

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

LIBERTARIAN PARTY OF OHIO, et al.,

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,

vs.

JON HUSTED, In his Official Capacity as
Ohio Secretary of State,

Defendant,

and

THE STATE OF OHIO,

Intervening Defendant.

CASE NO. 2:13-cv-00953

JUDGE MICHAEL H. WATSON

**INTERVENING PLAINTIFFS' REPLY MEMORANDUM TO DEFENDANT JON
HUSTED AND INTERVENING DEFENDANT STATE OF OHIO'S
MEMORANDA CONTRA TO INTERVENING PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Now comes Intervening Plaintiffs Robert M. Hart (“Hart”), individually and Robert Fitrakis (“Fitrakis”), on behalf of the Green Party of Ohio (“GPOHIO”) and Max Russell Erwin (“Erwin”), individually and Dan Shrader (“Shrader”), on behalf of the Constitution Party of Ohio (“CPO”), by and through counsel and submit this Reply Memorandum to Defendant Husted and Intervening Defendant State of Ohio’s Memoranda Contra to Intervening-Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction. (Docs. 37 and 39).

I. STATEMENT OF RELEVANT FACTS

As Intervening Plaintiffs noted in their prior reply brief, S.B. 193 established new and onerous ballot access laws in the State of Ohio. Pursuant to its terms, S.B. 193 will deny these minor parties a primary ballot, decertify all currently recognized minor political parties and, to gain ballot access, require new party formation procedures that will require the submission of new nominating petitions.¹ S.B. 193, §§ 1 and 3. *See, e.g.,* Jim Siegel, *Kasich Signs Bill on Ballot Access for Minor Parties*, THE COLUMBUS DISPATCH, Nov. 7, 2013, *available at* <http://www.dispatch.com/content/stories/local/2013/11/06/Minor-parties-bill-up-for-vote.html>.

Plaintiffs and Intervening Plaintiffs all contend that, when considered in conjunction with pre-existing Ohio voting laws, S.B. 193 places an unconstitutional burden on the rights of minor political parties, their candidates, and thousands of Ohio voters who would be inclined to support these candidates. *See, e.g.,* Motion to Intervene of Robert M. Hart, Individually and Robert Fitrakis on Behalf of the Green Party of Ohio

¹ Because all minor political parties are stripped of their status (S.B. 193, § 3) and required to reform via petition in 2014 (S.B. 193, § 4) S.B. 193 permits only the Democratic and Republican parties to field candidates in the 2014 primary election.

and Max Russell Erwin, Individually and Don Shrader on Behalf of the Constitution Party of Ohio (Doc. 19).

On November 10, 2013, Plaintiffs Libertarian Party of Ohio, et al. (“LPO”) moved for a preliminary injunction, seeking to enjoin Defendant-Husted from excluding LPO and its candidates from participating in Ohio’s 2014 general election. (Doc. 17) In citing to *Northeast Ohio Coalition for Homeless v. Husted*, 696 F.3d 580 (6th Cir. 2012), LPO contended in its Motion for preliminary injunction that “[t]he Due Process Clause protects against extraordinary voting restrictions that render the voting system fundamentally unfair.” LPO argued in its Motion for Preliminary Injunction that the cumulative effect of S.B. 193 in conjunction with existing law unconstitutionally burdened the LPO from access to the 2014 ballot.

Subsequent to the filing of LPO’s motion for preliminary injunction, Intervening Plaintiffs also moved for injunctive relief, contending that, in the absence of intervention by this Court, Intervening Plaintiffs will be (1) subjected to immediate, permanent and irreparable harm, (2) unconstitutionally burdened in their attempts to engage in the electoral process, (3) prevented from meaningful involvement in the 2014 primary and general elections, and (4) prevented from conveying their political message to people who would be receptive or inclined to elect their candidates or support their agendas. Intervening Plaintiffs also contended in their Motion for Injunctive Relief that S.B. 193 would retroactively strip them of their status as a political party and, by requiring them to undergo requalification procedures, would impose unconstitutionally burdensome conditions for 2014 and beyond. Finally, Intervening Plaintiffs contended that S.B. 193 is not narrowly tailored to advance any compelling state interest in regulating Ohio’s

elections and, as such, constitutes a violation of Intervening Plaintiffs' First and Fourteenth Amendment rights.

