

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

**LIBERTARIAN PARTY OF OHIO,** )  
**KEVIN KNEDLER, AARON HARRIS, and** )  
**CHARLIE EARL,** )

Plaintiffs, )

and )

**ROBERT M. HART,** )  
individually and )

**ROBERT FITRAKIS** )  
on behalf of the **GREEN PARTY OF OHIO,** )

and )

**MAX RUSSELL ERWIN,** )  
individually and )

**DON SHRADER** )  
on behalf of the **CONSTITUTION** )  
**PARTY OF OHIO,** )

Applicants to Intervene, )

v. )

**JON HUSTED,** )  
in his Official Capacity as )  
Ohio Secretary of State, )

Defendant, )

and )

**THE STATE OF OHIO,** )

Intervener-Defendant. )

Case No. 2:13-cv-00953

JUDGE MICHAEL H. WATSON

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION BY  
INTERVENER-APPLICANTS TO INTERVENE AS PLAINTIFFS**

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## **I. INTRODUCTION**

Plaintiff-intervener-applicants Robert M. Hart, individually and Robert Fittrakis, on behalf of the Green Party of Ohio (“GPOHIO”), Max Russell Erwin, individually and Don Shrader on behalf of the Constitution Party of Ohio (“CPO”) respectfully submit this memorandum of law in support of their Motion to Intervene as Plaintiffs articulating the basis for which intervention is sought pursuant to Fed. R. Civ. P. 24(a) or, in the alternative, Fed. R. Civ. P. 24(b).

Plaintiffs Libertarian Party of Ohio (“LPO”), Kevin Knedler, Aaron Harris, and Charlie Earl (“Plaintiffs”) filed an amended complaint on November 8, 2013 seeking a declaration that S.B. 193 violates the First and Fourteenth Amendment rights of the Plaintiffs and a preliminary injunction to enjoin Ohio Secretary of State Jon Husted and the State of Ohio (“Defendants”) from enforcing S.B. 193 in the 2014 election cycle. Similar to Plaintiffs, Applicants are minor political parties, their candidates and qualified Ohio voters who wish to support these parties and their candidates.

S.B. 193 places severe burdens on the First and Fourteenth Amendment rights of the Plaintiffs and Applicants. Consequently, Applicants have a direct and substantial interest in halting enforcement of S.B. 193. As set forth below, Applicants are seeking intervention as a matter of right pursuant to Fed. R. Civ. P. 24(a). Alternatively, Applicants should be permitted to intervene under Fed. R. Civ. P. 24(b)(1), as Applicants’ claims share a common question of law with the main action and there is no risk that permitting Applicants to intervene would delay or prejudice the orderly adjudication of Plaintiffs’ claims.

## **II. APPLICANTS**

Applicant Robert M. Hart (“Hart”) is a member of the GPOHIO, a recognized minor political party in the State of Ohio, and a member of the Franklin County Green Party.

Applicant-Hart chose to run for the United States Congress as a Green Party candidate and to compete in the 2014 Ohio primary to represent Ohio's 12th Congressional District in the United States House of Representatives.

Applicant Robert Fitrakis ("Fitrakis") is a member of the GPOHIO, a recognized minor political party in the State of Ohio, and a member of the Franklin County Green Party. Applicant-Fitrakis serves as the co-chair of the GPOHIO's Central Committee. As co-chairman of the GPOHIO's Central Committee Applicant-Fitrakis functions as the authorized representative of the Green Party of Ohio and has received authority from the GPOHIO to represent their interests in this litigation challenging S.B. 193.

Applicant Max Russell Erwin is a member of the CPO, a recognized minor political party in the State of Ohio. Applicant-Erwin chose to run for the United States Congress as a CPO candidate and compete in the 2014 primary to represent Ohio's 7th Congressional District in the United States House of Representatives.

Applicant Don Shrader is the State Chairman of the CPO, a recognized minor political party in the State of Ohio. As State Chairman of the CPO, Applicant Shrader is the authorized representative of the CPO. Applicant Shrader functions as the authorized representative of the CPO and has received authority from the CPO to represent their interest in this litigation challenging S.B. 193.

In addition to seeking intervention on behalf of their parties or themselves as candidates, Applicants Hart, Fitrakis, Erwin, and Shrader also seek to intervene in their capacity as qualified Ohio electors who want to remain affiliated with GPOHIO or CPO and vote for the candidates of these minor political parties in the May 2014 primary election.

