

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

LIBERTARIAN PARTY OF OHIO, <i>et al.</i>,	:	
	:	
Plaintiffs,	:	Case No. 2014-3030
	:	
And	:	
	:	
GREEN PARTY OF OHIO, <i>et al.</i>,	:	
	:	
Intervening Plaintiffs,	:	
	:	
vs.	:	
	:	
SECRETARY OF STATE JON HUSTED,	:	
	:	
Defendant,	:	
	:	
And	:	
	:	
THE STATE OF OHIO	:	
	:	
Intervening Defendant.	:	

MOTION TO EXPEDITE APPEAL

Defendants-Appellants Ohio Secretary of State Jon Husted and the State of Ohio jointly move the Court under Fed. R. App. P. 2 and Sixth Circuit Rule I.O.P.

2 for an order expediting this appeal. An expedited appeal is requested because the trial court's order preliminarily enjoins for the 2014 elections the operation of S.B. 193, Ohio's ballot access law allowing new and minor political parties a path to access the Ohio general election ballot. The District Court also granted the Plaintiffs, Libertarian Party of Ohio, Green Party of Ohio, and Constitution Party of Ohio access to Ohio's primary and general election ballots for 2014.

This matter needs to be expedited in fairness to all sides because Ohio's ballot access law was scheduled to take effect on February 5, 2014. Under that law, minor parties and candidates would not participate in the State's May 6, 2014, primary election, but could still appear on the November 4, 2014, general election ballot by submitting a party formation petition by July 1, 2014, and candidate nominating petitions by July 17, 2014. However, because the District Court now has ordered that these minor party candidates be required to take part in Ohio's primary election, they and any other individuals interested in receiving the nomination of those minor political parties for any partisan office in the state must file their paperwork by February 5, 2014.

Expediting this appeal is necessary so that the Court may decide and resolve this issue before February 5, 2014, the date that S.B. 193 is slated to take effect and the date that, absent action from this Court, members of the Plaintiffs' political parties must file their petitions in order to participate in the State's May 2014

primary. If this Court overturns the District Court's grant of a preliminary injunction, minor political parties would need to submit their party formation petitions no later than July 1, 2014 to qualify for the general election ballot. If this appeal were heard in the normal course, it might result in a situation where the preliminary injunction is vacated and the Plaintiffs would have little, if any, time to obtain the signatures necessary to qualify for ballot access in 2014. Expediting the decision of this appeal is necessary to ensure that Plaintiffs have ample time to qualify for the 2014 ballot under either set of rules. Thus, the Defendants respectfully request the Court set a briefing schedule in which:

- Defendants-Appellants' merit briefs would be due on January 16, 2014;
- Plaintiffs-Appellees' merit briefs would be due on January 22, 2014;
- and
- Defendants-Appellants' reply briefs would be due on January 24, 2014.

Defendants-Appellants are willing to waive oral argument in order to allow faster resolution of this case, but would participate in argument if the Court believes that would aid it in rendering a decision.

Respectfully submitted,

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Ohio Attorney General

/s/ Richard N. Coglianese

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MEMO IN SUPPORT

Appellants Ohio Secretary of State Jon Husted and the State of Ohio respectfully request that this appeal be expedited to allow the possibility of resolution before February 5, 2014 – the date by which individuals who wish to run in partisan primary elections must file their paperwork and the date that S.B. 193, a law altering Ohio’s ballot access laws, was scheduled to become effective. As mentioned above, expediting this case is in both sides’ best interests. The closer the date of decision gets to July 1, 2014, the less time Plaintiffs would have to collect signatures for a party formation petition if this Court reverses the District Court’s order exempting them from S.B. 193 for the 2014 election cycle. However, because it is also the deadline for filing petitions seeking access to the 2014 primary election, regardless of the outcome of this appeal, February 5, 2014, is the date by which all parties need to know which set of rules will apply to Ohio’s 2014 elections.

When examining this case, it is necessary to remind this Court how we got to the current challenge to Ohio’s ballot access laws. By way of background, Plaintiff Libertarian Party of Ohio (“LPO”) has brought several ballot access cases against Ohio’s ballot access law. In 2004, LPO had attempted to petition for access to the Ohio ballot. Ohio law, at that time, mandated that a new political party file petitions with signatures equal to 1% of the total number of individuals

who voted in the last gubernatorial or presidential election and that those petitions be filed no later than 120 days prior to the State's primary election (that is, [virtually] a full year before the general election). The LPO filed signatures that purported to be sufficient, but their petitions were ultimately rejected when they used an incorrect form. The LPO then filed suit claiming that the State's ballot access law requiring that the combination of a 1% signature threshold in addition to a filing deadline of 120 days before a March primary violated the LPO's First Amendment rights. This Court agreed that such combination was unconstitutional and struck down the ballot access law in *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir. 2006).

