

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

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

Plaintiffs,

Case No. 2:13-cv-00953

v.

JUDGE WATSON

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

and

THE STATE OF OHIO,

Intervenor-Defendant.

**SECOND
PRELIMINARY
INJUNCTION
REQUESTED**

FIRST AMENDED COMPLAINT
(VERIFIED)

Facts

1. Because of prior successful litigation against Ohio's Secretary of State, *see Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006); *Libertarian Party of Ohio v. Brunner*, 462 F. Supp.2d 1006 (S.D. Ohio 2008); *Libertarian Party of Ohio v. Husted*, No. 2:11-cv-722 (S.D. Ohio, Sep. 7, 2011), *vacated as moot*, 497 Fed. Appx. 581 (6th Cir. 2012), Plaintiff, the Libertarian Party of Ohio (hereinafter "the LPO"), has since the 2008 general election, both by federal-court-order and Directives issued by the Ohio Secretary of State (which

is the Defendant here) pursuant to those orders, remained a ballot-qualified political party in Ohio. *See, e.g.*, Ohio Secretary of State Directive 2001-01 (Jan. 6, 2011); Ohio Secretary of State Directive 2011-38 (Nov. 1, 2011); Ohio Secretary of State Directive 2013-02 (Jan. 31, 2013).

2. The LPO has participated in and fielded candidates through Ohio's primaries since 2010, having held primaries in both 2010 and 2012 and having taken significant steps toward holding its primary in 2014. *See, e.g.*, Ohio Secretary of State Directive 2011-38 (Nov. 2, 2011).

3. The LPO in the 2008, 2010 and 2012 general elections ran candidates for local, state-wide, and federal office (including for Governor in 2010 and President in 2008 and 2012).

4. Ohio's Constitution, Article V, § 7, provides that "[a]ll nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law"

5. Ohio's Constitution, Article V, § 7, has been interpreted by the Ohio Supreme Court to require that a qualified political party's candidates gain access to Ohio's general election through party primaries; only independent candidates are allowed to petition. *See State ex rel. Gottlieb v. Sulligan*, 193 N.E.2d 270, 272-73 (Ohio 1963) (holding that party candidate accesses general election ballot by "filing a declaration of candidacy accompanied by a petition entitling one to be a participant in the direct party primary wherein candidates from all political parties seek their nomination").

6. Article V, § 7 of Ohio's Constitution creates an enforceable "liberty" interest under Ohio law, the First Amendment and the Fourteenth Amendment to the United States

Constitution, in the LPO and its candidates in participating in Ohio's 2014 primary.

**Ohio's Restriction on Primary Candidates' Use
of Non-residents to Circulate Petitions**

7. The only lawful method under Ohio law for Plaintiff-LPO's candidates to gain access to Ohio's 2014 general election ballot is to participate in Ohio's primary. *See* ¶¶ 4 & 5, *supra*.

8. Signatures required by Ohio law to support nominating petitions for party primaries, *see* O.R.C. § 3513.05, must be gathered and witnessed by "circulators." *See* O.R.C. § 3513.05.

9. From 2008 until June 21, 2013, because of the Sixth Circuit's holding in *Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008), which invalidated under the First and Fourteenth Amendments Ohio's law requiring that circulators of candidates' petitions be residents of Ohio, Ohio did not require that circulators of candidates' petitions be residents of Ohio. *See, e.g.*, Ohio Secretary of State Directive 2011-01 (Jan. 6, 2011) at page 3 ("Circulators of any candidate's petition **do not have to Ohio residents or Ohio electors** under the ruling of the U.S. Court of Appeals for the Sixth Circuit in *Nader v. Blackwell*, 545 F.3d 459 (2008).") (Emphasis original).

10. On June 21, 2013, Ohio amended its law, O.R.C. § 3503.06, to once again require that circulators of candidates' petitions be residents of Ohio. Specifically, O.R.C. § 3503.06(C)(1)(a) states: "Except for a nominating petition for presidential electors, no person shall be entitled to circulate any petition unless the person is a resident of this state and is at least eighteen years of age."

11. The LPO's candidates for Ohio's 2014 primary, including Plaintiff-Earl and Plaintiff-Harris, are prevented from using non-residents to circulate the petitions required by

Ohio law.

