

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

2014 MAY -1 AM 10:00

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

OHIO STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
LEAGUE OF WOMEN VOTERS OF OHIO,
BETHEL AFRICAN METHODIST
EPISCOPAL CHURCH,
OMEGA BAPTIST CHURCH,
COLLEGE HILL COMMUNITY CHURCH
PRESBYTERIAN, U.S.A.,
A. PHILIP RANDOLPH INSTITUTE, and
DARRYL FAIRCHILD,

Case No.

2:14 CV - 404

JUDGE FROST

Plaintiffs,

v.

JON HUSTED, in his official capacity as Ohio
Secretary of State,
MIKE DEWINE, in his official capacity as
Ohio Attorney General,

MAGISTRATE JUDGE DEAVERS

Defendants.

COMPLAINT

Plaintiffs, by their attorneys, file this complaint against Defendants and allege as follows:

1. Plaintiffs bring this action to prevent the elimination of early voting days during which over 157,000 voters participated during the last federal election, and thereby restore the early in-person voting period available to all Ohioans during previous federal election cycles. Only 16 months after the United States District Court for the Southern District of Ohio entered a preliminary injunction, affirmed by the Sixth Circuit, enjoining Defendants from eliminating the last *three* days of the early voting period in 2012, *see Obama for Am. v. Husted*, 888 F. Supp. 2d 897 (S.D. Ohio 2012) ("*OFA I*"); *aff'd*, 697 F.3d 423 (6th Cir. 2012) ("*OFA II*"), the Ohio

legislature and the Secretary of State have moved swiftly to eliminate the last *two* days of the early voting period – and even more egregiously, have also eliminated an entire week of early voting during which voters were able to register and vote at the same time; and have banned early voting during *all* evenings and Sundays. These recent statutory and administrative changes to Ohio’s election laws will directly deny the franchise or otherwise make it significantly more difficult for tens of thousands of Ohioans to vote, in violation of 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution. The effects of these changes will be felt most keenly among lower-income voters who are predominantly African-American, causing them to have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice, resulting in the denial or abridgement of the right of African Americans in Ohio to vote in contravention of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973(b). Plaintiffs request that this Honorable Court grant relief in the form of, *inter alia*, a declaratory judgment and preliminary and permanent injunctions preventing Defendants from implementing reductions to Ohio’s early voting period.

2. Specifically, this lawsuit challenges two recent changes to early voting in Ohio. First, Senate Bill Number 238 (“SB 238”) amends Ohio Rev. Code §§ 3509.01, 3511.10 to eliminate the first week of early voting in Ohio, which is the only week that included what is known as “same-day registration” – the opportunity to register to vote and cast a ballot in person at the same time, an opportunity that is particularly valuable to lower-income and homeless voters. Second, Secretary of State Directive 2014-06 (“Directive 2014-06”) eliminates all Sundays and all evening hours¹ from the early voting period, as well as the Monday before

¹ Directive 2014-06 left evening hours in place on Monday, April 7, 2014, for the May 2014 primaries, but only because of Ohio Rev. Code § 3501.10(B), which requires board of elections offices to be open until 9 p.m. on the last day of voter registration. SB 238, however, eliminated this final bastion of evening early voting by defining the early voting period as starting *after* the last day of voter registration, and will go into effect for the November 2014

Election Day, time periods that have been strongly favored by the African-American community in Ohio. Directive 2014-06 is the latest in a series of directives that have similarly targeted early in-person voting times and dates disproportionately relied upon by African Americans – specifically, weekends and evening hours – and the Secretary of State has made clear that such directives will continue unabated until the Ohio legislature enshrines these targeted cutbacks into permanent law.

3. These reductions in early voting and registration opportunities will significantly impact thousands of voters, especially African-American voters. In 2006, Ohio passed laws establishing an early voting system that provided a one-week same-day registration period in which voters could register to vote and cast a ballot at the same time, and permitted each county to hold early voting hours on evenings and on Sundays. Allowing each county to have early voting on evenings and Sundays, as well as the day before the election, allowed for general uniformity of voting opportunity across the state. Because each county may have only *one* early voting site, *see* Ohio Rev. Code § 3501.10(C), regardless of the size of its population or unique transportation access issues, such flexibility was necessary to ensure sufficient voting opportunity for all Ohioans. Thus, for instance, larger counties such as Cuyahoga County (population 1,280,122) could (and did) have early voting on evenings and Sundays to provide meaningful voter opportunities for their larger lower-income voter population who may have greater difficulty taking time off of work during ordinary business hours to cast a vote, as well as generally to reduce long lines on Election Day and the attendant pressures on election administration. Such larger counties were not straitjacketed by more restricted early voting hours that might be more acceptable in a smaller county such as Vinton County, which has about

elections. At that point, SB 238, together with Directive 2014-06, will eliminate *all* evening hours from the early voting period. Directive 2014-06 also eliminates four Saturdays from the early voting period for the May 2014 primaries, and three Saturdays from the early voting period for the November 2014 election:

1/100th of the population of Cuyahoga (population 13,435).

4. This early voting system also reduced the congestion that caused such severe waits during the 2004 Presidential election in Ohio that many citizens, predominantly African Americans, were effectively denied the right to vote, and it increased participation among voters, including those for whom work or family obligations make it difficult to vote on Election Day. Indeed, as noted above, in 2012, over 157,000 Ohioans voted on the early voting days that would have been eliminated had SB 283 and Directive 2014-06 been in place in 2012. Without these early voting opportunities, tens of thousands of citizens who would have otherwise exercised their right to vote during this period, including Plaintiffs' members and supporters, may now be forestalled from participating in future elections.

5. These undue burdens on the fundamental right to vote violate the Equal Protection Clause of the United States Constitution and Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973(b). Plaintiffs have no plain, adequate, or complete remedy at law other than the relief requested in this Complaint. Unless Directive 2014-06 and the changes made to Ohio Rev. Code §§ 3509.01, 3511.10 by SB 238 are enjoined by this Court, Plaintiffs and the voters they represent will be directly and irreparably harmed in upcoming elections.

6. For these reasons and those specifically alleged herein, Plaintiffs seek a declaratory judgment, preliminary injunction, and permanent injunction prohibiting Defendants from implementing or enforcing Directive 2014-06 and the changes made to Ohio Rev. Code §§ 3509.01, 3511.10 by SB 238, thereby restoring the preexisting in-person absentee voting period for all Ohio voters.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,

1343(a)(3), and 1357.

8. This Court has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

9. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b).