In responding to Intervening Plaintiffs' Motion for Injunctive Relief, Defendants contended in their Memoranda Contra that S.B. 193 actually "aids" new political parties that might seek 2014 ballot access in several significant ways in: (1) reducing the signature totals on nominating petitions with the Secretary of State from 1% to .5% 126 days before the November 4, 2014 general election, (2) reducing the 3% vote total needed to retain ballot access to 2% of the votes for governor in the 2014 election to retain access as opposed to the 3% that will apply after 2014 which, when considered in conjunction with S.B. 193's increased ballot access retention period to four years actually "eases" the ability of new parties to retain ballot access until 2013 and (3) reducing the number of required petition signatures for "non-major parties" from 500 to 50. Defendants also contended in their Memoranda Contra that the revisions contained in S.B. 193 are reasonable, non-discriminatory and unremarkable because S.B. 193 does not retroactively strip minor political parties or their candidates of ballot access (Docs. 37 and 39): and Intervening Plaintiffs have not shown that the burden that S.B. 193 places on them is sufficiently severe under the *Anderson/Burdick* test to justify the issuance of injunctive relief. Incredibly, Defendants conclude their arguments by denying that Intervening Plaintiffs would be irreparably harmed but that it is the State that will be subjected to irreparable harm if injunctive relief is granted because the State will be adversely affected in its ability to execute valid laws which serve the State's compelling interest in preserving the integrity of the election process.

For the reasons that are contained in this Reply, Intervening Plaintiffs contend that the arguments of Defendants are without merit and conveniently ignore the cumulative burden that Ohio's voting laws place on the First and Fourteenth Amendment Rights of minor political party candidates Intervening Plaintiff Hart and Intervening Plaintiff Erwin and Ohio voters who wish to support minor political party candidates or affiliate with minor political parties. As Intervening Plaintiffs asserted in their Motion for Injunctive Relief, when S.B. 193 is examined in conjunction with other Ohio voting laws, S.B. 193 was not narrowly tailored to advance a compelling state interest and places a severe burden on the constitutional rights of minor political parties and their candidates and voters. Consequently, a failure to grant injunctive relief will cause immediate, permanent, and irreparable harm to the constitutional rights of all minor political parties their candidates and voters.

II. S.B. 193 RETROACTIVELY STRIPS MINOR POLITICAL PARTY CANDIDATES OF BALLOT ACCESS AND RUNS COUNTER TO THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT.

LPO and the Intervening Plaintiffs all contend in their requests for injunctive relief that S.B. 193 strips all minor political parties, including the GPOHIO, CPO, LPO as well as the Socialist Party of Ohio ("SPO"), of their status as minor political parties.

S.B. 193 is scheduled to take effect on February 5, 2014. 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 Dec. 11, 2013). That date is also the deadline for nominating petitions to be submitted by partisan political candidates. Ohio Secretary of State, 2014 Ohio Election Calendar, <http://www.sos.state.oh.us/sos/upload/publications/election/2014ElectionCalendar.pdf> (last visited Dec. 11,

2013). Thus, S.B. 193 will take effect just in time to prevent minor political party candidates from competing in the 2014 primary election.

At the present time four minor political parties, i.e., LPO, GPOHIO, CPO, and SPO, are recognized political parties in the state pursuant to directives issued by the Secretary of State. Directive 2013-02, Jan. 31, 2013. While Defendant Husted and Intervening Defendant the State of Ohio have attempted to argue that LPO, GPOHIO, CPO, and SPO did not have a right to the ballot in 2014 because no directives or court orders had been issued to extend ballot access into that year (Docs. 37 and 39), . the plain language of S.B. 193 reveals that the opposite is true. When S.B. 193 was enacted, an emergency provision that would have had it take immediate effect was removed. Thus S.B. 193 was specifically adjusted to take effect in 2014. However, despite the fact that the law would not become effective until 2014 – a time when Defendant-Husted claims all preexisting Secretary of State Directives and court orders recognizing minor political parties would have expired – the law still contains a provision that exists solely to void all of the preexisting directives that recognized the LPO, GPOHIO, CPO, and SPO. (S.B. 193, § 3.) Clearly, it would make no sense to include a provision in S.B. 193 that voids Directives that have already expired.