12. Many of the LPO's candidates, including Plaintiff-Earl and Plaintiff-Harris, seek to use non-residents to circulate the petitions required by Ohio law.

13. Many of the LPO's candidates, including Plaintiff-Earl and Plaintiff-Harris, have already commenced using circulators to collect the signatures required to support their petitions as required by Ohio law.

14. Ohio does not provide a specific date for when candidates who seek to run in Ohio's 2014 primaries may lawfully begin collecting signatures.

15. Ohio law states that candidates who seek to run in Ohio's primaries must submit their nominating petitions and supporting signatures to local election boards (for local office) or to the Defendant (for state-wide office) no later than four p.m. ninety days before the primary. *See* O.R.C. § 3513.05.

16. Ohio law, O.R.C. § 3501.01(E)(1), states: "Primary elections shall be held on the first Tuesday after the first Monday in May of each year except in years in which a presidential primary election is held."

17. Ohio's 2014 primary is scheduled for Tuesday, May 6, 2014.

18. Candidates' nominating petitions for Ohio's May 6, 2014 primary are due on or about February 5, 2014.

Ohio's Retroactive Stripping of LPO's and its Candidates' Primary

19. On November 6, 2013, seven weeks after this suit was filed and over two weeks following the conclusion of briefing in connection with Plaintiffs' first Motion for Preliminary Injunction, Defendant-Intervenor, State of Ohio, passed legislation, hereinafter "S.B. 193,"

(signed by the Governor the same day passed) retroactively abrogating Plaintiffs' primary- and general-election ballot access for 2014. *See*

http://www.legislature.state.oh.us/bills.cfm?ID=130_SB_193 (copy attached as Exhibit 1).

20. Section 3 of S.B. 193 states that "Directives 2009-21, 2011-01, and 2013-02 issued by the Secretary of State are hereafter void and shall not be enforced or have effect on or after the effective date of this act."

21. S.B. 193 will, in the absence of a very unlikely referendum, take effect on February 5, 2014.

22. In place of the ballot access awarded by federal court orders and Directives 2009-21, 2011-01, and 2013-02, S.B. 193 provides that "minor parties," those that did not receive a number of votes at the previous 2010 gubernatorial or 2012 presidential election equaling three percent of the entire vote cast, *see* S.B. 193, § 1 (amending O.R.C. § 3501.01(2)), must re-qualify for the 2014 general election ballot by submitting a nominating petition supported by a number of signatures equaling one-half of one percent of the total vote at the previous gubernatorial or presidential election, *see* S.B. 193, § 4(A) and S.B. 193, § 1 (amending O.R.C. § 3517.01(A)), and drawn from no less than eight of Ohio's congressional districts. *Id.*

23. The signatures described in ¶ 22 are due 125 days before the general election, which will be held on or about November 4, 2014.

24. The number of signatures required by S.B. 193, approximately 30,000, will be due on or about July 2, 2014.

25. Neither S.B. 193 nor any other Ohio law provides a mechanism for Ohio's minor parties, including Plaintiff-LPO, to qualify for or gain access to Ohio's May 6, 2014 primary.

26. Because no minor party in Ohio won a number of votes equal to 3 percent of the total votes cast at the “most recent regular state election” for Governor or President, *see* S.B. 193, § 193 (amending O.R.C. § 3501.01(2)), no minor party, including Plaintiff-LPO, will on February 5, 2014, the day S.B. 193 takes effect, remain a qualified “minor party” in Ohio.

27. Because of S.B. 193, no previously qualified minor party in Ohio, including Plaintiff-LPO, will be qualified to participate in Ohio’s May 6, 2014 primaries.

28. Because of S.B. 193, no minor-party candidates who otherwise properly qualify for minor party primaries in Ohio scheduled for May 6, 2014, including Plaintiff-LPO’s, will remain qualified for Ohio’s May 6, 2014 primary.

29. Minor-party candidates who have otherwise properly qualified for Ohio’s May 6, 2014 primary are retroactively stripped of their qualifications for the primary by S.B. 193, and they are also additionally required by S.B. 193, § 1 (amending O.R.C. § 3517.012), assuming the minor party otherwise re-qualifies as described in ¶¶ 22-24, to re-submit a separate nominating petition supported by signatures of “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.” *See* S.B. 193, § 1 (amending O.R.C. § 3517.012).

