

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

Plaintiffs,

v.

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

Defendants.

Case No. 2:14 CV 00404

Judge Peter C. Economus

NOTICE OF DISPOSITIVE FILING IN RELATED CASE

Plaintiffs in the above-captioned matter (“NAACP Plaintiffs”) submit this notice regarding the impact on this case of a dispositive motion recently filed in the related case, *Obama for America v. Husted*, No. 2:12-cv-636 (“*OFA*”).

1. On May 1, 2014, the same day that this case was filed, the *OFA* plaintiffs filed a motion for summary judgment, *see OFA*, Doc. 84, seeking some – but not all – of the relief sought in this case. The NAACP Plaintiffs therefore wish to respectfully notify the Court of the bearing of that motion on this case.

2. NAACP Plaintiffs include, *inter alia*, nonpartisan organizations and African-American churches dedicated to helping Ohioans exercise their fundamental right to vote. They challenge:

(1) Senate Bill 238, which eliminated the first week of early in-person voting (the only time in which voters could register and vote at the same time); and (2) Secretary of State Directive 2014-06, which eliminated the last two days of the early voting period, plus *all* Sundays and *all* evening hours throughout that period. These cutbacks will prevent thousands of Ohio citizens – particularly lower-income and African-American voters – from exercising their right to vote. For these reasons among others, NAACP Plaintiffs allege violations of the Equal Protection Clause and Section 2 of the Voting Rights Act. *See* Doc. 1, Compl., ¶ 1.

3. The *OFA* plaintiffs’ motion for summary judgment is more limited, seeking only to restore the last three days of early voting before Election Day, and solely on Equal Protection grounds.

4. Because the *OFA* defendants do not contest liability, *see OFA*, Doc. 87, Defs.’ Resp. to Pls.’ Mot. for Summ. J., at 6, the only issue before this Court with respect to the *OFA* summary judgment motion is the scope of relief to be ordered.

5. The evidentiary record submitted during the briefing of the *OFA* plaintiffs’ 2012 motion for preliminary injunction establishes the need for a permanent injunction ordering that early in-person voting be restored on the three days preceding all future Election Days for all eligible voters.

6. The *OFA* defendants incorrectly assert that a lesser remedy – which would purportedly establish uniformity without restoring early voting during the last two days of the early voting period, *see OFA*, Doc. 87, at 7 – could resolve the constitutional violation in this case.

7. This Court’s preliminary injunction ruling, however, clearly stated that “[t]he issue presented is the State’s . . . restriction of the right of Ohio voters to cast their votes in person through the Monday before Election Day,” and thus ordered “that in-person early voting IS

RESTORED on the three days immediately preceding Election Day for all eligible Ohio voters.” *OFA*, 888 F. Supp. 2d 897, 910-11 (S.D. Ohio 2012) (“*OFA I*”). NAACP Plaintiffs respectfully submit that no lesser relief would be sufficient now. Any lesser remedy would fail to account for the uncontested and “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*, 697 F.3d 423, 431 (6th Cir. 2012) (“*OFA II*”).

8. Further, equitable considerations counsel in favor of making permanent the preliminary relief. The *OFA* defendants have themselves asserted that military voters face the circumstance of being “suddenly deployed . . . [and thus] may not be able to vote at all,” without early voting opportunities during the last three days of the preexisting early voting period. *OFA I*, 888 F. Supp. 2d at 904. Those opportunities should not be eliminated now. Moreover, as the Sixth Circuit made clear in affirming this Court’s preliminary injunction, “[t]he public interest . . . favors permitting as many qualified voters to vote as possible.” *OFA II*, 697 F.3d at 437. Thus, based on the existing record in *OFA*, this Court can and should issue a permanent injunction restoring early in-person voting during the last three days of the early voting period for all Ohio voters.

9. In the event, however, that this Court is not inclined at this time to grant the relief sought by the *OFA* plaintiffs, the NAACP Plaintiffs respectfully request an opportunity to be heard before any final determination is made as to permanent relief. The adoption of any lesser relief could implicate the interests of the NAACP Plaintiffs.

