

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

<b>OHIO A. PHILIP RANDOLPH INSTITUTE, <i>et al.</i>,</b>	:	
	:	
Plaintiffs,	:	<b>Case No. 2:16-v-0303</b>
	:	
v.	:	<b>Judge George C. Smith</b>
	:	
<b>SECRETARY OF STATE, JON HUSTED</b>	:	<b>Magistrate Judge Deavers</b>
	:	
Defendant.	:	

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**OHIO DEMOCRATIC PARTY’S MOTION FOR LEAVE TO FILE *AMICUS CURIAE*  
BRIEF REGARDING REMEDY ON REMAND IN RESPONSE TO MOTIONS FILED  
BY THE PARTIES**

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The Ohio Democratic Party (“ODP”) respectfully moves to file a brief as *amicus curiae* regarding the parties’ proposed remedies, as contained in Defendant’s Motion to Implement Remedy (ECF No. 72) and Plaintiffs’ Emergency Motion for a Temporary Restraining Order (ECF No. 74), to implement on remand the Sixth Circuit’s decision in *A. Phillip Randolph Institute et al v. Husted*, \_\_\_ F.3d \_\_\_, 2016 WL 5328160 (6th Cir. Sept. 23, 2016). A copy of the proposed brief is attached to this Motion.

**I. DISTRICT COURTS HAVE AUTHORITY TO ACCEPT AMICUS BRIEFS**

Leave to participate as *amicus curiae* is “within the sound discretion of the courts.” *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991); *see also Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (“amici often make useful contributions to litigation”); *Neonatology Assocs., P.A. v. Commissioner of Internal Revenue*, 293 F.3d 128, 132 (3d Cir. 2002) (“[e]ven when a party is well represented, an amicus may provide important assistance to the court.”). Courts considering whether to accept the submission of an *amicus curiae* brief consider whether the information

offered by the amicus is “timely, useful, or otherwise necessary to the administration of justice.” *Bd. of Educ. v. United States Dep’t of Educ*, Case No. 2:16-cv-524, 2016 WL 4269080, 2016 U.S. Dist. LEXIS 107614, \*17 (S.D. Ohio Aug. 15, 2016) (quoting *United States v. Michigan*, 940 F.2d at 165). Courts have further explained that granting leave to file an *amicus* brief is appropriate when a party “has an important interest and a valuable perspective on the issues presented.” *Id.*

## **II. PROPOSED AMICUS ODP HAS AN IMPORTANT INTEREST AND VALUABLE PERSPECTIVE ON THE ISSUES PRESENTED AND OFFERS USEFUL INFORMATION THAT IS NECESSARY TO THE ADMINISTRATION OF JUSTICE**

ODP is a state political party, organized under Chapter 3517 of the Ohio Revised Code, dedicated to electing Democratic candidates to Ohio public offices and protecting the rights of all voters. ODP’s interest in this case is in ensuring that the voters affected by the State’s unlawful purge can cast a regular ballot so long as they remain otherwise qualified to do so, rather than requiring them to cast a provisional ballot as the parties have proposed. ODP has been concerned about the State’s unlawful purging under the Supplemental Process for years and ODP’s leaders have long called on the State to cease its unlawful purging. *See*, Exhibit A (press releases from ODP’s leaders calling for Defendant Secretary to stop unlawfully purging voters). ODP has hundreds of thousands of members across the state who support and vote for ODP-affiliated candidates, and many of ODP’s members and voters who support ODP-affiliated candidates were removed from Ohio’s voter registration rolls as a result of the State’s unlawful purge. To date, these unlawfully purged voters have yet to be reinstated to Ohio’s voter registration rolls.

ODP’s interest in this case is also based on its involvement in recent litigation involving Ohio’s election administration and the processing of provisional ballots, including *Northeastern Ohio Coalition for the Homeless v. Husted*, 2:06-cv-00894 (S.D. Ohio); *Hunter v. Hamilton County Board of Elections*, 1:10-cv-00820 (S.D. Ohio); *Obama for America v. Husted*, 2:12-cv-

00636; and *Ohio Organizing Collaborative v. Husted*, 2:15-cv-01802 (S.D. Ohio). Rather than reinstating the unlawfully purged voters onto the voter registration rolls, Defendant and Plaintiffs have proposed remedies that would require the unlawfully purged voters to use Ohio's provisional voting system for the upcoming presidential general election. Having litigated a number of cases regarding the administration of Ohio's provisional voting system, ODP has "unique information [and] perspective" on the challenges faced by provisional voters "that can help the Court beyond the help that the lawyers for the parties are able to provide." *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997).

ODP's interests in this case are not adequately represented by Defendant or Plaintiffs. *See, Ryan*, 125 F.3d at 1063 ("explaining that an *amicus* brief is appropriate "when a party is not represented competently or is not represented at all."). Defendant and Plaintiffs have both proposed remedies that, based on *amicus* ODP's experiences litigating voting rights cases, would not address the harms caused by the State's unlawful purge and could even exacerbate both many of the election administration challenges facing Ohio and hurdles faced by voters. ODP's litigation regarding Ohio's provisional voting scheme has produced thousands of pages of documents and testimony from voters, poll workers, county boards of elections, and from Defendant's office that demonstrate that provisional voters face a heightened risk of having their ballots rejected for improper or trivial reasons. This evidence demonstrates that provisional ballots are all too often rejected for errors committed by poll workers who fail to direct wrong precinct, wrong location voters to the correct location, errors by the county boards of elections that improperly apply Ohio law, and for minor, technical errors made by the voters when filling out the often unnecessary, yet required information fields on their provisional ballot form. Requiring all unlawfully purged voters, many of whom are ODP's members or support ODP-affiliated candidates, to cast

provisional ballots would only increase the risk of their votes not being counted. As set forth in the attached *amicus* brief, ODP believes that rather than forcing the unlawfully purged voters to cast provisional ballots, these voters should be reinstated onto the voter registration rolls, as originally requested by Plaintiffs when they filed their successful action, and be permitted to cast a regular ballot if they remain otherwise qualified to do so.

The Court has previously used its broad discretion to permit other *amicus curiae* to participate in the instant matter, and ODP believes that their brief will likewise address issues that may not be addressed by the other parties and will therefore assist the Court in its determination of the parties' motions.

For these reasons, ODP respectfully asks this Court to grant its motion for leave to file the attached *amicus* brief.

Respectfully submitted,

/s/ Donald J. McTigue

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion for Leave was filed electronically on October 17, 2016. Notice of this filing will be sent to all parties via the Court's electronic filing system.

/s/ Donald J. McTigue \_\_\_\_\_  
Donald J. McTigue