30. Minor-party candidates’ nominating petitions and signatures must be filed no later than 110 days before the November 4, 2014 general election. *See* S.B. 193, § 1 (amending O.R.C. § 3517.012).

31. Section 4 of S.B. 193 provides that “a political party that polls for its candidate for Governor at least two percent ... of the entire vote cast for that office at the 2014 general election remains a minor political party”

32. Plaintiff-LPO's candidate for Governor in the last election (2010) won more than two percent of the entire vote cast.

33. Section 4 of S.B. 193 was tailored to insure that the LPO would not be able to use its 2010 success to achieve ballot access in 2014.

34. Plaintiff-LPO has several candidates presently circulating nominating petitions for the 2014 primary.

35. Plaintiff-Earl is presently circulating his nominating petition for the 2014 primary in Ohio.

36. Plaintiff-Harris is presently circulating his nominating petition for the 2014 primary in Ohio.

37. Plaintiff-LPO has several candidates who have already filed their nominating petitions and paid their qualifying fees for the 2014 primary in Ohio.

38. Plaintiff-LPO will have several additional candidates, including Plaintiff-Earl and Plaintiff-Harris, file their nominating petitions and pay their qualifying fees no later than the day before the effective date of S.B. 193 on February 5, 2014.

39. Ohio law provides that "the duty of the board of elections to place the name of the [candidate] on the ballot will relate back to the time [the candidate] filed his nominating petition." *State ex rel. Brown v. Summit County Board of Elections*, 545 N.E. 2d 1256, 1259 (Ohio 1989).

40. Those minor-party candidates, including those who are running as LPO candidates, who have already filed their nominating petitions and paid their filing fees, and those who will do so before midnight on February 4, 2014, including those who are running as LPO

candidates, have and will have vested liberty interests under the First and Fourteenth Amendments, as well as Ohio law, in running in Ohio's 2014 primary.

41. Retroactive application of S.B. 193 to disqualify minor-party candidates, including those running as LPO candidates, who qualify before February 5, 2014, violates the First and Fourteenth Amendments, as well as Ohio law.

42. Plaintiff-LPO is directly injured by the application of S.B. 193 to candidates described in ¶¶ 40 and 41 who are attempting to run as LPO candidates in Ohio's 2014 primary.

43. Plaintiff-LPO is directly injured by the application of § 3 of S.B. 193, which as described in ¶ 20 voids past Directives that guaranteed Plaintiff-LPO's continuing ballot access and guaranteed Plaintiff-LPO's right to participate in Ohio's 2014 primary.

44. Plaintiff-LPO is directly injured by S.B. 193's retroactively stripping it of its qualified status for the 2014 election cycle and forcing it to re-qualify by submitting a nominating petition supported by approximately 30,000 signatures.

45. Plaintiff-LPO is directly injured by S.B. 193's retroactively stripping Plaintiff-LPO's candidates of their rights to run in Ohio's 2014 primary.

46. Plaintiff-Earl is directly injured by S.B. 193's retroactively stripping him of his opportunity to run as an LPO candidate in Ohio's 2014 primary.

47. Plaintiff-Harris is directly injured by S.B. 193's retroactively stripping him of his opportunity to run as an LPO candidate in Ohio's 2014 primary.

48. S.B. 193 unconstitutionally chills Plaintiff-LPO's, Plaintiff-Earl's and Plaintiff-Harris's First Amendment rights.

49. Because Ohio registers voters with political parties through the use of primaries,

S.B. 193's stripping Plaintiff-LPO of its 2014 primary also harms Plaintiff-LPO by restricting its ability to keep and add party members.

50. Without a primary in 2014, Plaintiff-LPO will be unable to register members.

51. Being able to register party members has significant benefits under Ohio law, including but not limited to the legal right to use party members to circulate and sign candidates' nominating petitions.

52. Ohio imposes party-membership requirements on the signers and circulators of candidates' nominating petitions. *See* O.R.C. § 3513.05.

53. Assuming Plaintiff-LPO were to re-qualify for Ohio's ballot by submitting enough signatures in July of 2014, and therefore regain its primaries in 2015 and 2016, its candidates in those primaries will be required by Ohio to submit nominating petitions circulated by LPO party members (or those who did not vote in the 2014 primary for a major-party candidate) and signed by only LPO party members (or voters who did not vote in the 2014 primary for a major-party candidate).