PARTIES

10. Plaintiff OHIO STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (“Ohio NAACP”) is a nonpartisan, nonprofit organization composed of over 60 chapters throughout the state of Ohio. The NAACP was founded in 1909, and is the nation’s oldest and largest civil rights organization, with more than 1.5 million members in the United States. The mission of the NAACP is to ensure the political, educational, social, and economic equality of rights of all people and to eliminate racial discrimination. In furtherance of this mission, the Ohio NAACP advocates to ensure that the interests of racial minorities are represented in the local, state, and national legislative bodies by representatives who share the community’s interests, values and beliefs and who will be accountable to the community. The Ohio NAACP encourages and facilitates nonpartisan get-out-the-vote drives and has relied especially on such efforts in lower income and African-American communities. The Ohio NAACP and its members would conduct get-out-the-vote programs during the time periods eliminated by SB 238 and Directive 2014-06 but cannot do so because of those measures. The NAACP National Voter Fund and its affiliate, the Ohio Voter Fund, lobbied and testified against SB 238 in both the House and the Senate. SB 238 and Directive 2014-06 will also harm the African-American members of Ohio NAACP by effectively denying their right to vote or otherwise depriving them of meaningful access to the political process by making it significantly more difficult for them to vote when compared to white

voters.

11. Plaintiff LEAGUE OF WOMEN VOTERS OF OHIO (LWVO), is a membership organization operating within Ohio. LWVO is affiliated with the League of Women Voters of the United States. Currently LWVO has 33 local Leagues throughout Ohio and over 2300 members, most of whom, on information and belief, are registered voters in Ohio. LWVO is a nonpartisan political organization that encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. LWVO was founded in 1920 by the suffragettes, after the enactment of the Nineteenth Amendment to the U.S. Constitution granting women's suffrage, with the goal to help citizens exercise their right to vote. Over the last 94 years, LWVO has fulfilled this goal by registering new voters, providing nonpartisan voter guides, helping educate citizens about when and how they may cast a ballot, advocating against restrictions on voting, and advocating in favor of positive voting reforms. In recent years, LWVO has spent considerable effort helping voters navigate the ever-changing landscape of voting rules in Ohio and advocating for sensible election administration. LWVO believes that early voting should include a reasonable number of evening and weekend hours and has urged the legislature and Secretary of State to adopt rules that provide voters with these options. Individual League members invest substantial time and effort in voter training and civic engagement activities, including voter registration and get-out-the-vote efforts, including during the early voting period. LWVO and its members strenuously encourage voters to cast a ballot by whatever means each voter should choose, in person or by mail, but those opportunities have been sharply limited by SB 238 and Directive 2014-06. Furthermore, as a result of SB 238 and Directive 2014-06, LWVO and its members will be forced to divert time, money, and resources

from their other activities, such as registering voters, sponsoring candidates' forums, and other activities, in order to educate and assist Ohio citizens – many of whom will not understand the changes in voting and who will be burdened by these early voting cutbacks, the vagaries of mailing absentee ballots, and other voting changes.

12. Plaintiff BETHEL AFRICAN METHODIST EPISCOPAL CHURCH is located in Columbus, Ohio. Its congregation is predominantly African-American and has over 200 members. The Church has undertaken substantial efforts to increase civic engagement in the community, including organizing education programs on voting requirements and conducting voter registration drives. The Church has also engaged in get-out-the-vote efforts during the same-day registration period as well as conducted “Souls to the Polls” programs on Sundays. The Church and its members would continue conducting get-out-the-vote programs during the time periods eliminated by SB 238 and Directive 2014-06 but cannot do so because of those measures.

13. Plaintiff OMEGA BAPTIST CHURCH is located in Dayton, Ohio. Its congregation is predominantly African-American and has thousands of members. The Church believes that voting is a God-given right which everyone has a duty to exercise. It has undertaken substantial efforts to increase civic engagement in the community, such as conducting “Souls to the Polls” programs which transport people to the polls after Sunday church services, as well as transporting people to the polls throughout the early voting period. The Church and its members would continue conducting get-out-the-vote programs during the early voting periods eliminated by SB 238 and Directive 2014-06 but cannot do so because of those measures.

14. Plaintiff COLLEGE HILL COMMUNITY CHURCH PRESBYTERIAN, USA is

located in a predominantly African-American neighborhood in Dayton, Ohio. Its congregation, dedicated to multiculturalism and equal worth of all people, is predominantly African-American and has over 200 members. The Church is involved with many different community groups that address the issues of poverty, justice, and empowerment. This includes encouraging people to register to vote, vote and express their views to their elected officials. As part of this involvement, the Church has taken part in efforts to encourage early voting and helped transport voters to the polling place during early voting periods. The Church and its members would continue conducting get-out-the-vote programs during the early voting periods eliminated by SB 238 and Directive 2014-06 but cannot do so because of those measures.

15. Plaintiff A. PHILIP RANDOLPH INSTITUTE (“APRI”) is an organization of trade unionists, and was established in 1965 to forge an alliance between the civil rights movement and the labor movement. The APRI is the senior constituency group of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and has nine chapters in Ohio. The APRI focuses on voter education and believes strongly in protecting the right to vote, and have conducted get-out-the-vote drives that help people in lower-income neighborhoods and urban communities, which are disproportionately African-American, to vote. The APRI chapters in Ohio would conduct get-out-the-vote programs during the time periods eliminated by SB 238 and Directive 2014-06 but cannot do so because of those measures.

16. Plaintiff DARRYL FAIRCHILD has been a community organizer over the past decade, and is currently a minister in Dayton, Ohio. He has engaged in numerous get-out-the-vote efforts, which included efforts to help people register and vote during the first week of early voting, and the coordination of transportation to the polls after church services on Sunday. Most of his work has been in lower-income, disproportionately African-American communities. He

would continue conducting get-out-the-vote programs during the early voting periods eliminated by SB 238 and Directive 2014-06 but cannot do so because of those measures.

17. This action is brought timely, in that SB 238 was signed by the Governor on February 21, 2014. SB 238's elimination of the weeklong same-day registration period will first take effect for the General Election to be held November 4, 2014. Directive 2014-06 was issued by Ohio Secretary of State Jon Husted on February 25, 2014 and is a part of a continuing pattern of directives slashing into the early in-person voting period. Its prohibition of evening hours, all Sundays, and the Monday before Election Day will take effect for the May 6, 2014 Primary Election, and will remain in effect for the November 4, 2014 General Election.

18. Defendant JON HUSTED is the Secretary of State of Ohio and is sued in his official capacity. Pursuant to Ohio Rev. Code § 3501.04, the Secretary of State is the chief election official of the State of Ohio, and, as such, is responsible for the administration of state laws affecting voting, and for assuring that elections in the state are conducted in accordance with the law. His principal office is in Columbus, Ohio.