Even if this Court were to accept the Defendants' suggestion by ignoring the plain language of S.B. 193 and assume that minor political parties had been operating in an area of complete uncertainty with respect to their continued viability in 2014, these minor political parties and their candidates were, nevertheless, acting reasonably in following the directives granting ballot access that had been issued by the Secretary of State in recent years. Accepting for the sake of argument that all Directives and orders would

expire prior to 2014, still it has been the regular practice of the Secretary of State to issue new directives at the conclusion of each year for the following year or soon after the onset of the new year. In fact, in 2013, Directive 2013-02 was not issued until January 31, 2013. Ohio Secretary of State Directive 2013-02 (Jan. 31, 2013). If the state were to continue its prior practice in 2014, minor political parties would not have known whether or not they would be recognized until mere days before the deadline by which partisan political candidates must submit their nominating petitions. Ohio Secretary of State, 2014 Ohio Election Calendar, *available at* <http://www.sos.state.oh.us/sos/upload/publications/election/2014ElectionCalendar.pdf> (noting that partisan political candidates have until 4 p.m. on February 5, 2014 to file their nominating petitions). The Defendants' arguments are, therefore, reduced to the shaky contention that minor political parties currently recognized in the state should have waited until the very last minute to begin collecting nominating petition signatures.

To claim that the passage of S.B. 193 has no retroactive effect on minor political parties like the LPO, GPOHIO, and CPO ignores reality and is clearly erroneous. By the admissions of both Defendant Husted and Intervening Defendant State of Ohio, the current operative directive, Directive 2013-02, granted recognition to LPO, GPOHIO, CPO, and SPO in 2013. (Doc. 37, pgs. 1-2; Doc. 39, pg. 1). Neither Defendant Husted nor Intervening Defendant State of Ohio asserts that Directive 2013-02 has expired or will expire at any time prior to the onset of 2014. Thus, the minor political parties in this case (LPO, GPOHIO, and CPO) and their candidates justifiably engaged in political activities in 2013 in their legitimate attempts to access the ballot in 2014. The parties and the candidates were fully warranted in collecting and submitting nominating petitions

with the state in order to access the 2014 primary ballot, paying the required fee when filing nominating petitions, expending time and resources in order to promote their candidacy, and registering with the Federal Election Commission. (Docs. 28 and 35, explaining the steps that Intervening Plaintiffs Hart and Erwin had taken prior to passage of S.B. 193 in order to access the 2014 primary ballot). The passage of S.B. 193 annuls all of the work of the minor political parties and their candidates in 2013 under the authority of Directive 2013-02 and completely eliminates the ability of these minor political parties and their candidates to solicit support for their campaigns, collect contributions, or effectively compete in the 2014 election cycle.²

The facts that S.B. 193 was fast-tracked through the Ohio legislature and signed into law just in time to adversely affect minor political parties in the 2014 election cycle, and that the currently recognized minor political parties and their candidates had expended time and resources to compete in the 2014 primary just as they regularly had done in prior years, demonstrate that the legislature was, quite obviously, aware of the fact that these parties and their candidates had already begun, and in some instances, concluded the nominating petition process in order to compete in the 2014 primary.

Because of (1) the late date on which S.B. 193 was enacted, (2) the fact that the currently recognized minor political parties had acted rationally to secure their place on the 2014 primary ballot, and (3) the minor political party candidates had already begun and, in some cases, had completed collecting nominating petition signatures and

² Compounding these severe burdens that S.B. 193 imposes on minor political parties is the fact that, according to Defendant Husted and Intervening Defendant State of Ohio, there would be no regulations governing minor political parties in 2014 or ability for minor political parties and their candidates to access the ballot had S.B. 193 not have been enacted. (Doc. 37, pg. 1-2; Doc. 39, pg. 1). This means that from the time that the 2014 calendar year begins until S.B. 193 takes effect on February 5, 2014, there is no law governing minor political parties in the state and there will be no recognized minor political parties in the