54. Stripping Plaintiff-LPO of its 2014 primary places Plaintiff-LPO at a political disadvantage by providing the two major parties with unrestricted access, through the 2014 primaries, to Plaintiff-LPO's existing membership; Plaintiff-LPO, after all, cannot attempt to retain these members because it will not have a primary.

55. Stripping Plaintiff-LPO of its 2014 primary places Plaintiff-LPO at a political disadvantage in future elections because it provides the two major parties with a set of signers and circulators, i.e., party members as defined by those who vote in their primaries, that will either not be available to Plaintiff-LPO in 2015 and 2016 or which will be diminished.

56. By its own terms, S.B. 193 provides that following a minor party's re-qualification in July of 2014 (by submitting its nominating petition and supporting signatures), a minor-party candidate for state-wide office, like Plaintiff-Earl and Plaintiff-Harris, must submit an additional nominating petition "signed by at least fifty qualified electors who have not voted as a member of a different political party at any primary election within the current year" S.B. 193, § 1 (amending O.R.C. § 3517.012).

57. Because Plaintiff-LPO will lose the ability to keep its present members and add new members, without a 2014 primary, S.B. 193's stripping Plaintiff-LPO of its participation in Ohio's 2014 primary places Plaintiff-LPO and its candidates at a political disadvantage in the 2014 general election (as well as the primaries that follow).

58. The two major parties are awarded political advantages by S.B. 193 in the 2014 general election and the primaries that follow in 2015 and 2016 because the two major parties will be able, through their monopoly on the 2014 primary, to keep and add members, and then to use these members to sign and circulate candidates' petitions in 2015 and 2016.

59. The loss of membership caused by S.B. 193 harms Plaintiff-LPO in myriad additional ways, as pointed out by the United States District Court in *Baer v. Meyer*, 577 F.S. 838, 843 (D. Colo. 1984), where the court observed that party registration "lists are invaluable in organizing campaigns, enlisting party workers and raising funds."

60. Because S.B. 193 retroactively voids Plaintiff-LPO's party-status and denies it a primary in 2014 in which to establish party membership, Plaintiff-LPO will not be entitled to party membership lists--which are routinely available to recognized parties.

61. Because S.B. 193 retroactively voids Plaintiff-LPO's party-status, Plaintiff-LPO's

ability to establish membership, raise funds, recruit candidates, and enlist party workers for the 2014 general election and future primaries will be greatly diminished.

62. S.B. 193's retroactive deprivation of Plaintiff-LPO's right to hold a 2014 primary injures Plaintiff-LPO, Plaintiff-Earl and Plaintiff-Harris by placing them at a political disadvantage in the 2014 general election.

63. S.B. 193's retroactive deprivation of Plaintiff-LPO's 2014 primary directly injures Plaintiff-LPO, Plaintiff-Earl and Plaintiff-Harris.

Parties

64. Plaintiff, LPO, is an affiliation of voters formed for the purpose of influencing public policy by a variety of means, which include running candidates for public office and disseminating its views on policy issues through its candidates' campaigns. The LPO was founded in or around 1972 and is the Ohio affiliate of the national Libertarian Party.

65. LPO was qualified for Ohio's ballot during the 2008, 2010 and 2012 election cycles and ran several dozen candidates for local, state-wide and federal office (including the Presidency). LPO currently has over 5,000 registered party members in Ohio.

66. In the most recent non-presidential election year, 2010, LPO's slate of state-wide candidates won nearly 5% of the total votes cast in their respective elections; specifically LPO's candidates won 184,478 votes (4.91% of the total) for State Treasurer in 2010, 182,977 votes (4.88% of the total) for Secretary of State in 2010, 182,534 votes (4.87% of the total) for State Auditor in 2010. In all 2010 elections combined, LPO candidates won over one million votes.

67. Plaintiff, Kevin Knedler, resides in Delaware County, Ohio and is the LPO State Executive Committee Chair. He is also a registered voter in Ohio and a member of the LPO. He

brings suit as the LPO's chair, a voter who intends to vote for LPO candidates on Ohio's 2014 primary, and as a member of the LPO.

68. Plaintiff, Aaron Harris, resides in Fairborn, Ohio and is the LPO State Central Committee Chair. He is a registered voter, a member of the LPO State Executive Committee, and also serves as the LPO Communication Director. He brings suit as the LPO's State Central Committee Chair, a voter who intends to vote for LPO candidates on Ohio's 2014 primary, and as a member of the LPO.