19. Defendant MIKE DEWINE is the Attorney General for the State of Ohio and is sued in his official capacity. Pursuant to Ohio Rev. Code § 109.02, the Attorney General is the chief law officer of the State and represents the State of Ohio in all legal matters. His principal office is in Columbus, Ohio.

FACTUAL ALLEGATIONS

The Use of Early Voting in Ohio

20. In the 2004 general elections, Ohio voters were faced with numerous problems, including extremely long lines and wait-times, especially in urban areas. African-American voters in particular waited in line nearly three times longer than white voters (an average of 51.8

minutes, as compared to an average of only 17.9 minutes for white voters), and 44% of African-American voters waited for more than 20 minutes while only 20% of white voters waited that long.² Many voters were forced to wait in line for two to twelve hours, and in at least one polling location, voting did not finish until 4:00 a.m. the day after Election Day. Thousands of voters left their polling places without voting because of school or work obligations, family responsibilities, or because a physical disability prevented them from standing in line. *See generally League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (6th Cir. 2008). A survey found that approximately 130,000 would-be Ohio voters left before casting a ballot in the 2004 general election due to excessively long wait times on Election Day.³

21. “To prevent similar problems from disenfranchising voters in the future and to ease the strain of accommodating all voters on a single day, the State established no-fault absentee voting in October 2005. The new rules eliminated the need for absentee voters to have an excuse for not voting on election day.” *OFA II*, 697 F.3d 423, 426 (6th Cir. 2012). *See* Ohio Rev. Code § 3509.02(A) (“Any qualified elector may vote by absent voter’s ballots at an election.”).

22. Early voting in Ohio is therefore conducted using no-fault absentee ballots, which can either be returned by mail (voting by mail) or completed and returned in person at early voting locations (early in-person voting).

23. Specifically, voters can access and return an absentee ballot in the following ways: (i) they can apply for a ballot by mail, complete it, and mail it in, postmarked by the day before Election Day; (ii) they can apply for a ballot by mail, complete it, and return it by hand to the local county board of elections by the close of polls on Election Day; (iii) they can apply for

² Diane Feldman & Cornell Belcher, DNC Voting Experience Survey, Mar. 3, 2005, at 3, *available at* <http://www-personal.umich.edu/~wmebane/Ohio2004/OhioReportCover2Cover.pdf>.

³ DNC Voting Experience Survey, *supra* note 2, at 2.

a ballot in person starting at the beginning of the early voting period and return it later either by mail or in person; or (iv) they may request and vote an early ballot in person at the same time during the early voting period.

24. Prior to the challenged reductions in early voting, Ohio law provided for early voting to begin thirty-five days prior to Election Day or, for voters voting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), the forty-fifth day before Election Day.

25. The first week of this thirty-five day early voting period overlapped with the last week of the voter registration period, which allowed voters to register to vote and cast an absentee ballot at the same time during that week, without making multiple trips to an election office. In other words, same-day registration was available during the first week of the early voting period.

26. According to statute, however, each county is only permitted one early voting location. *See* Ohio Rev. Code § 3501.10(C) (“if the board of elections permits electors to vote at a branch office, electors shall not be permitted to vote at any other branch office or any other office of the board of elections”).

27. Ohioans heavily utilize early voting opportunities, and African Americans in particular rely heavily on early in-person voting, the use of which has skyrocketed since the introduction of no-fault absentee voting in 2005⁴ and shows no signs of abating.

28. Early in-person voting has also been used heavily by the Ohio population as a

⁴ Ray C. Bliss Institute of Applied Politics, *A Study of Early Voting in Ohio Elections* (2011), available at <http://www.uakron.edu/bliss/research/archives/2010/EarlyVotingReport.pdf>; Ohio Secretary of State, *Voter Turnout: November 4, 2008: Official Amended Results* (2011), <http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/2008ElectionResults/turnout110408.aspx>; Norman Robbins et al., *Analysis of Early In-Person and Mail-in Absentee Voting in the Ohio 2012 General Election Compared to 2008* (Jan. 19, 2013), available at <http://www.nova-ohio.org/analysis%20early-absentee%20voting%202012%20vers10%201-19-13.pdf>.

whole. In both the 2008 and 2012 general elections, roughly one-third of early voting was done through early in-person voting. In 2008, Ohio voters cast approximately 512,000 early in-person absentee ballots, and in 2012, Ohio voters cast approximately 580,000 early in-person absentee ballots.

29. Ohio statutes have never straitjacketed all 88 counties, regardless of population and voter access to polling locations, into having the exact same days and hours for early in-person voting. Instead, each county board of elections was allowed to set their hours of operation, including early voting hours, depending on the population, unique transportation access issues, or other factors faced by each county. Ohio Rev. Code §§ 3501.06, 3501.11. Because each county is only permitted one early voting polling location by statute, Ohio Rev. Code § 3501.10(C), this meant that larger counties could provide greater access to voting for their larger populations, including their larger lower-income voter populations, helping ensure uniformity of voting opportunity throughout the state.

30. For example, in the 2008 election, Ohio's two largest counties, Cuyahoga and Franklin, permitted early voting after-hours and on weekends. A significant number of the approximately 100,000 or more early in-person absentee votes from those counties, a disproportionate share of which were by African-American voters, were cast during the evening hours, weekends, and the last few days before Election Day. *See OFA II*, 697 F.3d at 426-27.

31. During the 2012 election, at least 90,000 voters statewide cast a ballot in-person during the weeklong period of same-day registration, with nearly 30,000 votes cast on the last day of that period, when elections offices were open until 9 p.m. as required by statute. Ohio Rev. Code § 3501.10(B). At least 80 out of the 88 counties in Ohio permitted early in-person voting on the last Sunday and Monday before Election Day in 2012. Over 67,000 Ohioans cast

their votes in person on those two days, with over 28,000 voters voting on the final Sunday alone.

32. African-American voters are much more likely than white voters to vote in person during the early voting period, including during the weeklong same-day registration period, during the evening hours, and on Sundays. From 2006 until 2010, according to the Current Population Survey conducted by the United States Census Bureau, African Americans voted early in-person at nearly *twice* the rate of white voters, and then *exceeded* that rate in 2012.