### III. BACKGROUND

In 2006, the Sixth Circuit Court of Appeals determined that Ohio laws regulating how new and minor political parties may form and obtain ballot access were unconstitutional. *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006). In spite of the 2006 determination that Ohio laws regulating minor political parties were unconstitutional, the State of Ohio has failed to enact new ballot access laws. *See, e.g.*, Ohio Secretary of State Directive 2011-01 (Jan. 6, 2011). However, minor political parties have continued to operate in the state based on directives and advisories issued by the Ohio Secretary of State and through federal court orders. *See, e.g.*, Ohio Secretary of State Directive 2009-21 (Dec. 31, 2009).

Since 2006, Directives issued by the Ohio Secretary of State have recognized both the GPOHIO and CPO as minor political parties in the state. *See* Ohio Secretary of State Directive 2013-02 (Jan. 31, 2013); Ohio Secretary of State Directive 2011-31 (Nov. 1, 2011); Ohio Secretary of State Directive 2011-01 (Jan. 6, 2011); Ohio Secretary of State Directive 2009-21 (Dec. 31, 2009).

On November 6, 2013, the Ohio Legislature passed S.B. 193 and Governor Kasich signed the bill into law later that same day. Ohio Legislative Service Commission, *S.B. 193 Status Report of Legislation*, <http://lsc.state.oh.us/coderev/sen130.nsf/Senate+Bill+Number/0193?OpenDocument> (last visited Nov. 20, 2013). Had the bill been signed into law a mere few days later, it would not have applied to the 2014 elections. *See, e.g.*, The Ohio House of Representatives, *Reps. Clyde, Foley Call on Gov. Kasich to Sign SB 193 Next Week*, Nov. 7, 2013 (noting that if S.B. 193 had been signed into law two days later it would not have applied to the 2014 election).

GPOHIO, CPO, and their candidates had been following the legally prescribed procedures in order to access the 2014 primary ballot prior to passage of S.B. 193. For example, Applicant-Hart was the endorsed GPOHIO candidate for the 12th Congressional District for the United States House of Representatives. Applicant-Hart had already collected signatures supporting his nomination as a Green Party Candidate for Congress, submitted his nominating petition to the Franklin County Board of Election, paid the filing fee, registered his candidacy with the Federal Election Commission, solicited campaign donations, and established a “Hart for Congress” website. S.B. 193 has, therefore, placed substantial burdens on the First and Fourteenth Amendment rights of Green Party Candidate Hart and Ohio voters who would be inclined to vote for Hart as a GPOHIO candidate for the United States Congress.

Applicant-Erwin was the endorsed CPO candidate for Ohio’s 7th Congressional District for the United States House of Representatives. Applicant-Erwin campaigned at the Constitution Party Convention for the congressional nomination and has expended more than \$20,000 for a campaign vehicle, campaign literature, and campaign expenses. Applicant-Erwin collected signatures supporting his nomination as the CPO Candidate for Congress in the 7th Congressional District and has otherwise been involved in campaigning for this seat.

**A. S.B. 193 Places a Severe Burden on GPOHIO and CPO.**

GPOHIO and CPO have been repeatedly recognized as minor political parties in Ohio. *See* Ohio Secretary of State Directive 2013-02 (Jan. 31, 2013); Ohio Secretary of State Directive 2011-31 (Nov. 1, 2011); Ohio Secretary of State Directive 2011-01 (Jan. 6, 2011); Ohio Secretary of State Directive 2009-21 (Dec. 31, 2009). As a result, GPOHIO and CPO have been able to compete in state primary elections, identify voters who support their platforms and candidates, and register new members.



