

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

LIBERTARIAN PARTY OF OHIO, et al.,	)	
	)	
	)	
Plaintiffs,	)	Case No. 2:13-cv-00953
	)	
	)	JUDGE MICHAEL H. WATSON
v.	)	
	)	
HUSTED, et al.,	)	
	)	
Defendants.	)	

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**COMPLAINT OF INTERVENING PLAINTIFFS ROBERT M. HART, ROBERT FITRAKIS, THE GREEN PARTY OF OHIO, MAX RUSSELL ERWIN, DON SHRADER, AND THE CONSTITUTION PARTY OF OHIO**

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**I. Introduction**

1. This Complaint of the Intervening Plaintiffs challenges the constitutionality of Ohio S.B. 193, which establishes new ballot access laws for Ohio. The basis for the challenge is that S.B. 193 violates the First and Fourteenth Amendments of the Constitution of the United States and the Constitution of the State of Ohio by (1) preventing Ohio’s minor political parties and their candidates from participating in Ohio’s May 6, 2014 primary election, and (2) severely burdening the rights of Ohio’s minor political parties and their candidates in participating in Ohio’s 2014 primary and general elections, and in future elections in the State of Ohio.

## **II. Procedural Context**

2. This litigation originated on September 25, 2013, when the Libertarian Party of Ohio, et al., (the “Original Plaintiffs”) filed an action against Defendant Secretary of State Jon Husted, challenging the constitutionality of R.C. 3503.06(C)(1)(a), which placed restrictions on the circulation of initiative and nominating petition by out-of-state circulators. The State of Ohio sought, and on October 3, 2013, was granted, leave to intervene as a defendant in the original litigation. (*Doc. #7*).
3. On November 6, 2013, seven weeks after the commencement of the original litigation, Defendant-Intervenor, the State of Ohio, enacted S.B. 193, the legislation at issue in this Complaint, which retroactively abrogated all Ohio minor political parties’ access to Ohio’s May 6, 2014 primary election, and placed severe burdens on minor parties and the ability of minor parties’ candidates to participate in Ohio general elections. In response to the enactment of S.B. 193, the Original Plaintiffs filed a First Amended Complaint (*Doc. #16*) on November 8, 2013, challenging the constitutionality of S.B. 193, and seeking to enjoin Ohio Secretary of State Jon Husted and the State of Ohio from enforcing S.B. 193 in the 2014 election cycle.
4. On November 27, the Intervening Plaintiffs sought leave to intervene in this matter, which was granted on December 4, 2013. *Minute Entry 12/04/2013*. This Complaint sets out the Intervening Plaintiffs’ claim pursuant to Fed.R.Civ.P 24(c).

### **III. The Intervening Plaintiffs**

5. The instant Complaint is brought by the following Intervening Plaintiffs (collectively the “Intervening Plaintiffs”):
- i. The Green Party of Ohio (“GPOHIO”), a recognized minor political party in the State of Ohio, consisting of an affiliation of voters organized for the purpose of influencing public policy and disseminating GPOHIO’s views by running candidates for public office in local, state, and federal elections;
  - ii. Robert Fittrakis (“Fittrakis”), a member of GPOHIO and the co-chair of its Central Committee, who has authority from GPOHIO to represent its interests in this litigation and is who suing (1) on behalf of GPOHIO, (2) on behalf of GPOHIO’s candidates and voters who wish to affiliate with and support GPOHIO, and (3) on his own behalf as a qualified Ohio elector who wants to remain affiliated with GPOHIO, vote for GPOHIO candidates in Ohio’s May 6, 2014 primary election and in future elections, and advance the GPOHIO agenda;
  - iii. Robert M. Hart (“Hart”), who is a resident of Franklin County, Ohio, a member and political candidate of GPOHIO and the Franklin County Green Party, and a qualified Ohio elector who wants to remain affiliated with GPOHIO, vote for GPOHIO candidates in Ohio’s May 6, 2014 primary election and in future elections, and advance the GPOHIO agenda;
  - iv. The Constitution Party of Ohio (“CPO”), a recognized minor political party in the State of Ohio, consisting of an affiliation of voters organized for the

purpose of influencing public policy and disseminating CPO's views by running candidates for public office in local, state, and federal elections;

- v. Don Shrader ("Shrader"), the State Chairman of CPO, who has authority to represent the CPO in this litigation and who is suing (1) on behalf of CPO, (2) on behalf of CPO's candidates and voters who wish to affiliate with and support CPO, and (3) on his own behalf as a qualified Ohio elector who wants to remain affiliated with CPO, vote for CPO candidates in Ohio's May 6, 2014 primary election and in future elections, and advance the CPO agenda;
- vi. Max Russell Erwin ("Erwin"), a resident of the city of Mt. Vernon in Knox County, Ohio, a member and endorsed political candidate of CPO, and a qualified Ohio elector who wants to remain affiliated with CPO, vote for CPO candidates in Ohio's May 6, 2014 primary election and in future elections, and advance the CPO agenda. .

