

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

THE OHIO ORGANIZING COLLABORATIVE, et al.,)	
)	
Plaintiffs,)	Case No. 2:15-CV-1802
)	
v.)	JUDGE WATSON
)	
JON HUSTED, et al.,)	MAGISTRATE JUDGE KEMP
)	
Defendants.)	
)	

**PLAINTIFFS’ REPLY TO DEFENDANTS’ RESPONSE
TO PLAINTIFFS’ NOTICE OF RELATED CASE**

Plaintiffs the Ohio Organizing Collaborative, Jordan Isern, Carol Biehle, and Bruce Butcher (“Plaintiffs”) offer this reply to Defendants’ Response to Plaintiffs’ Notice of Related Case (Doc. 10). Despite Defendants’ best efforts to confuse the issue, the Complaint filed in the instant case (Doc. 1) clearly contains certain claims that are the same or substantially identical to the claims contained in the Second Supplemental Complaint attached to the October 30, 2014 Motion for Leave to File in *Northeast Ohio Coalition for the Homeless, et al. v. Husted, et al.*, Case No 2:06-CV-00896 (“*NEOCH*”). (*NEOCH*, Doc. 429).

Defendants essentially make two arguments for why the Complaint filed in this case is not related to the *NEOCH* case. First, Defendants argue that the Motion for Leave filed in *NEOCH*, and not the complaint itself, is pending before the Court. (Doc. 10 at 4).

Concurrent with that argument, Defendants argue that the claims presented in the pending case do not relate to the claims made in the original and first supplemental complaints that were filed in *NEOCH* in 2006. (Doc. 10 at 3). Secondly, Defendants change Plaintiff's statement that the "Judge in the *NEOCH* case is well acquainted with Ohio's absentee and provisional voting laws" to "Plaintiffs contend, and the Defendants do not dispute, that the Judge in *NEOCH* is well acquainted with Ohio's voting laws" in order to then argue that "[t]he District does not—and should not—have a single judge to hear all cases generally related to Ohio's election laws." (Doc. 7 at 3 (emphasis supplied); Doc. 10 at 6).

The plaintiffs in *NEOCH* filed their Motion for Leave on October 30, 2014. (*NEOCH*, Doc. 429). The Motion is ripe for review and, if granted by the Court, the claims in the Second Supplemental Complaint will proceed to be heard and determined by the Court. By filing the Motion, the plaintiffs have placed the issues before the Court. Defendants do not cite to any authority that the "case" contemplated by S.D. Ohio Civ. R. 3.1(b) can not be in a pending mode while awaiting a ruling on a motion for leave. Suggesting otherwise, Defendants are essentially arguing that the Court should raise procedural form over substance. To do so, however, undermines the worthy objectives sought to be achieved by the related case rule.

S.D. Ohio Civ. R. 3.1(b) specifies, in part, that "any party may call to the Court's attention any related case(s) by filing a notice of related case(s)." This is precisely what the Plaintiffs have done here as the Complaint filed in this matter contains certain claims that are the same or substantially identical to claims in the Second Supplemental Complaint pending in *NEOCH*. In fact, Defendants provide their own summary of the seven claims being made by Plaintiffs in this case, and three of the seven claims are central claims in the Second

Supplemental Complaint filed in *NEOCH*. (Doc. 10, p. 3). From Defendants’ list, these are: “(4) new requirements for counted absentee and provisional ballots; . . . (6) the procedure through which mistakes of provisional ballots can be cured; and (7) the system for deciding whether votes cast in multi-precinct voting locations will be counted.” (*Id.*).

In *NEOCH*, the plaintiffs have made several persuasive arguments in their Motion for Leave and their subsequent Reply why the Court should grant the Motion to permit the plaintiffs to proceed with the Second Supplemental Complaint. (*NEOCH*, Docs. 429, 439).

The plaintiffs state the following in their December 18, 2014 Reply:

[C]ontrary to [d]efendants’ claim, [p]laintiffs have met Rule 15(d)’s requirements. As [p]laintiffs set forth in their motion, the new claims relate to the existing action in that they challenge various aspects of the new voting laws [S.B. 205 and S.B. 216] affecting provisional (and absentee) ballots and whether they will be counted, especially due to identification issues—topics that were similarly at the heart of (or a “focal point” of) the original complaint.