33. Many African-American churches conducted “Souls to the Polls” programs in an effort to help African-American congregants vote on Sunday after church, a program that has taken on special meaning in the African-American community. In 2012, Defendant Husted substantially hindered these efforts by African-American churches by targeting *all* Sundays for elimination from the early voting period as explained below. Only after a court forced Defendant Husted to allow early in-person voting on the final Sunday before Election Day were churches able to resume “Souls to the Polls” activities, but they were forced to cram all of that work onto a single Sunday.

Ohio’s Repeated Attempts to Restrict Early In-Person Voting

34. Immediately after African-American voter turnout in Ohio surged during the 2008 Presidential elections to help elect the first African-American President into office, the Ohio legislature moved quickly to target the early voting period upon which African Americans had relied so heavily. Indeed, mere moments after the historic election, a bill was passed to eliminate the entire first week of early voting, the only period of same-day registration. Then-Governor Ted Strickland vetoed the bill in December 2008. In 2009, another bill seeking to eliminate that week of early voting, as well as same-day registration, was proposed and passed by the House,

but it did not pass the Senate.

35. Ohio elected officials were undaunted by these failed attempts to make voting more difficult, employing a series of convoluted legislative and executive maneuvers in the following years, in a desperate search for some politically-creative way to eliminate same-day registration and slash into the early voting period.

36. In early 2011, Ohio legislators introduced House Bill 194 (“HB 194”), which would have eliminated the weeklong same-day registration period and the last three days of the early in-person voting period, in addition to several other early in-person voting days. The bill was introduced during a biannual debate over the budget, which is unusual and typically seen as an attempt to pass a bill under the cover of night, when legislators and the media are predominantly preoccupied with the budget debate. The gambit succeeded for the time being, and HB 194 was signed into law in July 2011.

37. What Ohio elected officials did not anticipate, however, was the fast and furious response by the Ohio citizenry and African-American organizations, including the Plaintiff Ohio NAACP, to the infringement of their fundamental right to vote. Immediately following the passage of the bill, citizens initiated a statewide referendum procedure to stop the law from going into effect.⁵ Over 300,000 Ohioans signed a petition successfully placing HB 194 to a referendum, which suspended HB 194 from going into effect in 2012. Bills are rarely successfully certified for a referendum in this manner.

38. Not anticipating such an angry response from the voting public, and fearing the embarrassment that would follow if ordinary Ohio citizens overturned the bill by referendum in direct repudiation of their voter suppression efforts, in May 2012 Ohio legislators repealed HB

⁵ See generally Ohio Secretary of State, Statewide Referendum, <http://www.sos.state.oh.us/LegnAndBallotIssues/issues/StateReferendum.aspx>.

194 before it could even be voted on by the people. *OFA II*, 697 F.3d at 427.

39. However, due to a technical statutory oversight by both the referendum organizers and the legislature, the last three days of the early voting period remained eliminated for non-military voters, and it was ambiguous whether the last three days were eliminated for military and overseas voters. Defendant Husted chose to construe the statute as allowing military and overseas voters to vote during the last three days of the early voting period, even as non-military voters could not. Litigation ensued in July 2012. *OFA II*, 697 F.3d at 427.

40. On August 15, 2012, while the *OFA* litigation was pending, Defendant Husted unilaterally issued Directive 2012-35, which straitjacketed all 88 counties in Ohio, with their dramatically different populations and unique transportation access issues, into adopting the exact same restricted early voting schedule even though each county is only permitted *one* early voting location. The directive targeted time periods that had been relied upon heavily by African American voters, banning early in-person voting during certain evening hours, and on Saturdays and Sundays across the board. The directive also reiterated the elimination of the last three days of the early voting period, which Defendant Husted later clarified in the context of litigation would apply only to nonmilitary voters. *OFA I*, 888 F. Supp. 2d at 902.

41. This directive was issued even though Ohio statutes only permit the Secretary of State to decide the early voting hours of a particular county if that county's four-member board of elections has cast a tie vote when deciding on their early voting hours. Ohio Rev. Code §§ 3501.06, 3501.11. As Defendant Husted acknowledged in the directive, there had been tie-votes from only four counties concerning the scope of early voting hours. He nonetheless unilaterally mandated early voting cutbacks for *all* 88 counties, regardless of whether there had been any tie-vote concerning early voting hours in any of the other 84 counties, in violation of state law.

42. On August 19, 2012, Doug Priesse, a member on the Franklin County Board of Elections, explained his vote against allowing weekend early voting in Franklin County in an e-mail to the media, saying, “I guess I really actually feel we shouldn’t contort the voting process to accommodate the urban – read African-American – voter-turnout machine.”⁶

43. On August 31, 2012, the United States District Court for the Southern District of Ohio entered a preliminary injunction enjoining the elimination of the last three days of the early voting period for non-military voters, finding no legitimate justification for treating military and non-military voters differently. *OFA I*, 888 F. Supp. 2d at 909. Furthermore, after being presented with evidence that minority and lower-income voters disproportionately rely on in-person early voting, and that 93,000 Ohioans had voted on the last three days of the early voting period, the court also found that the absolute burdens on non-military voters were themselves significant, and were not justified by any “precise, compelling” State interest. *OFA I*, 888 F. Supp. 2d at 902, 910-11.

44. Notwithstanding the court order, on September 4, 2012, Defendant Husted issued Directive 2012-40, which “strictly prohibit[ed] county boards of elections from determining hours for the Friday, Saturday, Sunday, or Monday before the election.” Again, the directive did not acknowledge any tie votes from any county as the basis for its determination. The very next day, the District Court ordered Defendant Husted to personally appear to explain why Directive 2012-40 was not in violation of the court’s preliminary injunction. (Notice of Hr’g, *Obama for Am. v. Husted*, 2:12-cv-636 (S.D. Ohio Sept. 5, 2012), ECF No. 52.) Two days later, Defendant Husted rescinded Directive 2012-40. (Def. Jon Husted’s Resp. to Pls.’ Mot. to Enforce & Mot. for Stay, *Obama for Am. v. Husted*, 2:12-cv-636 (S.D. Ohio Sept. 7, 2012), ECF No. 54.)

⁶ Darrel Rowland, “Voting in Ohio | Fight over poll hours isn’t just political,” *Columbus Dispatch*, Aug. 19, 2012, available at <http://www.dispatch.com/content/stories/local/2012/08/19/fight-over-poll-hours-isnt-just-political.html>.