#### **IV. The Defendants**

- 6. Defendant Jon Husted ("Husted") is the Ohio Secretary of State and, pursuant to Ohio Rev. Code § 3501.04, is the chief elections officer in the State of Ohio. Husted's actions at all relevant times have been under color of Ohio law within the meaning of 42 U.S.C. §1983 and constitute state action within the meaning of the First and Fourteenth Amendments to the United States Constitution. Husted is sued in his official capacity pursuant to 42 U.S.C. § 1983 and Ohio law as Ohio's chief elections officer and Ohio Secretary of State.

7. Defendant-Intervenor, the State of Ohio, originally entered this lawsuit voluntarily for the purpose of defending itself against the Original Plaintiffs' claims under O.R.C. § 3503.06(C)(1)(a) (relating to restrictions on the circulation of initiative and nominating petitions by out-of-state circulators.) Soon after its intervention in this litigation, as stated above in paragraph 3, the State of Ohio enacted S.B. 193, the unconstitutionality of which is the basis for this Complaint.

#### **V. Jurisdiction And Venue**

8. This Court has jurisdiction over this matter pursuant to the First and Fourteenth Amendments to the United States Constitution, 28 U.S.C. §§ 1331 and 1343, and U.S.C. § 1983.
9. Supplemental jurisdiction over Intervening Plaintiffs' state law claim (Count Three) against Husted and the State of Ohio is proper under 28 U.S.C. §1367(a).
10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

#### **VI. Factual Background**

##### **Minor Party Ballot Access Prior to S.B. 193**

11. Since 2006, following a determination by the Sixth Circuit Court of Appeals in the case of *Libertarian Party of Ohio v. Blackwell*, 462 F.3rd 579 (6<sup>th</sup> Cir. 2006), that Ohio laws regulating new and minor political parties were unconstitutional, the State of Ohio failed to enact new ballot access laws, although Ohio's minor political parties were able to operate continuously pursuant to directives and advisories promulgated by the Ohio Secretary of State and pursuant to federal court orders.

12. Since 2006, and as recently as January 2013, directives issued by the Ohio Secretary of State, have recognized both CPOHIO and CPO, among other parties, as minor political parties in the State of Ohio. *Ohio Secretary of State Directive 2001-01 (January 6, 2011); Ohio Secretary of State Directive 2011-38 (Nov. 1, 2011); Ohio Secretary of State Directive 2013-02 (Jan. 31, 2013).*
13. As a result of *Libertarian Party of Ohio v. Blackwell, supra*, and the directives issued by the Ohio Secretary of State, GPOHIO and CPO have been able to participate in Ohio's primary elections, permitting the parties to maintain and gain recognition among voters, identify voters who support their platforms, and register new members.

### **Factual Background**

#### **S.B. 193 Bars Minor Parties from Ohio's 2014 Primary Election**

14. The Ohio Constitution provides that “[a]ll nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law...” *Article V, § 7.* The Ohio Supreme Court interprets this provision to mean that a qualified party candidate may access Ohio's general elections only through a party primary election, although independent candidates may obtain a place on Ohio's general election ballot by petition.
15. On November 6, 2013, the Ohio General Assembly passed S.B. 193, and Governor Kasich signed the bill into law that same day. If the bill had been signed into law just two days later, it would not apply to the 2014 election cycle. The bill was conveniently expedited through the General Assembly so that it would take effect in time to prevent minor political parties from entering Ohio's 2014 primary

election and to impede minor political parties' participation in the 2014 general election.

16. S.B. 193 is scheduled to take effect on February 5, 2014, and Section 3 of S.B. 193 provides that, “[d]irectives 2009-21, 2011-01, and 2013-02 issued by the Secretary of State are hereafter void and shall not be enforced or have effect on or after the effective date of this act.”
17. Because S.B. 193 voids the Secretary of State Directives that have recognized GPOHIO and CPO, in the absence of action by this Court, these parties will cease to exist on February 5, 2014, the effective date of S.B. 193.
18. Because S.B. 193 has eliminated the sole mechanism for Ohio’s minor parties to gain access to Ohio’s May 6, 2014 primary election, GPOHIO and CPO will be barred from participating in the primary, even though they were previously qualified.
19. S.B. 193 retroactively strips minor party candidates who have already qualified for Ohio’s May 6, 2014 primary election of their qualifications.
20. S.B. 193 denies minor party candidates who were in the process of qualifying for Ohio’s May 6, 2014 primary election the opportunity to qualify for participation.
21. Until S.B. 193 was enacted, the Intervening Plaintiffs had been following the legally prescribed procedures to access Ohio’s 2014 primary ballot.
22. Intervening Plaintiff Hart is the endorsed GPOHIO candidate for the United States House of Representatives for Ohio’s 12<sup>th</sup> Congressional District. Prior to the passage of S.B. 193, Hart: (1) circulated signature petitions and gathered the