submitting their petitions to the state, applying S.B. 193 to the 2014 election cycle raises serious constitutional concerns. As discussed in LPOs' and Intervening Plaintiffs' replies to the Memoranda Contra filed by Defendant-Husted and Intervening Defendants State of Ohio, *Hudler v. Austin*, 419 F. Supp. 1002 (E.D. Mich. 1976), is informative. (Docs. 33 and 36). In *Hudler*, Michigan had passed new ballot access laws in April, 1976 and sought to have them applied at a primary election in early August. In challenging the constitutionality of the new ballot access laws, the Plaintiffs in *Hudler* made several claims, one of which asserted that the new law, which "was imposed after plaintiffs, or at least some of them, had completed or nearly completed gathering petitions under the previously existing statutory requirements[,]” violated the Due Process Clause of the 14th Amendment. *Hudler*, 419 F. Supp. at 1005. In *Hudler*, even though the court determined that the law, generally, was constitutional, it determined that applying the law to the upcoming election cycle offended the U.S. Constitution. *Id.* at 1014. In making this determination, the court pointed to a number of factors, including: (a) that it was “particularly prejudicial and inopportune” to require that the Plaintiffs comply with the new law in the upcoming election cycle when their “petition drives were either completed or nearly completed,” (b) that “[t]he short time limits [imposed on the Plaintiffs with regard to the upcoming election], extra expense and duplicative efforts [that the Plaintiffs would be required to undertake] ... impose[d] an unnecessarily prejudicial burden,” and (c) that “the legislature’s failure to take earlier action although fully apprised of the problem” “contribut[ed] to the deprivation of due process.” *Id.*

state of Ohio. Thus, LPO, CPO, and GPOHIO and their candidates are stalled from being able to effectively engage in the political process for the first part of 2014.

The current case is parallel to *Hudler* in a number of significant ways. In the current case, a number of Plaintiffs as well as the Intervening Plaintiff Robert Hart had submitted their nominating petitions to appear on the 2014 primary ballot and expended time and resources to advance their campaigns. Prior to passage of S.B. 193, GPOHIO Congressional Candidate Robert Hart had filed his nominating petition, paid the required candidacy fee, opened a checking account for his campaign, collected campaign contributions from individuals and registered with the Federal Election Commission as a GPOHIO candidate. If S.B. 193 takes effect on February 5, 2014, Intervening Plaintiff Hart will have to recollect signatures supporting his nomination and expend time and money to re-trace the steps that he has already taken. Additionally, because his party will cease to exist, Intervening Plaintiff Hart has been placed in a legally precarious position with regards to his ability to campaign and solicit funds under federal election laws. Declaration of Robert Hart (Doc. 28).

Intervening Plaintiff Max Erwin, a CPO Congressional Candidate, has similarly been placed into a precarious position by the passage of S.B. 193 so close to the primary. Intervening Plaintiff Erwin had expended a significant amount of his personal resources to promote his candidacy for Congress. As Intervening Plaintiff Erwin stated in his declaration, S.B. 193 has brought his campaign to a screeching halt. Declaration of Max Russell Erwin (Doc. 35, paras. 13 and 14) (noting that S.B. 193 prevented him from “soliciting or collecting campaign contributions” and that when people have asked “how to donate to [his] campaign[he has] been forced to turn down their contributions”). S.B. 193 has, therefore, deprived Intervening Plaintiffs Hart and Erwin of their due process rights.

III. INTERVENING PLAINTIFFS MEET THE REQUISITE STANDARD FOR OBTAINING INJUNCTIVE RELIEF

As acknowledged by Intervening Defendant State of Ohio, the Court must consider four factors when considering whether a temporary restraining order or preliminary injunction should be granted. (Doc. 39, pg. 7). These four factors to be considered are:

- (1) whether there is a strong likelihood that the plaintiffs will succeed on the merits;
- (2) whether the plaintiffs will suffer irreparable harm absent a stay;
- (3) whether granting the stay would cause substantial harm to others; and
- (4) whether granting the stay would serve the public interest.

Ohio Republican Party v. Brunner, 543 F.3d 357, 361 (6th Cir. 2008); *Sellers v. University of Rio Grande*, 838 F.Supp.2d 677, 680 (S.D. Ohio 2012).

However, as Intervening Plaintiffs indicated in their reply to the Memoranda Contra of the Defendants to Plaintiff-LPO's Motion for Preliminary Injunction, when determining whether injunctive relief should be granted, no single factor is determinative. *Sellers*, 838 F.Supp.2d at 680.