69. Plaintiff, Charlie Earl, resides in Wood County, Ohio, and seeks to run for Governor of Ohio in 2014 as the candidate for the LPO. In order to do so, he must run in Ohio's 2014 primary. In order to run in Ohio's 2014 primary, he must use circulators to collect signatures to support his nominating petition. He is a registered voter and was the 2010 Libertarian candidate for Secretary of State in Ohio.

70. Defendant, Jon Husted, is the Ohio Secretary of State and, pursuant to Ohio Rev. Code § 3501.04, is the chief elections officer in Ohio. Defendant-Husted's actions at all relevant times have been under color of Ohio law within the meaning of 42 U.S.C. § 1983 and constitute state action within the meaning of the First and Fourteenth Amendments to the United States Constitution. Defendant is sued in his official capacity under 42 U.S.C. § 1983 and Ohio law as Ohio's chief elections officer and Ohio Secretary of State.

71. Intervenor-Defendant, the State of Ohio, voluntarily entered the above-styled suit in order to defend its requirement under O.R.C. § 3503.06(C)(1)(a) that the circulators of candidates' petitions for Ohio's 2014 primaries be Ohio residents. Intervenor-Defendant, after this litigation commenced and it had intervened, passed S.B. 193, which as described above

strips Plaintiff-LPO and its candidates of their rights to participate in Ohio's 2014 primary and thereby threatens Plaintiffs' continuing standing to prosecute their challenge to O.R.C. § 3503.06(C)(1)(a).

Jurisdiction and Venue

72. Federal jurisdiction is proper over Plaintiffs' federal claims (Counts One through Four) against Defendant-Husted under 28 U.S.C. §§ 1331 and 1343, this action having arisen under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

73. Supplemental jurisdiction over Plaintiffs' state-law claim (Count Five) against Defendant-Husted and Intervenor-Defendant, the State of Ohio, is proper under 28 U.S.C. § 1367(a) ("supplemental jurisdiction shall include claims that involve the ... intervention of additional parties") and Ohio law, *see, e.g., Racing Guild of Ohio, Local 304 v. State Racing Commission*, 503 N.E.2d 1025 (Ohio 1986), the state-law claim being asserted herein being "so related to claims in the action within such original jurisdiction that they form part of the same controversy under Article III of the United States Constitution."

74. Venue properly lies in this district under 28 U.S.C. § 1391(b).

Count One

Facial First Amendment Challenge to 3503.06(C)(1)(a) Under § 1983 Against Defendant-Husted

75. Plaintiffs herein incorporate the allegations made in paragraphs 1 through 74.

76. Ohio's residence requirement for circulators of candidates' nominating petitions found in O.R.C. 3503.06(C)(1)(a) violates, facially, the First Amendment (as incorporated

through the Fourteenth Amendment) to the United States Constitution and 42 U.S.C. § 1983. *See Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008).

77. Defendant-Husted, as chief elections officer in Ohio, is charged with enforcing O.R.C. 3503.06(C)(1)(a).

78. Defendant-Husted's enforcement of O.R.C. 3503.06(C)(1)(a), facially, thereby violates the First Amendment (as incorporated through the Fourteenth Amendment) to the United States Constitution and 42 U.S.C. § 1983. *See Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008).

Count Two

As-Applied First Amendment Challenge to 3503.06(C)(1)(a) Under § 1983 Against Defendant-Husted

79. Plaintiffs herein incorporate the allegations made in paragraphs 1 through 74.

80. Ohio's residence requirement for circulators of candidates' nominating petitions found in O.R.C. 3503.06(C)(1)(a) violates, as-applied, the First Amendment (as incorporated through the Fourteenth Amendment) to the United States Constitution and 42 U.S.C. § 1983. *See Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008).

81. Defendant-Husted, as chief elections officer in Ohio, is charged with enforcing O.R.C. 3503.06(C)(1)(a).

82. Defendant-Husted's enforcement of O.R.C. 3503.06(C)(1)(a), as-applied, thereby violates the First Amendment (as incorporated through the Fourteenth Amendment) to the United States Constitution (and 42 U.S.C. § 1983). *See Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008).