Specifically, the proposed supplemental complaint raises issues such as that the new laws shorten the period for provisional-ballot voters to correct ID issues and set a cure period for absentee ballots that is shorter than the period for submitting ballots; require boards of elections to reject such ballots based on technical and immaterial mismatches in identification information on Form 11 or Form 12-B; create the risk for inconsistent county-by-county standards in counting provisional and absentee ballots; and repeal a provision that protected the right to vote of the permitted forms of ID and lack an SSN-4. These matters unquestionably have “some relationship” to the subject matter of the original complaint and the first supplemental complaint, which both raised concerns related to whether provisional ballots cast by voters lacking requisite identification would be counted. The proposed complaint also raises challenges to “right location, wrong precinct” ballots and “wrong polling place” ballots, matters that were before the Court in 2012 in both the instant action and related *SEIU Local 1 v. Husted* case.

Defendants make much of the fact that [p]laintiffs' action adds claims related to absentee ballots, asserting that "this case has never involved absentee ballots." Contrary to [d]efendants' claim, however, the original complaint did include absentee-ballot allegations, including the concern—as in the proposed supplemental complaint—that different counties were applying the rules applicable to absentee ballots inconsistently. The earlier absentee-ballot allegations were resolved in the parties' 2006 consent order. Moreover, given that these claims are closely connected to others relating to provisional ballots, combining the claims into one supplemental complaint only aids judicial economy and efficiency.

* * *

Even [d]efendants must admit that the new law has "some relationship" to the existing action, including the Decree, they file a notice of proposed changes, which they were required to do only where the state "repeals or amends any portion of the Ohio Voter ID Law or Provisional Ballot Laws that are identified in the [c]omplaint."

(*NEOCH*, Doc. 439 at 8-10).

In summary, the Complaint filed in the instant case is undoubtedly related to the issues in the *NEOCH* case, both as originally filed and in the pending Second Supplemental Complaint.

Further, Plaintiffs, in their Notice of Related Case, stated that the "Judge in the *NEOCH* case is well acquainted with Ohio's absentee and provisional voting laws, which have been at issue in one way or another since the original *NEOCH* Complaint was filed in 2006." (Doc. 7 at 3)(emphasis supplied). Defendants responded that "the Defendants do not dispute, that the Judge in *NEOCH* is well acquainted with Ohio's voting laws." (Doc. 10 at 6)(emphasis supplied). Defendants changed Plaintiffs' words in order to then argue that "The District does not—and should not—have a single judge to hear all cases generally related to Ohio's election laws." (*Id.*). Plaintiffs are not suggesting that there should be only

a single judge to hear all Ohio election law cases. However, Plaintiffs are suggesting, and rightly so, that the Judge in *NEOCH* has a nine year history of addressing issues involving Ohio's laws and Secretary of State's directives relating to whether absentee and provisional ballots must be counted, and the overseeing of a consent decree on some of these very matters.

Defendants cite to a series of election-related cases that have been filed in the Southern District of Ohio (Doc. 10 at 6). None of these other cases pertain to the recent changes to the standards for counting absentee and provisional ballots. For example, *Libertarian Party of Ohio, et al. v. Husted*, Case No. 2:13-cv-953 (S.D. Ohio) pertains to ballot access of a third-party candidate; *Citizens in Charge, Inc., et al. v. Husted*, Case No. 2:13-cv-935 (S.D. Ohio) pertains to petition circulator requirements; *Fair Elections Ohio, et al. v. Husted*, Case No. 1:12-cv-797 (S.D. Ohio) pertains to state referendum rights; *Judicial Watch, et al. v. Husted*, Case No. 2:12-cv-763 (S.D. Ohio) pertains to NVRA voter registration list requirements; *Moneyhan v. Husted*, Case No. 3:12-cv-379 (S.D. Ohio) pertains to the application of the Americans with Disabilities Act to disabled voters. Furthermore, while the litigation in *Ohio State Conference of the NAACP, et al. v. Husted*, Case No. 2:14-cv-404 (S.D. Ohio) involved a claim concerning the elimination of "Golden Week" that is similar to one of the claims in the instant case, the *NAACP* case was recently settled and voluntarily dismissed.

For the foregoing reasons, relating the instant case to the *NEOCH* case will serve the objectives sought to be obtained under S.D. Ohio Civ. R. 3.1(b).

Respectfully submitted,

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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 May 14, 2015 and served upon all parties of record via the court's electronic filing system.

/s/ Donald J. McTigue
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