45. On October 5, 2012, the United States Court of Appeals for the Sixth Circuit affirmed the preliminary injunction order, finding that the plaintiffs “introduced extensive evidence that a significant number of Ohio voters will in fact be precluded from voting without the additional three days of in-person early voting.” *OFA II*, 697 F.3d at 431. The court observed that the elimination of these three days was particularly burdensome on voters because Directive 2012-35 (not challenged in the lawsuit) had also eliminated all remaining evening and weekend hours. *Id.* The court did not give any weight to Defendant Husted’s generic political talking point that early voting caused administrative problems, because it was not supported by any actual evidence, and could not survive judicial scrutiny. “With no evidence that local boards of elections have struggled to cope with early voting in the past, no evidence that they may struggle to do so during the November 2012 election, and faced with several of those very local boards in opposition to its claims, the State has not shown that its regulatory interest in smooth election administration is ‘important,’ much less ‘sufficiently weighty’ to justify the burden it has placed on nonmilitary Ohio voters.” *Id.* at 434. Defendant Husted filed an application to the United States Supreme Court for a stay, which was referred by Justice Kagan to the full Court, but was denied on October 16, 2012. *See Husted v. Obama for Am.*, 133 S. Ct. 497 (2012).

46. During the November 2012 Presidential elections, over 90,000 voters cast a ballot in person during the weeklong same-day registration period, and over 67,000 voters cast a ballot in person on the Sunday or Monday before Election Day. These groups of voters were disproportionately comprised of African Americans. In addition, thousands more Ohioans likely would have voted in the November 2012 election if Directive 2012-35 had not eliminated all remaining Sundays and several evening hours from the early voting period.

Senate Bill 238

47. Notwithstanding the *OFA* litigation, Ohio elected officials have tried once again to curtail early in-person voting. On November 13, 2013, the Ohio legislature introduced SB 238 in order to eliminate the first week of early voting in Ohio. This had the effect of also eliminating same-day registration, when voters had the opportunity to register to vote and cast a ballot in person at the same time, because the last week of registration had overlapped with the first week of early voting.

48. SB 238 was rammed through the Senate State Government Oversight and Reform Committee, where it was limited to only two hearings. Most bills receive at least three hearings: one for the bill sponsor, one for proponents, and one for opponents of the bill. When SB 238 passed committee and arrived on the Senate Floor, State Senator Lou Gentile pointed out the way in which the bill was rushed through committee and moved to re-refer SB 238 back to committee, simply to better assess the impact that the bill would have on voters. The motion was rejected.

49. On November 20, 2013, only one week after the bill's introduction, SB 238 passed the Senate. Passing a bill within a week of introduction is extraordinarily rare in either chamber.

50. Unusual procedural maneuvers also surrounded SB 238's consideration by Ohio House of Representatives, starting with the actions of the House Policy and Legislative Oversight Committee. Ordinarily, an official committee notice is sent out on a Thursday or a Friday indicating when the committee is to meet the following week, and the typical deadline for introducing amendments is 24 hours before the scheduled hearing. If no official committee notice is sent out, then there is no committee meeting the following week. When it came time to consider SB 238, however, a confusing official committee notice was sent out on Thursday,

January 30, 2014. It specifically stated that there would be *no* committee meeting on Tuesday, February 4; indicated that all amendments to SB 238 should be submitted no later than noon on February 4 (suggesting that the committee meeting would be on Wednesday, February 5, given the typical 24-hour period); but then failed to indicate when a committee meeting would actually be held. It was not until February 6 that legislators learned the committee meeting would be on the following Tuesday, February 11. These conflicting and confusing signals made it unclear when amendments were actually due, and essentially pushed the ordinary 24-hour deadline for introducing amendments back by a full week. During the hearing, only one ameliorative amendment was proposed, to allow online voter registration, which may have mitigated the impact of eliminating the weeklong same-day registration period. The amendment was rejected.

51. When SB 238 went to the House floor, legislators had timely written and submitted to the House Clerk two additional ameliorative amendments before the floor debate. One amendment would have allowed county boards of election to have more than one early voting location. The other would have required the Secretary of State to simply *assess* how SB 238 would affect African Americans, women, and other voters.

52. However, before any legislator could even speak out in support of these amendments, State Representative Matt Huffman abruptly “called the question,” invoking a rarely-used procedure which Speaker William G. Batchelder permitted, effectively ending the debate and prompting a literal outcry from those legislators on the floor of the House who wanted to introduce and speak in favor of the amendments. Silencing the mere discussion of properly presented amendments is unusual in the House and resulted in the filing of a formal protest from those legislators. None of these amendments were even voted upon, and the House passed SB 238.

53. The bill returned to the Senate floor for a concurrence vote. State Senator Nina Turner, an African-American legislator, spoke about the impact that SB 238 would have on African Americans but was impatiently cut off by the gavel of Senate President Keith Faber and ruled out of order. No other debate was allowed. SB 238 passed the concurrence vote.

54. Notwithstanding these irregularities, testimony concerning the impact on African Americans and lower-income voters was presented throughout this truncated legislative process. Members of the Ohio legislature were well-aware of the impact that SB 238 would have before they voted to approve it.

55. Bills that are sent to the Governor for signature are rarely signed into law on the same day. This was not the case with SB 238. As soon as it was sent to Governor Kasich for signature on February 21, 2014, it was signed immediately.

Secretary of State Directive 2014-06

56. During a House Policy and Legislative Oversight Committee discussion about early voting in February 2014, State Representative Matt Huffman, the same legislator who abruptly shut down debate over SB 238 and prevented even the *discussion* of any amendments that would mitigate the impact of SB 238, stated, “There’s that group of people who say, ‘I’m only voting if someone drives me down after church on Sunday.’ . . . Really? Is that the person we need to cater to when we’re making public policy about elections?”⁷

57. Defendant Husted was well aware of the *OFA* decisions, including their findings that the elimination of the last three days of the early voting period as well as evening hours and weekends would likely have a disparate impact on African-American voters. *See OFA I*, 888 F. Supp. 2d at 906-07; *OFA II*, 697 F.3d at 426-27.

⁷ Sharon Coolidge, “Early voting eliminated on Sundays across Ohio,” *Cincinnati.com*, Feb. 25, 2014, <http://www.cincinnati.com/apps/pbcs.dll/article?AID=/201402252302/NEWS010602/302250052>.

58. Only four days after SB 238 was signed into law, Defendant Husted issued Directive 2014-06. Like Directive 2012-35, this directive straitjacketed all 88 counties in Ohio, with their dramatically different populations ranging from 13,435 in Vinton County to 1,280,122 in Cuyahoga County and unique transportation access issues, to the exact same restricted early voting schedule for the May and November 2014 elections, even though each county is only permitted one early voting location. *See* Ohio Rev. Code § 3501.10(C). This directive unilaterally forced all 88 counties to eliminate evening hours, all Sundays from the early voting period, and the Monday before Election Day. By forcing larger counties to adopt the restricted hours more suitable for smaller counties, the directive resulted in unequal voting opportunities throughout the state.