S.B. 193 places a severe burden on the First and Fourteenth Amendment rights of GPOHIO and CPO since it voids the Secretary of State Directives that have recognized these parties. As a result, both the GPOHIO and CPO will cease to exist on the day that S.B. 193 takes effect. S.B. 193, § 3. Indeed, in order for GPOHIO and CPO to receive recognition in 2014 and be able to place candidates on the *general* election ballot, they will be required to submit a party formation petition with the state more than 125 days before the general election. *Id.* §§ 4(A) and 1 (amending O.R.C. § 3517.012(A)(1)). In 2014, S.B. 193 will require that party formation petitions be signed by qualified electors equal in number to at least one-half of one percent of the total vote for presidential nominees in the 2012 Ohio general election. *Id.* § 4(A). Signatures must be collected from individuals residing in at least half of the state's congressional districts, with a minimum of 500 qualified electors signing from each of these districts. *Id.* § 1 (creating O.R.C. § 3517.01(A)(1)(b)(ii)). Thus, in 2014, minor political parties will have to collect more than 27,900 signatures from qualified electors living across the state and submit them to the Secretary of State on or about July 1, 2014 if they wish to receive recognition in statewide or local elections. After 2014, party formation petitions will need to be signed by qualified electors equal in number to at least one percent of the total vote for nominees for governor or president in the most recent election for such office. *Id.* § 1 (creating O.R.C. § 3517.01(A)(1)(b)(i)).

S.B. 193 essentially requires minor political parties to field candidates in gubernatorial or presidential races in order to maintain their party status. It does this by creating a threshold of votes that parties must attain in such races if they wish to maintain party status for a period of four years. *Id.* §§ 1 (creating O.R.C. § 3517.01(A)(1)(a)) and 4(B). In 2014, a political party's gubernatorial candidate will need to obtain at least two percent (2%) of the vote in order to prevent their party from being disbanded. S.B. 193, § 4(B). Commencing in 2015, a political

party's candidate for governor or president must obtain three percent (3%) of the vote if the party wishes to maintain its status. *See, e.g., id.* § 1 (amending O.R.C. § 3501.01(F)(2)(a)). If a party does not field a candidate for these offices or if a party's candidate fails to obtain the required percentage of the vote, the party is disbanded and must re-submit a party-formation petition in order to be recognized in future elections. *See, e.g., id.* § 1 (amending O.R.C. §§ 3501.01(F)(2)(b) and 3517.01(A)(1)(b)). These party-formation petitions will have to be signed by at least one percent (1%) of the total vote for nominees for governor or president in the most recent election for such office. *Id.* § 1 (creating O.R.C. § 3517.01(A)(1)(b)(i)).

S.B. 193 prevents parties seeking to form via petition from participating in the primary election. These parties are only provided the opportunity to compete in the *general* election. *Id.* § 1 (amending O.R.C. § 3517.01(A)(1)(b)(iii) to require that party-formation petitions declare their intention “of participating in the succeeding general election” and O.R.C. § 3517.012(A)(1), which notes that when parties submit sufficient party formation petitions they are “entitled to nominate candidates to appear on the ballot at the *general* election”). While parties are not precluded from submitting their petitions prior to the primary election, these petitions need only be submitted 126 days before the general election. *Id.* § 1 (amending O.R.C. § 3517.012(A)(1) to note that party formation petitions need to be submitted more than 125 days before the primary election). Additionally, regardless of when a party formation petition is submitted, the Secretary of State is not required to determine the sufficiency of the petition until 95 days before the general election. S.B. 193, § 1 (amending O.R.C. § 3517.012(A)(2)(d)). This is almost three (3) months after the primary election has taken place.

Neither GPOHIO nor CPO attained the percentage of votes that S.B. 193 requires to maintain party status in either the 2010 gubernatorial or the 2012 presidential election.

Therefore, it seems likely that these parties will face continual post-election disillusion for the foreseeable future. This means that S.B. 193 will have the effect of preventing both the GPOHIO and CPO as well as other minor parties from competing in primary elections.

Because Ohio law only allows individuals to change their party affiliation at primaries, *see* ORC §§ 3513.19 and 3513.20 (2013), denying GPOHIO and CPO the ability to compete in the primary election and failing to even certify their status as a political party prior to the time of the primary, will place a severe burden on the ability of these minor parties to compete in 2014 and beyond and provide the two major parties with an effective political monopoly throughout the state. Specifically, by denying minor political parties the ability to compete in the 2014 primary election, S.B. 193 prevents these parties from being able to retain and add members and obtain party membership lists. Party membership lists allow parties to identify those individuals who: support their candidates and platforms, would be eligible to circulate nominating petitions under current Ohio law, and would be likely to volunteer their time and donate their resources and money to help advance minor political parties and their candidates. *See, e.g., Baer v. Meyer*, 577 F.Supp. 838, 843 (D. Colo. 1984) (recognizing that party membership “lists are invaluable in organizing campaigns, enlisting party workers and raising funds”). Thus, S.B. 193 places GPOHIO and CPO, who already operate under significantly greater financial constraints than major political parties, at a substantial disadvantage, unjustifiably interferes with their ability to organize and burdens their attempts to participate in the election process. *Williams v. Rhodes*, 393 U.S. 23, 32 (1968) (noting that “[n]ew parties struggling for their place must have the time and opportunity to organize in order to meet reasonable requirements for ballot position, just as the old parties have had in the past”).