Count Three

Due Process and First Amendment Challenge to S.B. 193 Under § 1983
Against Defendant-Husted

83. Plaintiffs herein incorporate the allegations made in paragraphs 1 through 74.

84. Defendant-Husted, as chief elections officer in Ohio, is charged with enforcing the terms of S.B. 193 described above.

85. S.B. 193 retroactively disqualifies Plaintiff-LPO and its candidates (including Plaintiff-Earl and Plaintiff-Harris) from participating in Ohio's 2014 primary in violation of the First Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See, e.g., Federal Communications Commission v. Fox Television Stations*, 132 S. Ct. 2307, 2318 (2012) ("This would be true with respect to a regulatory change this abrupt on any subject, but it is surely the case when applied to the regulations in question, regulations that touch upon 'sensitive areas of basic First Amendment freedoms'").

86. Defendant-Husted's enforcement of S.B. 193 thereby violates the First Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution (and 42 U.S.C. § 1983).

Count Four

Equal Protection and First Amendment Challenge to S.B. 193 Under § 1983
Against Defendant-Husted

87. Plaintiffs herein incorporate the allegations made in paragraphs 1 through 74.

88. Defendant-Husted, as chief elections officer in Ohio, is charged with enforcing the terms of S.B. 193 described above.

89. S.B. 193 places minor parties, including Plaintiff-LPO, at a political disadvantage relative to the two major parties in Ohio's 2014 general election by denying it access to the party membership privileges afforded the two major parties.

90. Ohio law, specifically S.B. 193, fails to provide minor parties, including Plaintiff-LPO, with a constitutionally-required mechanism by which they can gain access to Ohio's 2014 primary and thereby enjoy the same party membership privileges afforded to the two major parties.

91. Ohio law, specifically S.B. 193, fails to provide minor parties, including Plaintiff-LPO, with a constitutionally-required "equal opportunity" to gain access to Ohio's 2014 primary and the resulting party membership privileges that are provided to the two major parties.

92. Defendant-Husted's enforcement of S.B. 193 thereby violates the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (and 42 U.S.C. § 1983).

Count Five

Ohio Constitutional Challenge Under Ohio Law Against Defendant-Husted and Intervenor-Defendant

93. Plaintiffs herein incorporate the allegations made in paragraphs 1 through 74.

94. Defendant-Husted, as chief elections officer in Ohio, is charged with enforcing the terms of S.B. 193 described above.

95. Intervenor-Defendant, the State of Ohio, passed S.B. 193.

96. Ohio law authorizes declaratory and injunctive actions filed under Ohio's Constitution in Ohio's Courts of Common Pleas against Ohio's departments and agencies,

including Defendant-Husted. *See, e.g., Racing Guild of Ohio, Local 304 v. State Racing Commission*, 503 N.E.2d 1025 (Ohio 1986); *State ex rel. Fatur v. Eastlake*, 2010 WL 1254369 (Ohio App. 2010) ("sovereign immunity is not available when a party seeks declaratory or injunctive relief or a mandamus action."); *Mega Outdoor, L.L.C., v. Dayton*, 878 N.E.2d 683, 692 (Ohio App. 2007) ("Sovereign immunity applies to money damages, not to claims for equitable relief, such as injunctive relief.").

97. Defendant-Intervenor, the State of Ohio, voluntarily intervened in this litigation and passed S.B. 193 in an effort, inter alia, to defeat Plaintiffs' challenge to O.R.C. § 3503.06(C)(1)(a) (Ohio's residence requirement for circulators), and has thereby waived any immunity from this suit in federal court under the Eleventh Amendment that either it or Defendant-Husted enjoyed. *See Clark v. Barnard*, 108 U.S. 436, 477 (1883) (holding that intervention by state in federal court action forfeited state's Eleventh Amendment immunity); *Lapides v. Board of Regents*, 535 U.S. 613, 619 (2002) (holding that removal by state to federal court waives Eleventh Amendment immunity).

98. S.B. 193's dispensing with Plaintiff-LPO's primary in 2014 violates Article V, § 7, of the Ohio Constitution, which provides that a party's "nominations for elective state, district, county and municipal offices shall be made at direct primary elections" *See State ex rel. Gottlieb v. Sulligan*, 193 N.E.2d 270, 272-73 (Ohio 1963); *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 582 (6th Cir. 2006) ("[t]he Ohio Constitution requires that all political parties, including minor parties, nominate their candidates at primary elections. Ohio Const. Art. V, § 7. ").