59. Again, such a directive was issued even though Ohio statutes only permit the Secretary of State to decide the early voting hours of a particular county if that county's four-member board of elections has cast a tie vote when deciding on their early voting hours. Ohio Rev. Code §§ 3501.06, 3501.11. However, unlike in 2012, Defendant Husted imposed this mandate without waiting to see if any county boards of elections would reach a tie vote on early voting at any time in the nine-month period between February and November.

60. Like Directive 2012-35, Directive 2014-06 was also issued without a notice-and-comment period. Under Ohio Rev. Code § 3501.053 – a law that was enacted in early 2008 under Defendant Husted's own leadership as then-Speaker of the House – directives may only be issued without a notice-and-comment period ("temporary directives") if they are issued within 90 days of the election in which it is to take effect, yet Directive 2014-06 not only applies to the May 2014 primary, but will also apply to the November 2014 general election which is well beyond 90 days from the date of the directive's issuance.

61. Furthermore, if “the situation prompting the establishment of a temporary directive appears likely to recur,” the Secretary of State may not rely on “temporary” directives indefinitely, but must issue a “permanent directive” with a formal notice-and-comment period. *Id.* The Secretary of State cannot circumvent formal notice-and-comment periods by issuing repeated “temporary” directives *ad infinitum*.

62. This would not be the first time Defendant Husted issued a directive through unusual procedural maneuvers. *See Serv. Emps. Int’l Union (“SEIU”) v. Husted*, Nos. 2:12-CV-562, 2:06-CV-896, 2012 WL 5497757, at *7 (S.D. Ohio Nov. 13, 2012) (“The Court also notes, with grave misgivings, that [Defendant Husted] changed an election rule on a Friday evening for an election scheduled for the following Tuesday, after repeatedly asserting, to both this Court and the Sixth Circuit, that he could not comply with injunctive relief ordered by this Court because he lacked sufficient time prior to the election. The surreptitious manner in which the Secretary went about implementing this last minute change to the election rules casts serious doubt on his protestations of good faith.”).

63. Nor would this be the first time Defendant Husted issued a directive in violation of state law as well as the U.S. Constitution. *See id.* at *5 (directive violated Ohio Rev. Code § 3505.181(B)(6) and the Fourteenth Amendment Due Process Clause, citing *SEIU v. Husted*, 698 F.3d 341 (6th Cir. 2012)).

64. Defendant Husted has expressed indifference to the importance of ensuring that indigent voters are not disenfranchised. *See Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-CV-896, 2013 WL 4008758, at *8 (S.D. Ohio Aug. 5, 2013) (noting that Husted’s counsel was dismissive of the principle that “[a]ll legal votes that are cast by indigent and homeless voters on Election Day will be counted”); *SEIU*, 2012 WL 5497757, at *5 (Defendant Husted’s

directive violated consent decree created for the purpose of protecting the votes of the indigent and homeless).

65. Defendant Husted has publicly and repeatedly expressed strong support for forcing more populous counties into adopting restricted early voting hours that might be more acceptable in less populous counties. As such, as reflected in Directive 2012-35, Directive 2014-01,⁸ and Directive 2014-06, Defendant Husted has a *de facto* policy of issuing a directive prior to each election that will force larger counties into the same restricted, early in-person voting hours which have a greater impact on lower-income voters. Defendant Husted will continue to do so unless the Ohio legislature enshrines Defendant Husted's repeated dictates into permanent law. *See* Directive 2014-01 (straitjacketing all 88 counties into the same restricted early voting schedule "given the absence of legislative action").

66. By prohibiting each individual county from adopting an early voting period that could accommodate the unique demands of each county's voting population, especially the needs of lower-income and predominantly African-American voters, Directive 2014-06 inflicts unequal voting opportunities throughout the state.

67. It also remains unclear whether SB 238 and Directive 2014-06, when read in conjunction and with existing law, will be interpreted to eliminate the last two days of the in-person early voting period for non-UOCAVA voters while allowing UOCAVA voters to vote in person up to Election Day, because SB 238 did not amend the conflicting statutory language, *see* Ohio Rev. Code §§ 3509.03, 3511.02, 3511.10, that gave rise to Defendant Husted's interpretation that was found unconstitutional in *OFA*.

⁸ On January 15, 2014, Defendant Husted issued Directive 2014-01, which eliminated all evening hours (except for the one Monday evening mandated by statute and later eliminated by SB 238) and all Sunday voting for the May 2014 primary, in light of the "quickly approaching primary election." However, Directive 2014-06, issued only a month later, dispensed with any such pretense of an emergency, imposing restricted hours for the November 2014 election even though it was still nine months away.

Burdens on the Right to Vote

68. These changes result in substantial reductions in opportunities for registration and early voting in Ohio. Together, both SB 238 and Directive 2014-06 eliminate same-day registration, the entire first week of the early voting period, *all* evening hours, *all* Sundays, and the last day before Election Day. Collectively, these changes will substantially reduce registration and voting opportunities for Ohioans, and will unduly burden the right to vote in at least several ways.

69. First, they will eliminate early voting days and evening hours during which significant numbers of Ohioans voted in person. Approximately 580,000 Ohioans cast in-person absentee ballots in the early voting period for the 2012 election, and more than 157,000 of those votes were cast on days that would have been eliminated had SB 238 and Directive 2014-06 been in place in 2012. Moreover, the 157,000 figure is likely to significantly understate the true impact of these measures, because even more voters would likely have voted in 2012 if Directive 2012-35's elimination of all remaining evening hours and Sundays – which Directive 2014-06 essentially duplicates – had not been in place. For instance, in 2008, all 88 counties could permit weekend voting during the entirety of the early voting period, and not just the final weekend. A substantial number of early in-person voters cast a ballot on weekends other than the final weekend – weekends that were later eliminated by Directive 2012-35 and unchallenged by the *OFA* litigation – and now almost entirely eliminated by Directive 2014-06.

70. Second, a disproportionate share of the Ohioans who voted on the now-eliminated evening hours and Sundays have lower incomes and less education and must overcome significant hardships in order to vote during regular weekday business hours. Many such voters have greater difficulty taking unpaid time off during regular business hours to vote. Many

lower-income voters are the primary childcare provider and as such are only able to vote in-person when working partners or relatives can take over childcare responsibilities in the evenings or on Sundays since they cannot afford to make childcare arrangements during the day. Such voters are also more likely to lack adequate transportation options and will need more opportunities to vote outside regular weekday business hours when friends or relatives may be available to provide transportation. Indeed, for that reason, many African-American churches coordinated transportation vans to help their congregants vote after church on Sunday, an effort that was made especially difficult in 2012 because Directive 2012-35 eliminated all Sundays and *OFA* only restored a single one. Directive 2014-06 puts an end to *all* Sunday voting and eliminates almost all of the remaining non-work and evening voting hours.