**B. S.B. 193 Places a Severe Burden on Minor Political Party Candidates.**

S.B. 193, when considered in conjunction with other Ohio ballot access laws, places severe burdens on the First and Fourteenth Amendment rights of minor political party candidates. The burdens placed on minor political party candidates, generally, as well as GPOHIO Congressional candidate Robert Hart and CPO candidate Max Russell Erwin, are discussed below.

**1. S.B. 193 Places a Severe Burden on Minor Political Party Candidates, Generally.**

S.B. 193 requires that individuals wishing to run as a minor political party candidate for a party seeking recognition via petition submit a nominating petition. S.B. 193, § 1 (creating O.R.C. § 3517.012(B)(1)). These nominating petitions must be signed by “qualified electors who have not voted as a member of a different political party at any primary election within the current year or the immediately preceding two calendar years.” *Id.* § 1 (creating O.R.C. § 3517.012(B)(2)(a)). Additionally, in Ohio, several restrictions exist regarding who is eligible to circulate nominating petitions. Individuals circulating nominating petitions for candidates affiliated with a political party must be of the same political party as the candidate. *See, e.g.,* Ohio Secretary of State, Declaration of Candidacy Party Primary Election, June 2010, *available at* <http://www.sos.state.oh.us/sos/upload/elections/forms/2-C.pdf>. Furthermore, on June 21, 2013, a new Ohio law went into effect to further limit who can circulate nominating petitions. *See* Legislative Service Commission, *S.B. 47 Status Report of Legislation*, <http://lsc.state.oh.us/coderev/sen130.nsf/Senate+Bill+Number/0047?OpenDocument>. Except in presidential elections, Ohio law now prohibits individuals who are not citizens of the state over the age of 18 from

circulating a candidate's nominating petition. O.R.C. § 3503.06(C)(1)(a) (2013). These restrictions on circulators, as this Court has noted, raises a number of constitutional concerns.

First, as mentioned in part III(A), Ohio law only allows individuals to change their party affiliation at primary elections. O.R.C. §§ 3513.19 and 3513.20 (2013). Thus, by banning all minor political parties from the 2014 primary election and possibly from all primary elections for the foreseeable future, S.B. 193 creates an impossible situation for minor political party candidates. Because S.B. 193 creates a situation where minor political parties will be unable to keep their present members and add new members, minor political party candidates will be unable to identify and use party members to circulate and sign their nominating petitions. In fact, it could likely end up that the only individuals available to sign nominating petitions are (a) those individuals who became eligible to vote in the approximately two months between the primary and the time that nominating petitions are due and (b) apathetic voters. *See* S.B. 193, § 1 (creating O.R.C. § 3517.012(B)(1)) (providing that nominating petitions are due 110 days before the general election, a date that falls a little more than two months after the primary election).

Second, Ohio's law restricting nominating petition circulators to citizens of the state could be considered an unjustifiable restriction of core political speech. *See, e.g., Nader v. Blackwell*, 545 F.3d. 459, 475-76 (2008) (finding that a Ohio law prohibiting non-citizens from circulating Nader's presidential nominating petition was unconstitutional law and reviewing case law noting that, like initiative-petition circulators, there is little reason to restrict candidate petition circulators, as they must be able to speak to a wider range of political topics.); *see also Libertarian Party of Va. v. Judd*, 718 F.3d 308 (4th Cir. 2013) (determining that Virginia's law prohibiting non-residents from circulating nominating petitions violated the First Amendment). These concerns resulted in this Court issuing an order for a preliminary injunction halting

enforcement of Ohio's "circulator" law on November 13, 2013. *See, e.g., Citizens in Charge v. Husted*, Order, 2:13-cv-935, Nov. 13, 2013, *available at* <http://www.ohioconstitution.org/wp-content/uploads/2013/11/Citizens-Order-Prelim-Inj.pdf>.

