

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

THE OHIO DEMOCRATIC PARTY, et al.	:	
	:	
Plaintiffs,	:	Case No. 2:15-CV-1802
	:	
v.	:	JUDGE WATSON
	:	
JON HUSTED, et al.,	:	MAGISTRATE JUDGE KING
	:	
Defendants.	:	

DEFENDANTS’ MOTION TO STAY PENDING APPEAL

Defendants Ohio Secretary of State Jon Husted and Ohio Attorney General Mike DeWine (“Ohio”) move under Fed. R. Civ. P. 62(c) and Fed. R. App. P. 8(a)(1)(C) for an order suspending in part the judgment issued by this Court on May 24, 2016, to avoid changes to the early voting calendar for an unexpected upcoming election. In particular, an unanticipated special party primary will now be held on September 13, 2016. *See* Decl. of Carrie Kuruc at 1. Under this Court’s May 24, 2016 Order, early voting for this September special election would begin on August 9, 2016, eight days from today. Prior to filing this motion, Ohio’s counsel conferred with counsel for Plaintiffs. Plaintiffs’ counsel stated that Plaintiffs take no position regarding this motion.

FACTS

On July 25, 2016, the Democratic nominee for the Eighth Congressional District withdrew. *Id.* In consultation with the Butler County Board of Elections, the most populous county board of elections in the Eighth Congressional District, the Secretary set a filing deadline and scheduled a Special Congressional Primary Election (Democratic Party only) for September

13, 2016 to fill the vacancy. R.C. 3513.312; *see also* Decl. of Carrie Kuruc at 1. The deadline to file declarations of candidacy and declarations of intent for write-ins was July 28, 2016. *Id.* at 2. Only one Democratic Party candidate filed. *Id.* Therefore, there will be one name on the September 13, 2016 Special Congressional Primary Election ballot.

ARGUMENT

Previously, Ohio requested a stay of this Court's Order with respect to an August 2, 2016 special election and for the November 8, 2016 general election. Doc. 120. The Court granted Ohio's motion for the August 2, 2016 election. Doc. 125 at 9. This situation is even more compelling than the facts that led the Court to stay its judgment with respect to the August 2, 2016 election.

First, this Court found that the boards of election would spend time and money if "required to implement Golden Week in such a short period of time." *Id.* at 6. The same holds true for the September 13 special primary election. The administrative burdens in this situation are even more significant because the directive scheduling the election was issued on July 27, 2016, and Golden Week would have to begin on August 9, 2016. Decl. of Carrie Kuruc at 1, 2. With a stay, permitting early voting to begin August 16, Decl. of Carrie Kuruc at 2, Ohio and the six boards of election within the Eighth Congressional District would conserve resources and avoid the logistical burdens associated with Golden Week. The potential for voter confusion will be mitigated.

In addition, in the June 9, 2016 decision, this Court noted that the August 2, 2016 special election would not be held in all counties and turnout was expected to be low. Doc. 125 at 8. Those factors are more pronounced here. The September special election will be in only one jurisdiction—the Eighth Congressional District—comprised of voters in only six of Ohio's counties. Decl. of Carrie Kuruc at 1, 2. Further, the race is not contested, as the date has passed

for any additional candidates to be on the ballot—write-in or otherwise. *Id.* With one name on the ballot, any get-out-the-vote spending is likely to be modest.

Ohio did not include this September 13, 2016 special election in its prior motion to stay because Ohio was unaware of the need for the election at that time. The Democratic candidate for the November 2016 election only recently—on July 25, 2016—withdraw from the race. *Id.*, Ex. A. On July 27, 2016, the Secretary issued a directive scheduling the special election. *See id.*, Ex. B.

CONCLUSION

Accordingly, for these reasons and the reasons set forth in the prior motion to stay, Ohio respectfully asks this Court to stay implementation of its Order for the September 13, 2016 special party primary election.

Respectfully submitted,

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Ohio Attorney General

/s/ Steven T. Voigt

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed with the U.S. District Court, Southern District of Ohio, on August 1, 2016, and served upon all parties of record via the Court's electronic filing system.

/s/ Steven T. Voigt

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