71. Third, the inevitable result of eliminating substantial opportunities for early voting will be even longer lines and waiting times for all voters throughout the early voting period and on Election Day itself, unduly burdening the right to vote across the electorate and effectively denying the franchise to thousands of voters who will be prevented or deterred from casting ballots. During the 2004 Presidential election, many Ohioans were forced to wait in lines from two to twelve hours, and over 129,000 voters were effectively disenfranchised because work or family obligations made it impossible to wait in line for hours at a time. Thanks to the advent of early voting, such wait-times were significantly reduced, but they continue to be a challenge, a challenge that was made more difficult in 2012 due to Directive 2012-35's elimination of all weekend voting days and evening hours, even with the restoration of the last three days of early voting resulting from the *OFA* decisions. Upon information and belief, wait-times during the last three days before the 2012 Election Day were generally less than one-half to one hour in counties with populations less than 160,000 but between one and four hours in

counties with populations over 160,000.⁹

72. Evidence from the 2012 general election in Florida – where the state eliminated six days of the early voting period – demonstrates that reductions in the number of early voting days will result in dramatically longer lines on Election Day. With fewer opportunities to vote early, the number of individuals who voted early in Florida during the 2012 general election dropped by 10.7% in comparison to 2008. But even with fewer early voters, Florida experienced significantly more congestion during the early voting period. Because early voters were compressed into a shorter time frame, crowds were 50-100% greater during the 2012 general election early voting period in Florida, when compared to corresponding days during the 2008 general election. And on Election Day itself, Florida experienced the longest average wait times to vote of any state. In fact, many voters cast ballots after midnight, and the last ballot was cast nearly 8 hours after the polls closed. Waits were longest in predominantly minority communities. These undue burdens on the right to vote effectively deprived the franchise from hundreds of thousands of voters, with one study estimating that at least 201,000 voters gave up in frustration in the face of such long lines.¹⁰

73. Fourth, voters with lower incomes and less education have a greater need for same-day registration during the first week of early voting. Lower-income families are more likely than their wealthier counterparts to move and change addresses because they are less likely to be homeowners, and because of unplanned or involuntary circumstances such as eviction or foreclosure, requiring them to update their voter registration more frequently. And of course, homeless people have no permanent residence at all and are in even greater need of same-day

⁹ See Robbins et al., *supra* note 4.

¹⁰ See Scott Powers and David Damron, *Analysis: 201,000 in Florida didn't vote because of long lines*, Orlando Sentinel (Jan. 29, 2013), available at http://articles.orlandosentinel.com/2013-01-29/business/os-voter-lines-statewide-20130118_1_long-lines-sentinel-analysis-state-ken-detzner.

registration. Indeed, one failed attempt to eliminate same-day registration through litigation was fueled in part by “concerns” that homeless people would dare to exercise their fundamental right to vote during this period, a “concern” that the Supreme Court of Ohio soundly rejected. *See State ex rel. Colvin v. Brunner*, 896 N.E.2d 979, 991 (Ohio 2008) (“homeless people are [not] per se ineligible to vote”). Individuals with less education are also more likely to be unaware of and miss registration deadlines, especially when they are faced with far greater pressures compared to their wealthier counterparts when it comes to maintaining an adequate supply of food, clothing, and shelter on a daily basis. Such individuals already have a more difficult time making arrangements to vote. Thus, same-day registration is particularly important for these voters because it allows them to update their voter registration and cast a vote at the same time.

Discriminatory Impact

74. The effects of reducing the number of early voting days will be felt disproportionately by minority voters and in voting locations that serve predominantly minority voters. African Americans use early in-person voting at significantly greater rates when compared to whites, especially in more populated counties.¹¹ Additionally, early voters are more likely than Election Day voters to be women, older, and of lower income and education attainment.¹² *See also OFA I*, 888 F. Supp. 2d at 903.

75. Lower-income voters, who are disproportionately African-American, will also

¹¹ *See generally* Russell Weaver & Sonia Gill, *Early Voting Patterns by Race in Cuyahoga County, Ohio: A Statistical Analysis of the 2008 General Election* (Oct. 5, 2012), http://www.lawyerscommittee.org/admin/site/documents/files/EarlyVoting_Cuyahoga_Report.pdf; Norman Robbins & Mark Salling, *Racial and Ethnic Proportions of Early In-Person Voters in Cuyahoga County, General Election 2008, and Implications for 2012* (2012), <http://www.nova-ohio.org/Racial%20and%20ethnic%20proportions%20of%20early%20in-person%20voting.pdf>; Norman Robbins, *Effects of Legislation and Directives on Early In-Person (EIP) Voting in Ohio in 2012, as of Aug. 17, 2012* (2012), [http://nova-ohio.org/Effects%20of%20legislation%20and%20Directives%20on%20early%20in-person%20\(EIP\)%20voting%20in%20Ohio%20in%202012.pdf](http://nova-ohio.org/Effects%20of%20legislation%20and%20Directives%20on%20early%20in-person%20(EIP)%20voting%20in%20Ohio%20in%202012.pdf); Norman Robbins, *Update, 9-27-12: Does Ohio Have “Fair” and Sensible Rules for Early In-Person (EIP) Voting?* (2012), http://www.nova-ohio.org/36627343_Update%209-27-12%20Does%20Ohio%20have%20fair%20rules%20for%20early%20in-person%20voting.pdf.

¹² *See* Ray C. Bliss Institute, *supra* note 4.

bear the brunt of the elimination of evening hours from the early voting period, because lower-income voters face significant difficulties taking time off during regular business hours to vote.

76. Moreover, since early in-person voting was established in 2006, many African-American churches in particular have conducted “Souls to the Polls” programs in an effort to help African-American congregants vote on Sunday after church, a program that has taken on special meaning in the Ohio African-American community. In 2012, when all but one Sunday was eliminated from the early voting period, African-American churches were severely hampered in their ability to help people vote on that single day. Eliminating *all* Sundays from the early voting period will put an end altogether to these programs, which have primarily served African-American communities, and will impose material burdens disproportionately on African Americans across the state.

77. Eliminating the same-day registration period will also impose material burdens disproportionately on lower-income voters, who are disproportionately African-American, because lower-income voters are more transient and need to update their registration more frequently.