Additionally, nominating petitions cannot be submitted until after the party formation petition has been filed with the Secretary of State. S.B. 193, § 1 (creating O.R.C. § 3517.012(B)(1), which states that nominating petitions cannot be submitted "earlier than the day the applicable party formation petition is filed"). At the time that the nominating petition is due, individuals submitting nominating petitions will not even know if their party will be eligible to compete in that election cycle. *Id.* § 1 (creating O.R.C. §§ 3517.012(A)(2)(d) and 3517.012(B)(3)(c), which states that the sufficiency of party formation petitions and nominating petitions must be made no later than 95 days before the general election). If a party formation petition is ultimately found insufficient, candidates will be prohibited from competing in the election. *Id.* § 1 (creating O.R.C. § 3517.012(C)(3)). Also, given the fact that the sufficiency of party formation petitions and nominating petitions may not be determined until nearly three months after the primary has taken place, even if both petitions are deemed sufficient, minor political party candidates are placed at a decided disadvantage. Minor political party candidates will not be given an equal opportunity to compete in the election, will be at a disadvantage in buying advertising space, and will be denied the media attention and other free publicity that a primary often produces.

## **2. S.B. 193 Places a Severe Burden on GPOHIO Candidate Robert Hart.**

Applicant- Hart is an attorney and a GPOHIO candidate who wishes to compete in the 2014 primary to represent Ohio's 12th Congressional District in the U.S. House of Representatives. On October 11, 2013, prior to enactment of S.B. 193 and when GPOHIO was

operating as a recognized minor political party in the Ohio, Applicant-Hart had filed the required nominating petition in order to compete in the 2014 primary. Applicant-Hart also established a website promoting his candidacy, registered with the Federal Election Commission (“FEC”), and began collecting campaign funds prior to passage of S.B. 193. *See, e.g.*, Federal Election Commission, 2014 Candidate Summary, <http://www.fec.gov/data/CandidateSummary.do> (last visited Nov. 21, 2013).

On February 5, 2014, S.B. 193 will become effective. At this time, GPOHIO will lose its status as a minor political party and Applicant-Hart will lose his ability to compete as a minor political party candidate. S.B. 193, § 3. S.B. 193 completely strips Applicant-Hart of his ability to compete in the primary election. *Id.* § 1 (amending O.R.C. §§ 3517.01(A)(1)(b)(iii) and 3517.012(A)(1)). If Applicant-Hart wishes to compete for a House seat, he will have to: wait for his party to collect the necessary number of signatures for its party formation petition and file that petition with the Secretary of State; wait for the committee identified in GPOHIO’s party formation petition to identify him as a candidate; re-collect signatures of qualified individuals supporting his nomination; re-submit his nominating petition; and wait for the state to determine that both GPOHIO’s party formation petition and his nominating petition are sufficient. *Id.* § 1 (amending O.R.C. § 3517.012). Thus, as a minor political party candidate who is already operating with less resources than candidates of a major political parties, Applicant-Hart will have to expend the time and resources to retrace the steps he has already taken to be certified as a candidate in the 2014 election. This places a substantial burden on minor political party candidates that the candidates of the Democratic and Republican parties do not have to face.

S.B. 193 places Applicant-Hart in a difficult position. First, Applicant-Hart knows that his party is going to be dissolved and that he will, as a result, lose his candidacy. However,

because there is a 90-day lag between the time that S.B. 193 was signed and the time that it becomes effective, Applicant-Hart has been placed in political-limbo. Second, having filed with the FEC as a GPOHIO candidate prior to passage of S.B. 193, Applicant-Hart is faced with legal uncertainty regarding his continued capacity to solicit campaign contributions under federal campaign laws.

S.B. 193 has brought Applicant-Hart's ability to achieve name recognition, actively solicit funds, and effectively compete with major political party candidates to a screeching halt. This has severe implications for Applicant-Hart's ability to compete as a serious candidate in the 2014 elections.

### **3. S.B. 193 Places a Severe Burden on CPO Candidate Max Russell Erwin.**

Applicant-Max Russell Erwin is a CPO candidate who wishes to compete in the 2014 primary to represent Ohio's 7th Congressional District in the U.S. House of Representatives. Prior to enactment of S.B. 193, when CPO was operating as a recognized minor political party in Ohio, Applicant-Erwin attended the CPO convention and campaigned for the nomination as the CPO candidate for Ohio's 7th Congressional District. In anticipation of his campaign for Congress, Applicant-Erwin purchased a campaign bus and expended more than \$20,000 retrofitting the vehicle, purchasing campaign literature, and collecting signatures for his petition.