After the *Blackwell* decision, Ohio did not have a ballot access law for minor and new political parties. In an attempt to remedy that situation, then Secretary of State Brunner issued a Directive for the 2008 general election. She administratively reduced the number of signatures needed for a new political party to qualify for the ballot from 1% to 0.5%. She also moved up the nominating petition filing date from 120 days before the primary to just 100 days before the election. The LPO and other political parties filed suit claiming that, among other things, the Secretary did not have the authority to administratively set requirements for ballot access. The district court agreed and ordered ballot access for the Libertarian and Green parties for the 2008 ballot. Because the State did not have

another mechanism for ballot access and none of these political parties reached the 5% vote threshold for President to qualify for ballot access, the Secretary issued Directives giving these political parties continued ballot access for 2010 and 2011. (Directives 2009-21, 2011-01).

In order to provide a statutory mechanism for ballot access, the General Assembly passed H.B. 194 in 2011. It sought to fix the problems found in *Blackwell* by moving the minor party nominating petition filing deadline from 120 days before the primary election to 90 days before the primary election. Before the law became effective, the LPO filed suit, claiming that the combination of a 1% signature requirement together with a filing deadline 90 days before the 2012 March primary violated their First and Fourteenth Amendment rights. The District Court issued a preliminary injunction against those provisions and ordered ballot access for the LPO for the 2011 and 2012 election cycles. A referendum was filed against H.B. 194 staying its effective date; before that bill was placed before Ohio voters, the General Assembly passed S.B. 295, repealing H.B. 194 in its entirety.

On November 6, 2013, Ohio's General Assembly passed and the Governor subsequently signed significant statutory reforms designed to ease ballot access and bring the State's ballot access laws into full constitutional compliance. S.B. 193 now mandates that a party that does not retain ballot access because it falls below the statutory vote receipt requirement can still obtain access by submitting a

petition to the Ohio Secretary of State containing the signatures of 1% of the total vote for governor or president at the most recent election. O.R.C. 3517.01(A)(1)(b). It may submit those signatures no later than 126 days before the November general election. O.R.C. 3517.01(a)(1)(b)(iii).

To aid new political parties that may seek ballot access in 2014 but that did not retain it from the 2012 election cycle, the General Assembly reduced certain thresholds even further. Instead of submitting signatures in the amount of 1% of the vote for president from 2012, the threshold has been lowered to 0.5%. In other words, in order for its candidate to appear on the general election ballot, a political party only has to submit petitions to the Secretary containing 28,167 valid signatures no later than July 1, 2014. Thus, S.B. 193 addressed many of the concerns the LPO and others had brought both through litigation and in testimony before the General Assembly. New political parties no longer are required to submit their petitions well in advance of Ohio's primary election. But to allow time for the signatures to be verified, the new political parties will not take part in Ohio's primary election.

S.B. 193's effective date was February 5, 2014, the same date that candidates who are taking part in Ohio's primary election need to file their petitions in order to qualify for the primary election.

The District Court now has enjoined S.B. 193 for the 2014 election cycle (only) and has ordered access to the State's primary election ballot to the political parties that filed this lawsuit. In order for State and all parties to know which ballot access rules apply for the 2014 election cycle, it is important, therefore, for this Court to decide this case, on an expedited basis, before February 5, 2014. To avoid this result, the Defendants ask this Court to expedite this case and propose the following briefing schedule; Defendants' merit briefs to be due on January 16, 2014; Plaintiffs merit briefs to be due on January 22, 2014; and Defendants' reply briefs to be due on January 24, 2014. This Court has historically expedited appeals on matters concerning rules for elections. *See, e.g., Northeast Ohio Coalition for the Homeless v. Husted*, 696 F.3d 580, 583 (6th Cir. 2012). Thus, the Defendants respectfully request that this Court issue an expedited briefing schedule in this appeal in order to again clarify the rules for elections for the 2014 election cycle. To aid the expeditious resolution of this matter, Appellants suggest forgoing oral argument unless the Court directs otherwise.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January 2014, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing has been served by e-mail or facsimile upon all parties for whom counsel has not yet entered an appearance and upon all counsel who have not entered their appearance via the electronic system.

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