

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

**LIBERTARIAN PARTY OF OHIO, et al.
Plaintiffs,**

and

**ROBERT HART, et al.,
Intervenor-Plaintiffs,**

Case No. 2:13-cv-00953

v.

**JUDGE WATSON
MAGISTRATE JUDGE KEMP**

**JON HUSTED,
in his Official Capacity as Ohio
Secretary of State,**

Defendant,

**STATE OF OHIO,
Intervenor-Defendant,**

and

**GREGORY FELSOCI,
Intervenor-Defendant.**

**PLAINTIFFS' FIRST MOTION FOR TEMPORARY RESTRAINING ORDER
AND ATTACHED MEMORANDUM OF LAW IN SUPPORT**

Plaintiffs pursuant to Federal Rule of Civil Procedure 65(b) move the Court to enter a temporary restraining order directing Defendants to place the name of Plaintiff-Earl, his running mate, and that of the Plaintiff-Libertarian Party of Ohio's candidate, Steven Linnabary, on Ohio's overseas and earl-voting ballots until such time as this Court can resolve Plaintiffs' Fourth

Motion for Preliminary Injunction.

The Secretary today notified the Court that the Sixth Circuit in *NAACP v. Husted*, No. 14-404 (S.D. Ohio 2014), *stay denied*, No. 14-3877 (6th Cir., Sept. 12, 2014), refused to stay the District Court's order that early voting for all voters commence on September 30, 2014 in Ohio. *See* Doc. No. 193. This Court on Friday, September 12, 2014 issued a scheduling Order setting an evidentiary hearing on Plaintiffs' Fourth Motion for Preliminary Injunction to begin on September 29, 2014. *See* Doc. No. 189. That hearing will not conclude until October 1, 2014, the day after early voting begins.

In order to preserve Plaintiffs' rights and to facilitate the Secretary's obligation to commence early voting pursuant to the District Court's order in *NAACP v. Husted*, No. 14-404 (S.D. Ohio 2014), *stay denied*, No. 14-3877 (6th Cir., Sept. 12, 2014), Plaintiffs respectfully request a temporary restraining order directing the Secretary to place Earl's and Linnabary's names as Libertarian Party of Ohio candidates on the early voting, absentee and overseas ballots. Should Plaintiffs ultimately prevail, their rights will have been preserved. Should Defendants prevail at the preliminary injunction hearing, Earl's and Linnabary's names can be removed and their votes discarded.

Under Rule 65(b)(2), the temporary restraining order, if issued on or about September 24, 2014, could be designed to last for the shorter of 14 days or this Court's resolution of Plaintiffs' Fourth Motion for Preliminary Injunction, whichever were to come first.

Plaintiffs certify that the Defendants have previously entered appearances in this case by either waiving service of process or voluntarily intervening. Plaintiffs further certify that the Ohio Attorney General's Office, which represents both governmental Defendants, and the law firm of Zeiger, Tigges & Little, which represents Intervenor-Defendant-Felsoci, have been

supplied copies of the Third Amended Complaint, the Fourth Motion for Preliminary Injunction, this First Motion for Temporary Restraining Order, supporting Memoranda, and Plaintiffs' attached Proposed Order, through the Court's electronic filing system.

Respectfully submitted,

s/Mark R. Brown
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that copies of this Motion, accompanying Memorandum in Support, and the attached Proposed Order, were filed using the Court's electronic filing system and will thereby be electronically delivered to all parties through their counsel of record.

s/Mark R. Brown
Mark R. Brown