On February 5, 2014, S.B. 193 will become effective which will result in the loss of CPO's status as a minor political party and Applicant-Erwin will lose his ability to compete as a minor political party candidate. S.B. 193, § 3. S.B. 193 completely strips Applicant-Erwin of his ability to compete in the primary election. *Id.* § 1 (amending O.R.C. §§ 3517.01(A)(1)(b)(iii) and 3517.012(A)(1)). If Applicant-Erwin wishes to compete for a seat in the House of Representatives, he will have to: wait for his party to collect the requisite number of signatures



for its party formation petition and file that petition with the Secretary of State; wait for the committee identified in CPO's party formation petition to identify him as a candidate; re-collect signatures of qualified individuals supporting his nomination; submit his nominating petition; and wait for the state to determine that both CPO's party formation petition and his nominating petition are sufficient. *Id.* § 1 (amending O.R.C. § 3517.012). Thus, as a minor political party candidate who is already operating with fewer resources than candidates of major political parties, Applicant-Erwin will have to expend the time and resources to re-qualify as a candidate in the 2014 election. This places a burden on minor political party candidates that the candidates of the Democratic and Republican parties do not have to face.

S.B. 193 places Applicant-Erwin in a difficult position. First, Applicant-Erwin knows that his party is going to be dissolved and, as a result, he will lose his candidacy. However, because there is a 90-day lag between the time that S.B. 193 was signed and the time that it becomes effective, Applicant-Erwin has been placed in limbo. Second, Applicant-Erwin is faced with legal uncertainty regarding his capacity to solicit campaign contributions under federal campaign laws.

S.B. 193 has brought Applicant-Erwin's ability to achieve name recognition, actively solicit funds, and effectively compete with major political party candidates to a screeching halt. This has severe implications for Applicant-Erwin's ability to compete as a serious candidate in the 2014 elections.

**C. S.B. 193 Places a Severe Burden on Qualified Ohio Electors who Wish to Register as Members of GPOHIO or CPO, and Vote for GPOHIO, or CPO, Candidates.**

The First and Fourteenth Amendment rights of Applicants Hart, Fitakis, Erwin and Shrader, who wish to affiliate with minor political parties and support minor political party

candidates are also severely burdened by S.B. 193 and the way that this bill interacts with other Ohio voting laws. *See, e.g., Kusper v. Pontikes*, 414 U.S. 51, 57 (1973) (“The right to associate with the political party of one’s choice us an integral party of ... basic constitutional freedom.”); *Williams*, 393 U.S. at 30 (recognizing “the right of individuals to associate for the advancement of political beliefs”). As mentioned in parts III(A) and (B), *supra*, Ohio law only permits voters to change their affiliation at the primary elections. O.R.C. §§ 3513.19 and 3513.20 (2013). By preventing minor political parties from competing in the primary and failing to determine the sufficiency of a minor political party’s formation petition prior to the date of the primary, Ohio law deprives voters of the opportunity to associate with these parties. Additionally, it is unclear if voters who are currently listed as party members will be stripped of their membership, as, if S.B. 193 takes effect, only the Democratic and Republican parties will be recognized by the state at the time of the 2014 primary.

#### IV. ARGUMENT

##### **A. The Intervener-Applicants Satisfy the Requirements for Intervention of Right as Set Forth in Fed. R. Civ. P. 24(a)(2).**

Fed. R. Civ. P. 24(a)(2) provides:

On timely motion, the court must permit anyone to intervene who ... claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

The Sixth Circuit has established four criteria that must be met before an intervention of right is granted. These four criteria, include: (1) that the application for intervention is timely, (2) that the Applicants have a substantial, legal interest in the subject matter of the pending litigation, (3) that the Applicants interests will be impaired if they are not permitted to intervene, and (4) that the present parties do not adequately represent the interest of the Applicants. *See*,

*e.g.*, *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997); *Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989).

**1. Intervention at this Juncture is Timely.**

The Sixth Circuit has identified several factors that may be considered in determining whether an application for intervention is timely:

(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure, after he or she knew or reasonably should have known of his interest in the case, to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention.

*U.S. v. Tennessee*, 260 F.3d 587, 592 (6th Cir. 2001) (citing *Grubbs*, 870 F.2d at 345).