10. NAACP Plaintiffs expect to file a motion for a preliminary injunction in this matter next month.

Dated this 16th day of May, 2014.

Respectfully submitted,

Freda J. Levenson (0045916)
Trial Attorney for Plaintiffs
Drew S. Dennis (0089752)
ACLU of Ohio Foundation, Inc.
4506 Chester Ave.
Cleveland, OH 44103
Tel: (216) 472-2205
Fax: (216) 472-2210
flevenson@acluohio.org
ddennis@acluohio.org

s/ Dale E. Ho
Dale E. Ho*
Sean J. Young*
ACLU Foundation
Voting Rights Project
125 Broad St., 18th Floor
New York, NY 10004
Tel: (212) 284-7359
Fax: (212) 549-2675
dho@aclu.org
syoung@aclu.org
*Admitted pro hac vice

Attorneys for Plaintiffs

Kim Keenan (DC Bar # 419241)
Marshall Taylor (DC Bar # 454615)
Victor Goode (0067863)
National Association for the Advancement
of Colored People
4805 Mt. Hope Drive
Baltimore, MD 21215
Tel: (410) 580-5777
Fax: (410) 358-9786
kkeen@naacpnet.org
mtaylor@naacpnet.org
vgoode@naacpnet.org

*Attorneys for Plaintiff Ohio State
Conference of the National Association for
the Advancement of Colored People*

CERTIFICATE OF SERVICE

The foregoing Notice was filed this 16th day of May, 2014, through the Court's Electronic Case Filing System. The following parties in this matter will be served, and may obtain copies electronically, through the operation of the Electronic Case Filing System:

Bridget E. Coontz
Kristopher J. Armstrong
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, OH 43215
614-466-2872
614-728-7592 (fax)
bridget.coontz@ohioattorneygeneral.gov
kristopher.armstrong@ohioattorneygeneral.gov
Attorneys for Defendants Husted and DeWine

The following parties in *OFA* who are not parties in this matter will be served via email and U.S. Postal Service first class mail:

Donald Joseph McTigue
Mark Alan McGinnis
John Corey Colombo
McTigue & McGinnis LLC
545 E. Town Street
Columbus, OH 43215
614-263-7000
614-263-7078 (fax)
dmctigue@electionlawgroup.com
mmcginnis@electionlawgroup.com
ccolombo@electionlawgroup.com

Attorneys for OFA Plaintiffs

Robert F. Bauer
Perkins Coie LLP
700 Thirteenth Street, NW
Suite 600
Washington, DC 20005
202-434-1602
202-654-6211 (fax)
rbauer@perkinscoie.com

General Counsel for Plaintiffs Obama for America and the Democratic National Committee

Jennifer Katzman
Obama for America
130 East Randolph
Chicago, IL 60601
312-985-1645
jkatzman@barackobama.com

National Voter Protection Counsel for Plaintiff Obama for America

James M. Dickerson, Jr.
Taft Stettinius & Hollister LLP
425 Walnut Street
Suite 1800
Cincinnati, OH 45202
513-357-9491
513-381-0205 (fax)
jdickerson@taftlaw.com

Attorney for Intervenor Defendants AMVETS, et al.

Robert Jason Howard
4130 Linden Ave, Suite 304
Dayton, OH 45432-3015
937-262-7600
937-262-7601 (fax)
rjhoward@howardlawoffices.com

*Attorney for Amicus American Center for
Law and Justice*

Majeed G. Makhlof
Director of Law
Cuyahoga County, Ohio
1219 Ontario Street, 4th Floor
Attn: Department of Law
Cleveland, OH 44113
216-698-6549
216-698-2744 (fax)
mmakhlof@cuyahogacounty.us

Attorney for Amicus Cuyahoga County

Respectfully submitted,

s/ Dale E. Ho
Dale E. Ho