78. These racially disproportionate effects will occur within a broader context of Ohio’s historic and contemporary attempts to exclude minority voters from the political process.

79. For instance, African Americans bear the effects of persistent inequality and discrimination in areas such as housing, employment, education, and health, which hinder their ability to participate effectively in the political process. As a result, lower-income voters are disproportionately comprised of African Americans in Ohio. Because SB 238 and Directive 2014-06 disproportionately harm lower-income voters by shutting off access to the hours and days most needed by them, these burdens also fall disproportionately on African Americans.

Furthermore, the perpetuation of segregation concentrates African Americans into the more populous and urban counties, which are limited to a single in-person early voting location and are thus more impacted by the straitjacketing of the early in-person voting period.

FIRST CLAIM FOR RELIEF

**Denial of Equal Protection under the Fourteenth Amendment to the
U.S. Constitution Pursuant to 42 U.S.C. § 1983**

80. Plaintiffs rely herein upon all of the paragraphs of this Complaint. The Equal Protection clause of the Fourteenth Amendment prohibits the states from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. When the State has authorized an in-person early voting period, it may not then materially burden the fundamental right to vote by slashing into that in-person early voting period, without sufficiently weighty and important justifications for doing so, supported by real and substantial evidence, and without demonstrating that the means for carrying out those interests are closely connected to achieving those ends. This is particularly true where, as here, Ohio’s adoption of early in-person voting was primarily intended to address unconstitutional burdens on the right to vote in the form of excessive and unprecedented waiting times during the 2004 election. In other words, the court must weigh “‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

81. SB 238 and Directive 2014-06 burden the fundamental right to vote by the arbitrary and unjustified reduction in early voting days and times and the loss of same-day

registration, harming Plaintiffs' efforts in helping people vote. Hundreds of thousands of voters relied on these methods of participation in recent elections and will now be denied an opportunity to do so. Voters who cannot adjust to the truncated early voting period or who fail to register in time will be disfranchised. Other voters will encounter longer lines and undue delays, and in many cases, will be prevented from voting altogether due to increased congestion during the remaining early voting period and on Election Day. Lower-income voters who cannot take unpaid time off of work to vote will be denied equal or uniform opportunities to vote compared to their wealthier counterparts. Citizens from more urban counties will be denied equal or uniform opportunities to vote compared to citizens from less populous counties, as urban counties are straitjacketed into a restricted early voting schedule that is unsuitable for a populous county especially when each county is only permitted to have one early voting polling site. Non-military voters may have a more restricted early voting period compared to military voters. In contrast, there are no plausible benefits to the State.

SECOND CLAIM FOR RELIEF

Denial of Equal Protection under the Fourteenth Amendment to the U.S. Constitution Pursuant to 42 U.S.C. § 1983

82. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

83. The Equal Protection clause of the Fourteenth Amendment prohibits the states from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. This provision prevents a state and its officials from discriminatorily or arbitrarily treating qualified voters differently on account of their race or skin color.

84. A motivating purpose behind SB 238 and Directive 2014-06 was to suppress the turnout and electoral participation of African-American voters, who disproportionately vote early and use same-day registration. As noted above, SB 238 and Directive 2014-06 will be successful

in effectuating that purpose.

85. Both the discriminatory effect of a statute and its legislative history are relevant factors in analyzing a statute for discriminatory intent. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977). As recounted above, after historic African-American voter turnout led to the election of the first African-American President in this nation's history, Ohio elected officials reacted swiftly – often through unorthodox methods – by repeatedly ramming through measures to cut back early voting, with full awareness of the impact that such measures would have on African-American voters. These sometimes ham-fisted attempts eventually culminated into SB 238, which passed the legislature after a series of unusual and unprecedented procedural maneuvers were used to minimize debate and prevent many ameliorative amendments from even coming to a vote, including an amendment that would have simply required Defendant Husted to *assess* the impact of SB 238 on African Americans. These maneuvers also included the literal silencing of an African-American State Senator by the Speaker's gavel as she explained the impact that SB 238 would have on African Americans, and occurred in the context of public comments from elected officials about the “urban – read African-American – turnout machine.” Numerous testimony on the impact of SB 238 on African Americans was also presented. The passage of SB 238 was swiftly followed by Directive 2014-06, banning early voting during evening hours and on Sundays, as well as the Monday before Election Day. The directive was issued with full awareness of the likely impact on African Americans as thoroughly litigated in the *OFA* lawsuit, issued in clear violation of state statutes, and issued in the context of public comments from elected officials about having to “cater” to “that group of people” who vote on Sundays.

THIRD CLAIM FOR RELIEF

Section 2 of Voting Rights Act of 1965, 42 U.S.C. § 1973

86. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

87. Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973(a) provides: (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color.

88. African-American citizens in Ohio, as a group, disproportionately participate in early in-person voting and vote during the same-day registration period. They do so in part because, as a group, African Americans' ability to participate effectively in the political process has been hindered by discrimination and resulting socioeconomic inequalities.

89. In addition, SB 238 and Directive 2014-06 were enacted with the intention of suppressing the votes of African-American voters in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

90. SB 238 and Directive 2014-06 will result in the denial or abridgment of the right to vote of Plaintiffs and others on account of race or color in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

91. The reduction in early voting and elimination of same-day registration will interact with social and historical conditions – which are themselves largely due to discrimination in areas such as education, employment, housing, health services, and voting – to cause an inequality in the opportunities enjoyed by African-American and white voters to elect their preferred representatives.

92. Under the totality of the circumstances, the reduction in early voting will result in less opportunity for African Americans to participate in the political process and to elect

candidates of their choice.

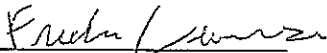
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask that the Court:

1. Declare that SB 238 and Directive 2014-06 violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the Voting Rights Act of 1965;
2. Declare that the rights and privileges of Plaintiffs will be irreparably harmed without the intervention of this Court to secure those rights for the exercise thereof in a timely and meaningful manner;
3. Enjoin preliminarily and permanently the Defendants, their agents, officers, and employees, from enforcing or giving any effect to the provisions of SB 238 and Directive 2014-06 that relate to early voting or same-day registration in any election;
4. Retain jurisdiction for such a period as it may deem appropriate, and during such period, no voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the Court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of the Voting Rights Act;
5. Make all further orders as are just, necessary, and proper to preserve Plaintiffs' constitutional rights to participate equally in elections;
6. Award Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. §§ 1988, 1973l(e); and
7. Grant such other relief as the Court deems just and proper.

Dated this 1st day of May, 2014.

Respectfully submitted,


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forthcoming