Intervening Plaintiffs outlined how they meet this standard in their Motion for Temporary Restraining Order and Preliminary Injunction. (Doc. 30). Rather than reiterating these arguments here, Intervening Plaintiffs respond to the arguments made by the Intervening Defendant, the State of Ohio.³ Specifically, Intervening Plaintiffs contend that: (a) S.B. 193's restrictions are severe and are not narrowly tailored to advance a state interest of compelling importance; (b) the Intervening Defendant has failed to take into account or address the burdens that S.B. 193 places on minor political party candidates

³ Notably Defendant-Husted did not make an argument on these grounds. Rather Defendant-Husted focused on the issues examined in Part II, *supra*.

and voters; and (c) that the decision in *In re DeLorean Motor Co.*, 755 F.2d 1223 (6th Cir. 1985) is applicable to the current case.

A. THE RESTRICTIONS IMPOSED BY S.B. 193 ARE SEVERE IN NATURE AND ARE NOT NARROWLY TAILORED TO ADVANCE A COMPELLING STATE INTEREST.

In the current case, the Intervening Defendant contends that the provisions challenged in this case are reasonable and nondiscriminatory, supported by sufficient state interests, and, as a result, should be subjected to a rational basis review. (*See, e.g.*, Doc. 39, pgs. 8-10).

The Intervening Defendant argues that because S.B. 193 was crafted to apply to “any political party” that fails to obtain a certain threshold of votes, it cannot be discriminatory or unconstitutional. (Doc. 39, pg. 9) (citing *Barr v. Galvin*, 626 F.3d 99 (1st Cir. 2010), which found that a law prohibiting candidates who had failed to submit nominating petitions from accessing the ballot was constitutional).⁴ This claim is neither supported by *Barr* nor the Sixth Circuit. In fact, to hold that a state law that creates provisions applying to “any political party” cannot possibly place unconstitutional burdens on minor political parties would essentially bar decisions like *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006), and would prevent courts from examining the constitutionality of most, if not all, ballot access laws.⁵ This assertion is clearly erroneous and lacks merit.

⁴ *Barr*, the First Circuit case on which the Intervening Defendant relies, is distinguishable from the current case. The *Barr* case only involved a state prohibiting the Libertarian Party from substituting candidates when the candidates seeking substitution had failed to submit required nominating petitions and had been provided with ample time in order to collect the number of signatures necessary to support their candidacy. The *Barr* Court examined only one state ballot access requirement, which it found to be “modest,” given that the candidates had both the means and the time necessary to meet the burden imposed. *Barr*, 626 F.3d at 110.

⁵ Here, as in *Blackwell*, S.B. 193 imposes requirements that state if *any* parties fail to meet a certain threshold of the vote they will not retain ballot access and petition requirements are imposed on those

The Memorandum Contra of Intervening Defendant State of Ohio examined a number of S.B. 193's specific requirements in isolation but conveniently ignored the cumulative effect of the scheme. For example, Intervening Defendant State of Ohio references cases that found state laws requiring party formation petitions containing a higher percentage of signatures and a requirement that they were to be filed at an earlier date to be constitutional. (Doc. 39, pg. 11-12). Intervening Plaintiffs do not dispute the contention that, if examined in isolation, certain features of S.B. 193, viewed separately, conceivably, could be considered constitutional. However, the courts have repeatedly reiterated that, when determining whether voting laws place an unconstitutional burden on the First and Fourteenth Amendment rights of minor political parties, their candidates, and qualified voters in a state, the cumulative effect of the laws must be examined.

Williams v. Rhodes, 393 U.S. 23, 34 (1968); *Blackwell*, 462 F.3d at 586.

Intervening Defendant also mischaracterizes Intervening Plaintiffs' arguments with regards to the primary election and misconstrues state law with regards to party affiliation. Intervening Plaintiffs do not contend that a state can never constitutionally preclude minor political parties from accessing the primary ballot.⁶ Rather, Intervening Plaintiffs contend that given the manner in which Ohio has structured its laws regarding party affiliation, to preclude minor political parties in the state from accessing the primary ballot, places a severe burden on the constitutional rights of these parties, their candidates, and Ohio voters. While Intervening Defendant argues that Ohio voters may

parties who fail to obtain the required threshold of votes. *See, e.g., Blackwell*, 462 F.3d at 582 (describing the election regulations being examined). Thus, according to Intervening Defendant, the Sixth Circuit should have been incapable of determining Ohio's ballot access laws were unconstitutional in *Blackwell*.