requisite number of valid signatures to support his nomination, (2) submitted his nominating petition, and paid the required filing fee to the Franklyn County Board of Elections, (3) established a website promoting his candidacy, (4) registered his candidacy with the Federal Election Commission, and (5) began soliciting and collecting campaign funds.

23. The passage of S.B. 193, retroactively denying Hart and his party, GPOHIO, the opportunity to participate in Ohio's May 6, 2014 primary election, will reverse all of the legal and logistical steps that Hart has taken to establish his candidacy. The bill will dissolve Hart's GPOHIO party, and it has already paralyzed his campaign, halting his ability to work to achieve name recognition, solicit funds, or otherwise compete with candidates of the two major parties.

24. Prior to the passage of S.B. 193, Intervening Plaintiff Erwin (1) campaigned at CPO's annual convention and won the party's nomination for Ohio's 7<sup>th</sup> Congressional District for the United States House of Representatives, (2) circulated signature petitions to support his nomination, and (3) expended more than \$20,000 for a campaign vehicle and the development of campaign media.

25. The passage of S.B. 193 has reversed the steps that Erwin took to establish his candidacy, dissolved Erwin's CPO party, and denied him and his party the opportunity to participate in Ohio's May 6, 2014 primary election. The bill has paralyzed his campaign and has halted his ability to work to achieve name recognition, solicit funds, or otherwise compete with candidates of the two major parties.

26. The State of Ohio relies on voter ballot requests at the primary election as the mechanism for voters to declare their political party affiliation. Barred from the 2014 primary, GPOHIO and CPO will be unable to register any members and will likely lose current members to the Democratic and Republican parties who will have unrestricted access to all of the primary election voters. The striking of GPOHIO and CPO from the 2014 primary by S.B. 193 irreparably harms GPOHIO and CPO by impeding their ability to retain and add party members, and will cause them to lose current members.
27. Having fewer identified members will severely restrict the ability of GPOHIO and CPO to circulate and sign candidates' nominating petitions, placing the Intervening Plaintiffs at a strategic political disadvantage in the 2014 general election, as well as in elections in succeeding years.
28. S.B. 193 awards to the Democratic and Republican parties political advantages in the 2014 general election and in succeeding elections, because S. B. 193 permits the Democratic and Republican parties the opportunity not only to retain and add members in the course of the 2014 primary, but also to use these members to circulate and sign candidate petitions in succeeding years.
29. Being barred from primary participation will deprive GPOHIO and CPO of party registration lists which are invaluable campaign assets, essential to fundraising and identifying likely campaign supporters and workers.
30. As a result of S.B. 193's retroactive stripping of minor parties' status, the Intervening Plaintiffs are severely diminished in their ability to raise funds and

enlist support, placing them at a political disadvantage in the 2014 general election.

31. As a result of S.B. 193's bar against minor parties' participation in Ohio's May 6, 2014 primary election, the Intervening Plaintiffs are severely diminished in their ability to raise funds and enlist support, placing them at a political disadvantage in the 2014 general election.

32. The retroactive application of S.B. 193 to disqualify minor party candidates, such as Hart who has already qualified, violates the First and Fourteenth Amendments of the Constitution of the United States, as well as the Ohio Constitution.

33. Intervening Plaintiffs Hart and Erwin, and other individual minor party candidates have liberty interests under the First and Fourteenth Amendments of the Constitution of the United States, as well as under the Ohio Constitution, in running in Ohio's 2014 primary election.

34. Because the only lawful method under Ohio law for GPOHIO and CPO to gain access to Ohio's 2014 general election ballot is to participate in Ohio's 2014 primary election, all of the Intervening Plaintiffs have a constitutional liberty interest in GPOHIO and CPO's right to participate in Ohio's 2014 primary election pursuant to Ohio law and the First and Fourteenth Amendments to the United States Constitution.