When considering the point to which the suit has progressed, “[t]he absolute measure of time between the filing of the complaint and the motion to intervene is one of the least important” considerations. *Stupak-Thrall v. Glickman*, 226 F.3d 467, 475 (6th Cir. 2000). Rather, “all the circumstances” of that particular case are to be taken into consideration. *Id.* This includes the actual progress that has been made in the case prior to the time that the motion to intervene is filed. *Id.*

In the present case, the motion to intervene is timely. The Plaintiffs challenged the constitutionality of S.B. 193 in an amended complaint filed on November 8, 2013. No determinations given the constitutionality of S.B. 193 or request for an injunction halting the application of the bill have been made by the Court. Applicants are seeking to intervene at this time in order to ensure that their interests are protected in the current case, as their positions as minor political parties in the state are not totally aligned with the Plaintiffs.

**2. Applicants Have a Substantial, Legal Interest in the Pending Litigation.**

The Sixth Circuit has adopted “a rather expansive notion” of what constitutes a substantial, legal interest sufficient to justify intervention of right. *See, e.g., Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999) (referencing *Miller*, 103 F.3d at 1245) (internal quotations omitted). While individuals applying for an intervention of right need not have the same standing as the Plaintiffs in the case, or a specific legal or equitable interest, *id.*, the Applicants seeking intervention here do have a cognizable legal claim and the same standing to bring that claim as the current Plaintiffs. Of course, Applicants could file a separate complaint against Defendant Husted posing the same questions of law as the Plaintiffs. However, such a strategy would be a waste of judicial resources and, in all probability would be consolidated with the Plaintiffs’ case. Therefore, Applicants seek intervention of right in the interest of judicial economy.

**3. The Interests of the Applicants will be Impaired if they are not Permitted to Intervene.**

In order to illustrate that their interests would be impaired if they were not permitted to intervene, Applicants must only establish “that impairment of [their] substantial legal interest is *possible* if intervention is denied. This burden is minimal.” *Miller*, 103 F.3d at 1247 (citing *Purnell v. City of Akron*, 925 F.2d 941, 948 (6th Cir. 1991) (emphasis added)). This standard is clearly met in the present case.

A decision that allows S.B. 193 to be enforced in 2014 and beyond would create a system that unjustifiably places a severe burden on the First and Fourteenth Amendment rights of the Applicant minor political parties, candidates, and voters. *See, e.g., Bullock v. Carter*, 405 U.S. 134, 143 (1972) (noting that “the rights of voters and the rights of candidates do not lend themselves to neat separation”); *Williams*, 393 U.S. at 30 (stating that laws restricting the ability

of minor political parties to access the ballot place a burden “on two different, although overlapping, kinds of rights – the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion to cast their votes effectively”); *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 584 (6th Cir. 2006) (same); *Libertarian Party of Tennessee v. Goins*, 793 F.Supp.2d 1064, 1079 (M.D. Tenn. 2010) (stating that when laws restrict the ability of minor political parties and their candidates to access the ballot they also, necessarily, affect the rights of individuals to associate for political purposes and the “right[] of qualified voters to cast their votes effectively”).

**4. The Present Parties May Not Adequately Represent the Interests of the Applicants.**

Under Fed. R. Civ. P. 24(a)(2), Applicants seeking intervention of right need only show that their interests “may be” inadequately represented by the current parties. *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n. 10 (1972); *see also* 7C Charles Alan Wright, Arthur Miller and Mary Kay Kane, *Federal Practice and Procedure*, § 1909 (2d ed.1986) (An applicant ordinarily should be permitted to intervene as of right “unless it is clear that the party will provide adequate representation for the absentee.”). “[T]he burden of making that showing should be treated as minimal,” *Trbovich*, 404 U.S. at 538 n. 10, and can be made even when the existing Plaintiff “purports to seek the same outcome” but “will not make all the prospective intervenor’s arguments.” *Grutter*, 188 F.3d at 400 (citing *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997)).