⁶ Intervening Defendant State of Ohio also incorrectly argues that Intervening Plaintiffs "want to choose whether to nominate [their] candidate[s] via petition, convention or committee or by primary." (Doc. 39, pg. 20).

affiliate with a party by selecting that party's ballot at a primary election *or* by signing a new party candidate's petition (Doc. 39, pg. 14), S.B. 193's language clearly prevents Ohio voters from changing their affiliation using the latter of these two options. (S.B. 193, § 1) (creating O.R.C. § 3517.012(B)(2)(a), which provides that the nominating petitions of candidates whose parties formed via petition may only be signed by "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").⁷ Thus, because the only realistic opportunity voters have to affiliate with political parties is at the primary election, to which all parties forming via petition are denied access, and because at the time of the election even new voters will not know what, if any, minor political parties will be certified in the state or who their candidates will be, there is no real opportunity for voters to affiliate with minor political parties in 2014 or, likely, in the foreseeable future.⁸ (*See, e.g.*, Doc. 19-1, pgs. 6-10 and 13-14).

Because of the manner in which Ohio law is structured, denying minor political parties the ability to compete in the primary election raises serious constitutional concerns. First, 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 or add new members or 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

⁷ O.R.C. § 3517.015, which is cited by Intervening Defendant, also relates to nominating petitions for candidates seeking to compete in the *primary* election.

⁸ As mentioned in the Intervening Plaintiffs' Memorandum of Law in Support of their Motion to Intervene, GPOHIO and CPO have not obtained the threshold number of votes necessary to maintain party status in recent years. Thus, these parties are likely to continue to be dissolved at the end of each election

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”).⁹ Second, S.B. 193 interacts with pre-existing laws to severely burden the constitutional rights of Intervening Plaintiffs and other Ohio voters who wish to affiliate with minor political parties and support minor political party candidates. *See, e.g., Kusper v. Pontikes*, 414 U.S. 51, 57 (1973) (“The right to associate with the political party of one’s choice is an integral part of ... basic constitutional freedom.”); *Williams*, 393 U.S. at 30 (recognizing “the right of individuals to associate for the advancement of political beliefs”).

In addition to denying minor political parties access to the primaries and denying Ohio voters the ability to associate for the advancement of their political beliefs, S.B. 193 and pre-existing Ohio voting laws combine to place a substantial burden on the constitutional rights of minor political parties, their candidates, and Ohio voters in a number of other significant ways, including, but not limited to:

- subjecting minor political parties and their candidates to new qualification requirements so close to the commencement of the 2014 election cycle, when many of them have already begun or completed the petition process and expended significant resources in support of their campaign;
- requiring that party formation petitions be signed by 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; and

cycle and voters will be unable to officially affiliate with these parties for the foreseeable future. (Doc. 19-1).

⁹ S.B. 193 places GPOHIO and CPO, which 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”).

- placing the date by which the state must determine the sufficiency of nominating petitions and party formation petitions at such a late point in the election cycle – mere months before the general election – that minor political parties and their candidates will be unable to truly compete with major political party candidates for office.

The burden that the late enactment of S.B. 193 places on Intervening Plaintiffs Hart and Erwin is significant, but has been utterly ignored in responses by Defendant-Husted and Intervening Defendant State of Ohio. As Intervening Plaintiffs noted, S.B. 193 severely burdens the rights of Intervening Plaintiffs Hart and Erwin by forcing them to repeat the steps they have already taken. Intervening Plaintiff Hart will be forced to secure signatures on petitions, refile his nominating petitions, re-register with the federal government, all after having lost opportunities and momentum in soliciting campaign contributions and volunteers to work on his campaign. (Doc. 28). Likewise, in the case of Intervening Plaintiff Max Erwin, a CPO Congressional Candidate, the passage of S.B. 193 so close to the primary has caused his campaign to come to a screeching halt, and with it, the strong probability that his campaign and campaign money will be for nothing. (Doc. 35, paras. 13 and 14) S.B. 193 has, therefore, deprived Intervening Plaintiffs Hart, Erwin and others, similarly situated, of their due process rights. .