99. Defendant-Husted's enforcement of S.B. 193 violates Article V, § 7, of the Ohio

Constitution.

100. Intervenor-Defendant, the State of Ohio, violated Article V, § 7, of the Ohio Constitution by passing S.B. 193.

RELIEF REQUESTED

101. WHEREFORE, Plaintiffs request the following relief pursuant to 28 U.S.C. § 2201, 42 U.S.C. § 1983, 42 U.S.C. § 1988(b), and Ohio law:

A. a declaration under 28 U.S.C. § 2201 that O.R.C. 3503.06(C)(1)(a) is facially unconstitutional under the First Amendment;

B. a declaration under 28 U.S.C. § 2201 that O.R.C. 3503.06(C)(1)(a) is unconstitutional as-applied under the First Amendment;

C. a preliminary injunction under 42 U.S.C. § 1983 prohibiting Defendant from enforcing O.R.C. 3503.06(C)(1)(a);

D. a permanent injunction under 42 U.S.C. § 1983 prohibiting Defendant from enforcing O.R.C. 3503.06(C)(1)(a);

E. a declaration under 28 U.S.C. § 2201 that S.B. 193's retroactive abrogation of Plaintiffs' rights to participate in Ohio's 2014 primary violates the First and Fourteenth Amendments to the United States Constitution;

F. a declaration under 28 U.S.C. § 2201 that S.B. 193's failure to provide Plaintiffs with any mechanism to participate in Ohio's 2014 primary violates the First and Fourteenth Amendments to the United States Constitution;

G. a declaration under 28 U.S.C. § 2201 that S.B. 193's failure to provide Plaintiffs with an equal opportunity to develop party membership and thereby use party members

equally during the 2014 general election (and beyond) violates the First and Fourteenth Amendments to the United States Constitution;

H. a preliminary injunction under 42 U.S.C. § 1983 prohibiting Defendant-Husted from removing Plaintiff-LPO and its candidates, including Plaintiff-Earl and Plaintiff-Harris, from Ohio's 2014 primary and general election ballots;

I. a permanent injunction under 42 U.S.C. § 1983 prohibiting Defendant-Husted from removing Plaintiff-LPO and its candidates, including Plaintiff-Earl and Plaintiff-Harris, from Ohio's 2014 primary and general election ballots;

J. a declaration under Ohio law that S.B. 193's application to the 2014 election cycle violates Article V, § 7, of the Ohio Constitution;

K. a preliminary injunction under Ohio law prohibiting Defendant-Husted and Intervenor-Defendant from removing Plaintiff-LPO and its candidates, including Plaintiff-Earl and Plaintiff-Harris, from Ohio's 2014 primary and general election ballots;

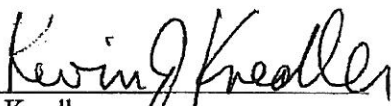
L. a permanent injunction under Ohio law prohibiting Defendant-Husted and Intervenor-Defendant from removing Plaintiff-LPO and its candidates, including Plaintiff-Earl and Plaintiff-Harris, from Ohio's 2014 primary and general election ballots;

M. a reasonable attorney's fee and costs pursuant to 42 U.S.C. § 1988(b); and

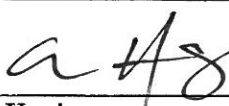
N. such other and further relief as may be just and proper.

Verification
(Pursuant to 28 U.S.C. § 1746)

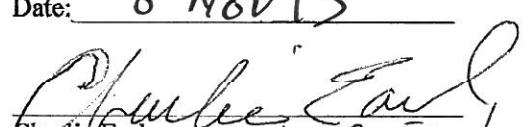
We, Kevin Knedler, Aaron Harris, and Charlie Earl, do hereby declare under penalty of perjury that the foregoing First Amended Complaint is true and correct to the best of our knowledge.


Kevin Knedler

Date: November 8, 2013


Aaron Harris

Date: 8 Nov 13


Charlie Earl CHARLES R. EARL

Date: 8 November 2013

Respectfully submitted,

s/Mark R. Brown

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed using the Court's electronic filing system and that copies of this First Amended Complaint will be automatically served on all parties of record through the Court's electronic filing system.

s/Mark R. Brown

Mark R. Brown