

Case No. 16-3746

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

OHIO A. PHILIP RANDOLPH	:	
INSTITUTE; NORTHEAST OHIO	:	On Appeal from the United States
COALITION FOR THE	:	District Court for the Southern
HOMELESS; LARRY HARMON	:	District of Ohio, Eastern Division
	:	
Plaintiffs – Appellants	:	District Court Case No. 2:16-cv-303
	:	
v.	:	
	:	
JON HUSTED	:	
	:	
Defendant-Appellee	:	

**APPELLANTS’ REPLY IN SUPPORT OF
MOTION TO EXPEDITE APPEAL**

Although Ohio Secretary of State Jon Husted raises the specter of confusion if this case is expedited for prompt decision, the real potential for confusion will arise only if this appeal is not decided prior to the 2016 Presidential Election. This November, thousands of infrequent Ohio voters—voters who have not moved or become ineligible for any other reason—will arrive at the polls unaware that they have been purged and will learn only then that they cannot have their vote count in this year’s Presidential Election. The Secretary offers no reason why, if this appeal is ultimately resolved in Appellants’ favor, the Ohio voters purged as a result of the

Secretary's unlawful list-maintenance practices should nevertheless be denied the opportunity to participate in this November's election. Moreover, regardless of which party prevails in this appeal,¹ this potential for mass confusion can be avoided only if the appeal is resolved prior to the election.²

Contrary to the Secretary's parade of horrors should this appeal come out against him prior to the election, Appellants have proposed a narrow injunction that would result in no confusion and would be easily administered: Appellants simply ask that the Secretary count the provisional ballots that are cast by voters unlawfully purged pursuant to Ohio's Supplemental Process. These ballots can be readily identified by comparing the voter's address on the provisional ballot envelope with the address at which the voter was registered at the time of the purge. If these addresses match, the voter is eligible to vote and would have been able to vote had the Supplemental Process not erroneously purged him or her. Indeed, in Ohio, such a provisional ballot, while it will not be counted, will result in the voter being added to the rolls at the same address where her or she was previously registered. Thus, despite the Secretary's dire warning of voting by dead or relocated voters, there is no question that the only voters whose votes will be counted are voters who are eligible to vote in Ohio.

¹ Indeed, the Department of Justice views practices such as Ohio's Supplemental Process to be unlawful under the National Voter Registration Act of 1993 ("NVRA"). *See Common Cause and the Georgia State Conference of the NAACP v. Kemp*, 1:16-cv-452-TCB (N.D. Ga. May 4, 2016), Exhibit F to Declaration of Cameron Bell in Support of Plaintiffs' Motion for Summary Judgment, R. 42-6.

² Until his filing in opposition to an expedited appeal, the Secretary has insisted repeatedly that he, too, seeks a final resolution of this case prior to the election. *See, e.g.*, Defendant's Second Merits Brief, R. 49, at 26, PAGEID # 22352.

Furthermore, the Secretary's contention that Appellants unreasonably delayed in bringing this suit is disingenuous at best. As the Secretary knows, Appellant A. Philip Randolph Institute first notified the Secretary that the Supplemental Process violated the NVRA in December 2015—approximately a week after Franklin County's board of elections conducted its 2015 purge of infrequent voters. Appellants subsequently negotiated in good faith with the Secretary in an effort to resolve their concerns without litigation. At the Secretary's request, Appellants delayed filing suit until after Ohio's 2016 Primary Election on March 15, 2016. Now, however, if this appeal is expedited, there will be ample time to implement the decision prior to the General Election.

Given the enormous number of voters whose votes stand to be denied³ if this appeal is not resolved in advance of the General Election, the integrity of Ohio's 2016 election may be called into question. Appellants therefore respectfully request that this appeal be expedited.

³ Based on a limited review of documents during the expedited discovery period in this case, Appellants identified over 600 infrequent but eligible voters—voters who had not moved or become ineligible for any other reason—who attempted to vote in the 2015 statewide election and the 2016 Primary Election in only about a dozen counties but had their votes denied. This November's Presidential Election—the first election in eight years without an incumbent and one that has already drawn the participation of many disaffected voters around the country—is likely to bring out many more infrequent Ohio voters whose inability to participate will cast a cloud over the election results if this appeal is not decided prior to the election.

Dated: July 6, 2016

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply in Support of Motion to Expedite Appeal was filed this 6th day of July, 2016 through the Court's Electronic Filing System. Parties will be served, and may obtain copies electronically, through the operation of the Electronic Filing System.

Dated: July 6, 2016

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