As Intervening Plaintiffs acknowledged in their Memorandum of Law supporting their Motion for a Temporary Restraining Order and Preliminary Injunction (Doc. 30), “[t]here is an inherent constitutional tension between the rights of states to conduct and regulate elections and the rights of political parties and voters to exercise their [constitutional] rights.” *Blackwell*, 462 F.3d at 595. “States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358

(1997); *see also Storer v. Brown*, 415 U.S. 724, 729 (1974) (describing different, legitimate interests that a state may advance in support of laws restricting ballot access). However, there are limits to this authority. For a state to place severe restrictions on the voting rights of minor political parties and their members, there needs to be a compelling state interest and the restrictions must be narrowly drawn. *Blackwell*, 462 F.3d at 585-86.

Obviously, the state has a legitimate interest in establishing a legal framework to govern the participation of minor political parties. However, S.B. 193 imposes a framework that places unjustified and severe burdens on the minor political parties, their candidates, and Ohio voters and this is especially true with respect to access to the ballot for the 2014 election. No matter what justification the state may advance in support of S.B. 193, when considered in connection with other Ohio voting laws, the laws regulating the ability of minor political parties to access Ohio ballots are not narrowly tailored and fall outside constitutionally prescribed limits. *See, e.g., Blackwell*, 462 F.3d at 595.

B. THE MERITS OF THIS CASE PRESENT A SUFFICIENTLY SERIOUS QUESTION TO JUSTIFY FURTHER INVESTIGATION

Intervening Plaintiffs assert that they have met the standard for injunctive relief in the current case, as S.B. 193 clearly places severe, restrictive, and unnecessary burdens on the ability of minor political parties, their candidates, and Ohio voters to exercise basic constitutional rights in the 2014 election cycle and beyond and was not narrowly drawn to advance a state interest of compelling importance. However, Intervening Plaintiffs contend that even should the Court question whether they have a strong likelihood of success, injunctive relief is still appropriate because S.B. 193 raises sufficiently serious constitutional questions so as to warrant further investigation. *In re DeLorean Motor Co.*,

755 F.2d 1223, 1230 (6th Cir. 1985) (A stay may be issued “if the merits present a sufficiently serious question to justify further investigation.”).

Intervening Defendant State of Ohio asserts that the requisites of *In re DeLorean* are not met here because injunctions under *DeLorean* should only be granted to preserve “the ‘existing state of things.’” (Doc. 39, pgs. 21-22). Here again, the Intervening Defendant asserts that GPOHIO, CPO, LPO, and SPO do not have a right to ballot access in 2014 and, as a result, *DeLorean* cannot apply. *Id.* at 22. However, as Intervening Plaintiffs noted in Part II of this Reply, the regular practice of the Secretary of State in issuing directives permitting ballot access of minor political parties gave the four recognized political parties every right to expect that, but for S.B. 193, they would be entitled to continue in 2014 as they had in prior years. Therefore, contrary to the Intervening Defendants’ arguments in its Memorandum Contra preserving the existing state of things would strongly suggest that injunctive relief would enable Ohio’s minor political parties to continue in the future as they have in the pass.

IV. PLAINTIFF-LPO’S CLAIMS UNDER THE OHIO CONSTITUTION

In reviewing the pleadings submitted by the Plaintiff, Intervening Plaintiffs note that the Plaintiffs have raised serious questions relative to the constitutionality of S.B. 193 under the Ohio Constitution. First Amended Complaint, (Doc. 16, paras. 4-6, 93-100). Although Intervening Plaintiffs contend that S.B. 193 is unconstitutional under both the Ohio and United States Constitution, Intervening Plaintiffs do recognize that should the Court that S.B. 193 is unconstitutional under Ohio Constitutional law, the more complex legal analysis under federal law will not be necessary.

V. CONCLUSION

Intervening Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction set forth persuasive arguments as to why injunctive relief is necessary to prevent immediate, permanent, and irreparable harm to the constitutional rights of minor political parties in the State of Ohio. The arguments presented by Defendant-Husted and Intervening Defendant State of Ohio are lacking in merit and, unless this Court intervenes, S.B. 193 will subject all minor political parties to injury and harm which will damage irreparably their ability to compete against the country's two major parties. This is a situation which violates the First and Fourteenth Amendments rights of Plaintiffs, Intervening Plaintiff, other minor political parties and persons in the State of Ohio who would support them or their platforms.

Respectfully submitted,

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VI. CERTIFICATE OF SERVICE

The foregoing Reply of Intervening Plaintiffs was filed this 23rd day of December, 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