**Factual Background**

**S.B. 193 Severely Burdens Minor Parties' Participation in Ohio's 2014 General Election, and Beyond**

35. The harm inflicted by S.B. 193 on minor parties, their candidates, and the voters who wish to support them, does not end with Ohio's May 6, 2014 primary election.
36. In place of the ballot access that had been continuously awarded since 2006 by federal court orders and directives of the Secretary of State, S.B. 193 provides that, "minor parties" (defined as those that did not receive at least three percent of the entire vote cast in the 2010 gubernatorial or 2012 presidential elections, *S.B. 193 § 1*), must re-qualify for Ohio's 2014 general election ballot. Re-qualification requires the submission of a party formation petition supported by signatures numbering at least one-half of one percent of the total vote at the previous gubernatorial or presidential election, and drawn from at least eight of Ohio's congressional districts, with at least 500 qualified electors signing from each of these districts. *S.B. 193 §4(A)*.
37. This S.B. 193 requirement, based on the total vote cast in the 2010 and 2012 elections, will amount to almost 30,000 signatures.
38. After 2014, the number of signatures of qualified electors required on party formation petitions will increase to one percent of the total vote for nominees for governor or president in the most recent election for such office. *S.B. 193 §4(A)*.
39. Even if a minor party is able to garner the signatures necessary to re-qualify, S.B. 193 will require an individual wishing to be a minority party candidate to submit a new nominating petition signed by "qualified electors who have not voted

as a member of a different political party at any primary election within the current year or the immediately preceding two calendar years.” *S.B. 193 § 1*. But following a primary that will have been closed to minor parties, all of the qualified electors who had wanted to vote for a primary candidate will have already declared themselves either Republican or Democratic. Consequently, qualified electors who will not have recently voted as a Republican or Democrat may be difficult to locate. Under these circumstances, S.B. 193 will effectively purge members from the minor political parties’ rolls, inevitably causing some members to declare themselves Republicans or Democrats, and thereby rendering those members ineligible for two years from signing a petition for a minor party candidate.

40. S.B. 193 also establishes a threshold of votes that parties must attain in elections in order to maintain party status for the succeeding four years. In 2014, a political party’s gubernatorial candidate will need to win at least two percent (2%) of the vote to avoid being disbanded. Commencing in 2015, a political party’s gubernatorial or presidential candidate must obtain three percent (3%) of the vote. Otherwise, in order to be recognized in future elections, the candidate must submit a new party-formation petition, signed by at least one percent of the total vote for governor or president in the most recent election.
41. Because no minor party, including CPOHIO and CPO, won a sufficient percentage of the total vote cast in the 2010 or 2012 general elections to maintain party status pursuant to S.B. 193, all minor parties will, on February 5, 2014, cease to be recognized under Ohio law, and will have to re-form via party-formation petition.

42. S.B. 193 prevents parties that form via party-formation petition from participating in a primary election.

43. Because neither GPOHIO nor CPO attained the percentage of votes in the last cycle required by S.B. 193 to maintain party status, it is probable that these parties will be unable to meet S.B. 193's required percentage to maintain party status in the future. GPOHIO and CPO will therefore, likely, face continual post-election dissolution, and have to re-form each time via party-formation petition. As a result, CPOHIO and CPO will be continually denied the opportunity to participate in primary elections. Exclusion from the primary process will, in turn, impede the parties' ability to attain the percentage of votes required to maintain party status. So, another cycle of dissolution, petition for formation, and exclusion from the primary will follow.... and thus the spiral will perpetuate, feeding on itself.

### **COUNT ONE**

#### **Due Process and First Amendment Challenge to S.B. 193** **Under §1983 Against Defendant Husted**

44. The Intervening Plaintiffs incorporate the allegations contained in paragraphs 1 through 43 as if fully written.

45. Defendant Husted, as chief elections officer in Ohio, is charged with enforcing the terms of S.B. 193.

46. S.B. 193 retroactively disqualifies the Intervening Plaintiffs from participating in Ohio's May 6, 2014 primary election in violation of their right of assembly under the First Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

47. Defendant Husted's enforcement of S.B. 193 thereby violates Intervening Plaintiffs' right of assembly under the First Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

## **COUNT TWO**

### **Equal Protection and First Amendment Challenge to S.B. 193 Under § 1983 Against Defendant Husted**

48. The Intervening Plaintiffs incorporate the allegations made in paragraphs 1 through 47 as if fully rewritten.
49. Defendant Husted, as chief elections officer in Ohio, is charged with enforcing the terms of S.B. 193.
50. S.B. 193 places minor parties, including GPOHIO and CPO, at a political disadvantage relative to the two major parties in Ohio's 2014 general election by denying them access to the party membership privileges afforded the two major parties.
51. With the enactment of S.B. 193, Ohio law fails to provide minor parties, including GPOHIO and CPO, with a constitutionally required mechanism with which to gain access to Ohio's 2014 primary election and thereby enjoy the same party membership privileges afforded to the two major parties.
52. With the enactment of S.B. 193, Ohio law fails to provide minor parties, including GPOHIO and CPO, with a constitutionally required equal opportunity to gain access to Ohio's 2014 primary election and the resulting party membership privileges that are provided to the two major parties.

