

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SHELBI HINDEL, et al.,	:	Case No. 2:15-cv-3061
	:	
Plaintiffs,	:	Judge George C. Smith
	:	
v.	:	Magistrate Judge Elizabeth
	:	Preston Deavers
JON A. HUSTED,	:	
OHIO SECRETARY OF STATE,	:	
	:	
Defendant.	:	

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR RECONSIDERATION OF ORDER GRANTING DEFENDANT'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

In its prior order, this Court held that Defendant Husted is violating Plaintiffs' rights under the Americans with Disabilities Act ("ADA"), but that Plaintiffs' proposed remote ballot marking tools could not be implemented for the November 2016 election because the tools could not be certified under Ohio law (Doc. 31). Before the passage of Senate Bill 63, state certification was impossible: Ohio required federal certification of remote ballot marking tools and there was no applicable federal certification process. Now, Ohio has lifted the federal certification requirement such that it can proceed without such an impediment. The passage of Senate Bill 63 makes state certification of remote ballot marking tools possible before future elections, so this Court should reconsider its prior order.

Defendant's sole reason for opposing Plaintiffs' request for reconsideration of this Court's prior order is that Ohio law still requires state certification prior to the implementation of a remote ballot marking tool (Doc. 35). This reasoning misconstrues Plaintiffs' request. Defendant Husted depicts himself as a passive player who must only act when remote ballot

marking tool vendors complete the entire certification process. However, Defendant Husted is still obligated to fulfill his responsibilities under the ADA. Accordingly, after granting the motion for reconsideration, Plaintiffs urge the Court to order him to take affirmative steps to identify potential remote ballot marking tools and certify a remote ballot marking tool that provides an accommodation for Plaintiffs.

Reconsideration is warranted when there is an intervening change in controlling law. *Ne. Ohio Coal. for Homeless v. Brunner*, 652 F.Supp.2d 871, 877 (S.D. Ohio 2009). Senate Bill 63 significantly changed the posture of this case because it is now possible for this Court to fashion a remedy for Defendant Husted's violation of the ADA without bypassing Ohio's entire certification process. This is particularly true in light of Plaintiffs' acknowledgement that any remedy would not apply to the November 2016 election. Because the standard on a motion for judgment on the pleadings is very high—the motion must be denied unless “plaintiffs undoubtedly can prove no set of facts consistent with their allegations that would entitle them to relief,” *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 527 (6th Cir. 2007)—it is likely that this Court would have reached a different conclusion if certification of remote ballot marking tools had been possible at the time of its order and the Court had not been facing a short timeline before a major election.

If this Court reconsiders its prior order, Plaintiffs request the opportunity to provide additional briefing on the remedy for the Defendant's violation of the ADA. There are many aspects of the implementation of a remote ballot marking tool that will require this Court's consideration, including the timeline for implementation, any additional barriers to certification, and Defendant Husted's role in this process. Ohio's next statewide election will occur on May 2, 2017. Local elections may also be held on February 7, 2017, so there is a need to move

expeditiously.

Contrary to Defendant's assertion that Plaintiffs are asking this Court to make an end run around the certification process, Plaintiffs instead are requesting that this Court reconsider its prior order because the change in Ohio's certification law means that Defendant can no longer rely on Ohio's certification process as a barrier to making Ohio's absentee voting program accessible, within whatever timeframe this Court would determine to be reasonable.

For these reasons, Plaintiffs request that the Court reconsider its prior order (Doc. 31) and deny Defendant's Motion for Judgment on the Pleadings (Doc. 20), enter a declaratory judgment for Plaintiffs on their claim that Defendant is violating the ADA in his operation of an inaccessible absentee voting system, and order additional briefing with regard to remedies.

Respectfully submitted,

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August, 2016, a copy of the foregoing Plaintiffs' Reply in Support of Motion for Reconsideration of Order Granting Defendant's Motion for Judgment on the Pleadings was served on all counsel of record via the Court's electronic filing system.

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