

No. 14-3756

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

**Ohio State Conference of the National Association for the
Advancement of Colored People, et al.,**

Plaintiffs-Appellees

v.

Jon Husted, et al.,

Defendants-Appellants

On Appeal from the United States District Court
for the Southern District of Ohio, Case No. 2:14-cv-00404

**Plaintiffs-Appellees' Response to Appellant's Motion
to Expedite Appeal**

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*Application for Admission to Sixth Circuit
forthcoming

Plaintiffs-Appellees, the Ohio State Conference of the National Association for the Advancement of Colored People, et al. (“NAACP”) oppose the motion by Appellant, The Ohio General Assembly, (the “General Assembly” or “Appellant”) to expedite this appeal.

BACKGROUND

On May 1, 2014, NAACP filed this action against Ohio Secretary of State Jon Husted and Attorney General Mike DeWine, (“Defendants”) challenging early voting restrictions which are to take effect prior to Ohio’s November, 2014 general election. The Defendants filed their Answers on May 23. On June 30, NAACP filed a motion for a preliminary injunction. On July 2, the hearing date was set for August 11, and expedited discovery was launched. On July 11, six weeks after the Complaint was filed, and right in the middle of the expedited discovery period leading to the hearing which was then only four weeks away, the General Assembly moved to intervene. The District Court denied the General Assembly’s motion on the grounds that (1) the motion was untimely, (2) the General Assembly offered no justification for its delay, (3) the General Assembly’s position was “superfluous” to that of the Defendants because the State’s chief legal representative, its Attorney General, was an existing defendant and could represent its interests, and (4) the potential prejudice to NAACP outweighed any potential prejudice to the General Assembly because the interests of the General Assembly and the Defendants were overlapping. The General Assembly filed an emergency motion for reconsideration, which the District Court also denied. The General Assembly has appealed the District Court’s denial of its motion to intervene, and has moved the Appellate Court to expedite this appeal. For its sole object in moving to expedite the appeal, the General Assembly asserts that it will be prejudiced by a lack of opportunity to participate in the Preliminary Injunction hearing on August 11, 2014.

An expedited appeal is unwarranted for the following reasons:

**RESOLVING THIS APPEAL ON A NORMAL SCHEDULE WILL FULLY PROTECT
ALL OF THE APPELLANT'S INTERESTS IN THE UPCOMING PRELIMINARY
INJUNCTION HEARING**

1. The General Assembly has written a 50-page brief with 183 pages of exhibits expansively setting forth its position on the preliminary injunction motion. Although the District Court did not permit the General Assembly, as a non-party, to file this brief, the Attorney General adopted the brief as his own and filed it in the District Court proceedings. Defendant Ohio Attorney General Mike DeWine's Supplemental Memorandum Contra Plaintiffs' Motion for Preliminary Injunction, attached as Exhibit A.¹

2. If the General Assembly has any other, conceivable, argument that it wishes to add to the comprehensive filing that it has already authored, it can avail itself of the additional opportunity to file an amicus curiae brief in this matter. The District Court has already invited the General Assembly to do this. Order of District Court Judge Peter C. Economus, dated July 31, 2014, and attached as Exhibit B.

3. Being precluded from participating as a party in the preliminary injunction hearing on August 11, will not deprive the General Assembly of any opportunity to present or examine witnesses, because none of the parties will be presenting witnesses. The hearing will consist

¹ The General Assembly, in its Motion to Expedite, makes an incorrect assertion that the Attorney General has sought leave to file the brief but that such leave has not been granted. This assertion is incorrect, and is contradicted by the Docket record which clearly shows that the Attorney General supplemented his other filings with the General Assembly's brief, and that the brief is on file in this case. There is NO pending motion for leave to file the brief; one was never made; and there in fact is no need for any such motion. The brief is in the Docket, incorporated by Doc. #54, which is exhibit A hereto, for the District Court to read.

only of the arguments of counsel, and, as stated above, the General Assembly has been, and still is, afforded every opportunity to submit all of its arguments and evidence.

4. The very arguments that the General Assembly would assert if permitted to participate as a party at the hearing will be asserted there by the Attorney General, who has fully adopted the General Assembly's position as his own position, and the General Assembly's brief as his own brief.

5. The lawyers who are representing the General Assembly in its proposed intervention are members of the same firm, and are some of the very individuals, who represent the Attorney General in this matter. See, e.g., Deposition of Daniel Smith, page 5, lines 5-7, attached as Exhibit C; and Motion of Appellant, The Ohio General Assembly, to Expedite Appeal, signature block, Appeal Doc. 4-1. Therefore, not only will the General Assembly's arguments be presented at the Preliminary Injunction hearing, but those arguments will be presented by the General Assembly's own lawyers.

6. Because its interests are fully aligned with the Attorney General's interests, and its attorneys are the same, the General Assembly has actively participated at every deposition conducted in this matter even though it has not been a party.

7. The General Assembly has not identified anything at all that it wishes to do in connection with the Preliminary Injunction hearing on August 11 other than that which it has already been permitted to do. The only additional thing that it seeks is the label of "party." Because its rights will not be affected by the lack of this label at the hearing, and re-labeling as a party can be done at any time, there is no need to resolve this appeal prior to the August 11 hearing.

For the above reasons, Appellant's Motion to Expedite this Appeal should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically on the Court's electronic case filing system on August 4, 2014. Notice will be served by operation of the Court's filing system. Copies of the filing are available on the Court's system. Electronic service will also be made upon all counsel of record at the e-mail addresses on file with the Clerk of the District Court.

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