

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

LIBERTARIAN PARTY OF OHIO, et al.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Case No. 2:13-cv-953
	:	
JON HUSTED,	:	Judge Michael H. Watson
	:	
Defendant.	:	

MEMORANDUM IN OPPOSITION TO AN EXPEDITED TRIAL

Ohio Secretary of State Jon Husted respectfully requests that Plaintiffs’ *Motion for an Expedited Trial* be denied. When Plaintiffs’ time-sensitive motion for preliminary injunctive relief relating to the May 2014 primary election was pending before the Court, this case was expedited. But Plaintiffs’ request for a preliminary injunction was denied. And there is not currently pending an equally time-sensitive request for injunctive relief that must be expedited. Instead, Plaintiffs seek to expedite a trial on the operative complaint, the *Second Amended Complaint*, which challenges the Secretary of State’s interpretation and application of Ohio Rev. Code Section 3501.38(E)(1) to the May 2014 *primary* election. (Doc. No. 57, ¶ 127, T, U). In the operative complaint Plaintiffs seek to enjoin the Secretary’s interpretation and application of R.C. 3501.38(E)(1) to the 2014 *primary* election. (Doc. No 57, ¶¶ 103, 108, T, U). The primary has long passed. Plaintiffs’ claimed need for an expedited trial so as to gain access to the November 2014 general election ballot fails where the operative complaint (the *Second Amended Complaint*) does not seek such access. Simply put, there is nothing in the operative complaint that demands the rushed trial that Plaintiffs seek.

Even if the *Second Amended Complaint* were construed to seek access to the November ballot, Plaintiffs' claim that this is a declaratory action that should be expedited simply makes no sense. (Doc. No. 177, p. 6) The Plaintiffs have not plead a single claim for declaratory relief. (See, Doc. No. 56). Instead, the *Second Amended Complaint* asserts eight claims, seven of which are asserted under 42 U.S.C. § 1983 (Counts One, Two, Three, Four, Six, Seven and Eight) and the remaining claim is asserted under Article V § 7 (Count Five) of the Ohio Constitution.¹

Finally, even if the operative complaint sought access to the November ballot, Plaintiffs have waited far too long to attempt to litigate that claim. And they are attempting to do it by seeking a trial date *after* voting for the November election will have already commenced. Regardless, the Secretary believes that this case can and should be disposed of through motion practice. Thus, the Secretary intends to file a dispositive motion on or before Monday, September 15, 2014. For the foregoing reasons Secretary Husted opposes Plaintiffs' motion to expedite the trial in this matter.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

/s/ Bridget C. Coontz

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¹ For the reasons set forth in *Defendant's Memorandum in Opposition to Plaintiff's Second Motion to Amend the Second Amended Complaint* (Doc. No. 122) Count Five is barred by the Eleventh Amendment and fails to state a claim upon which relief can be granted.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically on this 8th day September, 2014. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ Bridget C. Coontz

BRIDGET C. COONTZ (0072919)

Assistant Attorney General