In the current case, Plaintiffs may not adequately represent the interests of Applicants. For example, while Plaintiff-LPO is a minor political party that is affected by S.B. 193, Plaintiff-LPO is differently situated. Plaintiff-LPO has a stronger political presence in the state, making it so that certain concessions could help cure the burdens placed on Plaintiff-LPO while failing to

address the burdens placed on Applicants GPOHIO and CPO. *See, e.g.*, Election 2010, THE NEW YORK TIMES, <http://elections.nytimes.com/2010/results/ohio> (last visited Nov. 22, 2013) (providing the votes that Ohio presidential candidates received in the 2010 election); Husted to Certify Ohio's 2012 Presidential Election Results, NORWALK REFLECTOR, Dec. 5, 2012, *available at* <http://www.norwalkreflector.com/article/1822691> (providing a link to the official election results for Ohio's 2012 gubernatorial race).

Because candidates of Plaintiff-LPO have received greater support in Ohio, and because the party has greater reach and more resources, the burdens imposed by S.B. 193 will likely be more acutely felt by Applicants GPOHIO, CPO, and their candidates. Applicants GPOHIO and CPO will, most assuredly, face a significantly more difficult time amassing the signatures needed to appear on the 2014 ballot and are substantially less likely to have the necessary resources and financial support to go through the onerous party formation petition and nominating petitions processes. Additionally, given that Applicants GPOHIO, CPO, Hart, and Erwin will be prevented from participating in the primary, have less political support in the state, and may only receive recognition as a party and a candidate 95 days before the general election, these Applicants will have a much more difficult time obtaining recognition and financial support in order to effectively compete in the general election. Furthermore, it is likely that S.B. 193 will place greater burdens on the Applicants moving forward, as Applicants GPOHIO and CPO are less likely to meet the threshold of votes that parties must obtain to maintain their status in 2014 or beyond.

Applicant candidates Hart and Erwin are also in different positions than Plaintiff-Earl, who is the LPO candidate represented in the case. Applicant-Hart, who has submitted nominating papers and registered with the FEC in order to compete for federal office in the 2014

primary, is in an area of greater legal uncertainty and differently situated than Plaintiff-Earl. Although Applicant-Erwin has not yet submitted nominating petitions, he has expended a significant amount of his personal income to qualify and compete for public office and he is differently situated than Plaintiff-Earl in that the loss of his candidacy will have a far greater personal impact on his ability to compete against larger, better funded candidates.

The fact that Applicants are differently situated than the Plaintiffs, means that the cumulative effect of Ohio's ballot access laws could place a significantly greater burden on Applicant minor political parties, candidates, and the right of voters to exercise their First and Fourteenth Amendment rights. Therefore, the intervention of Applicants is necessary in order to guarantee that the full impact of S.B. 193 on all minor political parties is addressed, examined and understood.

**B. Even if Intervener-Applicants are Not Permitted to Intervene as a Matter of Right, they Satisfy the Requirements for Permissive Intervention Pursuant to Fed. R. Civ. P. 24(b)(1).**

As detailed above, Applicants meet the requirements for intervention of right under Rule 24(a). However, if this Court chooses not to permit intervention as a matter of right, Applicants request that this Court grant them permissive intervention under Rule 24(b).

The determination as to whether permissive intervention is appropriate is committed "to the sound discretion of the district judge." *Meter Goldberg, Inc. v. Goldberg*, 717 F.2d 290, 294 (6th Cir. 1983). Rule 24(b) grants the district court the discretion to permit intervention "if the motion is timely, and if the applicant's claim or defense and the main action have a question of law or fact in common." *Purnell*, 925 F.2d at 950-51 (internal citation and quotations omitted). "Once these two requirements are established, the district court must then balance undue delay and prejudice to the original parties, if any, and any other relevant factors to determine whether,

in the court's discretion, intervention should be allowed." *U.S. v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005).

As mentioned in part IV(A)(1) and (2), *supra*, Applicants' motion for intervention is timely and shares common questions of law. Further, there will be no prejudice to any party or any undue delay if permissive intervention is granted. Since Applicants have standing to bring their own case challenging S.B. 193 that would likely be consolidated with Plaintiffs' case, judicial economy favors granting permissive intervention in this case.

## V. CONCLUSION

For the reasons stated herein, Applicants respectfully request that the Court grant them intervention as of right or, in the alternative, permissive intervention.

Respectfully submitted,

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**VI. CERTIFICATE OF SERVICE**

The foregoing Motion was filed this 27<sup>th</sup> day of November, 2013 through the Court's Electronic Filing System. Parties will be served, and may obtain copies electronically, through the operation of the Electronic Filing System.

/s/ James L. Hardiman  
James L. Hardiman  
TRIAL ATTORNEY

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