Elections in a suit challenging the constitutionality of a state election law, reasoning that “the need for a defendant class is not apparent,” because the named defendants included the Secretary of State. The Sixth Circuit subsequently has made clear, however, that where, as here, the requirements of Rule 23(a) and either Rule 23(b)(1) or 23(b)(2) are satisfied, class certification may not be denied on the ground that a court sees “no need for the action to go forward as a class action.” *Penland v. Warren County Jail*, 797 F.2d 332, 334-35 (6th Cir. 1986) (citing *Penland v. Warren County Jail*, 759 F.2d 524, 531 (6th Cir. 1985) (*en banc*)). In any event, certification of a defendant class is appropriate here, because the members of the County Boards of Elections, not the Secretary of State, determine whether to reject or count each provisional ballot. See Ohio Rev. Code. §3505.183.

enforcement is in accordance with the interests of judicial administration and justice which Rule 23 is meant to further,” and certification under Rule 23(b)(2) is appropriate. *Redhail v. Zablocki*, 418 F.Supp. 1061, 1066 (D. Wis. 1976), *aff’d on other grounds*, 434 U.S. 374 (1978); *cf. Thompson v. Bd. of Educ. of Romeo Cmty. Sch.*, 709 F.2d 1200, 1204 (6th Cir. 1983) (noting that courts have recognized that defendant class actions are appropriate under Rule 23(b)(2) “where the individual defendants are all acting to enforce ‘a locally administered state statute or similar administrative policies’”) (quoting *Greenhouse v. Greco*, 617 F.2d 408, 413, n.6 (5th Cir.1980)); *Brown v. Kelly*, 609 F.3d 467, 479 (2d Cir. 2010) (“[I]t is now settled that 23(b)(2) is an appropriate vehicle for injunctive relief against a class of local public officials.”) (quoting *Marcera v. Chinlund*, 595 F.2d 1231, 1238 (2d Cir.), *vacated on other grounds sub nom. Lombard v. Marcera*, 442 U.S. 915 (1979)).³

C. This Court Should Resolve This Motion for Certification of the Defendant Class Along With Plaintiffs’ Motion for Injunctive Relief.

Certification of the defendant class in connection with Plaintiffs’ motion for a preliminary injunction is appropriate so that the injunction can provide meaningful and *uniform* relief for voters across Ohio during the upcoming 2012 elections. *See CBS*, 681 F.Supp. at 806

³ Plaintiffs have standing to assert claims against all members of the proposed defendant class on the basis that “all defendants are *juridically related*,” meaning that “all members of the defendant class are officials of a single state and are charged with enforcing or uniformly acting in accordance with a state statute, or common rule or practice of state-wide application, which is alleged to be unconstitutional.” *Thompson*, 709 F.2d at 1205 (quoting *Mudd v. Busse*, 68 F.R.D. 522, 527-28 (N.D. Ind. 1975)) (emphasis in original). Even if this doctrine of standing did not apply (which it does), Plaintiffs also have standing with respect to each member of the proposed defendant class because Plaintiffs represent members in every county in the State (*see* Decl. of Lance Wyatt in Support of Pls.’ Mot. for Preliminary Injunction ¶4), and because the unconstitutional state law at issue “frustrates the [plaintiff] organization[s]’ goals and requires the organization[s] to expend resources . . . they otherwise would spend in other ways.” *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 943 (9th Cir. 2011) (internal quotation marks and citation omitted); *see, e.g.*, Decl. of Karen Gasper in Support of Pls.’ Mot. for Preliminary Injunction ¶¶3-6.

(certifying defendant class of Florida Supervisors of Elections in connection with issuance of preliminary injunction against enforcement of challenged election law); *Clean-Up '84 v. Heinrich*, 582 F.Supp. 125, 127 (M.D. Fla. 1984) (certifying defendant class of Florida sheriffs in connection with issuance of preliminary injunction against enforcement of challenged criminal election law).

The Court is not required to order any notice prior to certifying a defendant class, and notification of certification of a class pursuant to Rules 23(b)(1) and (b)(2) is at this Court's discretion. *See* Fed. R. Civ. P. 23(c)(2)(A). Because Defendant Secretary of State Husted should be able accurately and efficiently to provide notice to all members of County Boards of Elections, Plaintiffs respectfully suggest that the Court order Defendant Husted to provide notice to all class members of the Court's certification of the defendant class.

CONCLUSION

For the forgoing reasons, the Court should grant Plaintiffs' Motion for Certification of Defendant Class.

Dated: June 29, 2012

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CERTIFICATE OF SERVICE

I certify that on June 29, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. All parties that have entered appearances will be notified through and may access the foregoing on the CM/ECF system. Additionally, the following party has been served via regular U.S. Mail:

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