53. Defendant Husted's enforcement of S.B. 193 thereby violates the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

**COUNT THREE**

**Ohio Constitutional Challenge Under Ohio Law  
Against Defendant Husted and Defendant-Intervenor, the State of Ohio**

54. The Intervening Plaintiffs incorporate the allegations contained in paragraphs 1 through 53 as if fully rewritten.
55. Defendant Husted, as chief elections officer in Ohio, is charged with enforcing the terms of S.B. 193.
56. Defendant-Intervenor, the State of Ohio, enacted H.B. 193 on November 6, 2013.
57. Defendant-Intervenor, the State of Ohio, voluntarily intervened in this litigation and has thereby waived any immunity from this suit in federal court under the Eleventh Amendment to the United States Constitution that either it may have otherwise enjoyed.
58. S.B. 193's elimination of the Intervening Plaintiffs' participation in the 2014 primary violates Article V, § 7, of the Ohio Constitution, which provides that a party's "nominations for elective state, district, county and municipal offices shall be made at direct primary elections..."
59. Defendant Husted's enforcement of S.B. 193 violates Article V, § 7, of the Ohio Constitution.
60. Defendant-Intervenor, the State of Ohio, violated Article V, § 7, of the Ohio Constitution by passing S.B. 193.

**Relief Requested**

WHEREFORE, the Intervening Plaintiffs request the following relief pursuant to 28 U.S.C. § 2201, 42 U.S.C. §1983, 42 U.S.C. § 1988(b), and Ohio law:

A. A declaration under 28 U.S.C. §2201 that S.B. 193's retroactive abrogation of the Intervening Plaintiffs' rights to participate in Ohio's 2014 primary and general elections violates the First and Fourteenth Amendments to the United States Constitution;

B. A declaration under 28 U.S.C. §2201 that S.B. 193's failure to provide the Intervening Plaintiffs with any mechanism to participate in Ohio's 2014 primary election violates the First and Fourteenth Amendments to the United States Constitution;

C. A declaration under 28 U.S.C. §2201 that S.B. 193's failure to provide the Intervening Plaintiffs with an equal opportunity to develop party membership in Ohio's 2014 primary election places the Intervening Plaintiffs at a disadvantage during the 2014 general election and beyond, and thereby violates the First and Fourteenth Amendments to the United States Constitution;

D. A preliminary injunction under 42 U.S.C. § 1983 prohibiting Defendant Husted from taking any action that will prevent the Intervening Plaintiffs from participating in Ohio's 2014 primary or general elections;

E. A permanent injunction under 42 U.S.C. § 1983 prohibiting Defendant Husted from taking any action that will prevent the Intervening

Plaintiffs from participating in Ohio's 2014 primary or general elections or any subsequent elections under circumstances that impose undue and severe burdens on their constitutional rights to due process or freedom of association;

F. A declaration under Ohio law that S.B. 193's application to the 2014 election cycle violates Article V, § 7, of the Ohio Constitution;

G. A preliminary injunction under Ohio law prohibiting Defendant Husted and Defendant-Intervenor, the State of Ohio, from taking any action that will prevent the Intervening Plaintiffs from participating in Ohio's 2014 primary or general elections;

H. A permanent injunction under Ohio law prohibiting Defendant Husted and Defendant-Intervenor, the State of Ohio, from taking any action that will prevent the Intervening Plaintiffs from participating in Ohio's 2014 primary or general elections or any subsequent elections under circumstances that impose undue and severe burdens on their constitutional rights to due process or freedom of association.

I. Pending legislative action by the Ohio General Assembly, an order requiring the Ohio Secretary of State to issue appropriate directives recognizing the GPOHIO, the CPO, and all other previously recognized minor political parties as minor political parties in the State of Ohio.

J. Reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988(b); and

K. All such other relief as may be just and equitable.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The foregoing Complaint of Intervening Plaintiffs was filed this 23<sup>rd</sup> day of December 2013 through the Court's Electronic Filing System. Parties will be served and may obtain copies electronically, through the operation of the Electronic Filing System.

/s/ James L. Hardiman  
James L. Hardiman  
TRIAL ATTORNEY