

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

**OHIO A. PHILIP RANDOLPH
INSTITUTE and NORTHEAST OHIO
COALITION FOR THE HOMELESS,**

Plaintiffs,

v.

JON HUSTED,
*in his official capacity as Ohio Secretary
of State,*

Defendant.

CIVIL ACTION NO. 2:16-cv-303

**PLAINTIFFS' NOTICE OF RELATED CASE PURSUANT TO LOCAL CIVIL
RULE 3.1(b)**

The Plaintiffs Ohio A. Philip Randolph Institute (“APRI”) and Northeast Ohio Coalition for the Homeless (“NEOCH”) respectfully request that this Court, all parties in this matter, and their respective attorneys take notice that the above-captioned case is, for the purposes of S.D. Ohio Civ. R. 3.1(b), related to two previously filed cases: *Judicial Watch Inc. et al. v. Husted*, previously before the Honorable Edmund A. Sargus as Case No. 2:12-cv-00792, and *Northeast Ohio Coalition for the Homeless v. Husted*, pending before the Honorable Algenon L. Marbley as Case No. 2:06-cv-00896.

As provided in S.D. Ohio Civ. R. 3.1(b) governing related cases:

Cases may be deemed related by the Court if they (1) Arise from the same or substantially identical transaction, happening, or event; or (2)

Call for a determination of the same or substantially identical questions of law or fact; or (3) Would entail a substantial duplication of effort and expense by the Court and the parties if heard by different Judges; or (4) Seek relief that could result in a party's being subjected to conflicting orders of this Court.

S.D. Ohio Civ. R. 3.1(b). As shown below, assigning the present case to either of these two judges would “provide for the orderly division of the business of this Court.” S.D. Ohio Civ. R. 3.1(c).

In this case, Plaintiffs are initiating suit against Secretary of State Jon Husted for widespread violations of Section 8 of the National Voter Registration Act of 1993 (“NVRA”). 52 U.S.C.A. § 20507 (2016). Contrary to the plain language of the NVRA as well as its purpose, the Defendant employs a roll-maintenance program, known as the “Supplemental Process,” that results in the removal of registered voters from the registration rolls by reason of their failure to vote. This program has led to, and threatens to continue to result in, the disenfranchisement of eligible Ohio voters. In addition, the address confirmation notice sent to voters pursuant to directives issued by the Defendant also violates the NVRA. Plaintiffs seek a temporary restraining order and preliminary and permanent injunctions to halt the Defendant's unlawful conduct and to protect the fundamental right to vote for eligible Ohio voters.

The Present Case Is Related to *Judicial Watch v. Husted*.

Even though Local Rule 3.1 lists several criteria that independently indicate whether one civil case may be related to another—so only one need be met—with respect to *Judicial Watch v. Husted*, nearly all of the criteria are present. First, the two cases arise from a “substantially identical transaction, happening, or event”—the

Defendant's roll-maintenance procedures. S.D. Ohio Civ. R. 3.1(b)(1). Both cases stem from Defendant Husted's failure to comply with Section 8 of the NVRA and properly maintain the voter-registration rolls. Both cases arise from the issuance of roll-maintenance directives, one of which—Directive 2011-15—is at issue in both the prior case and this case. *Compare* Complaint, No. 2:16-cv-303, Doc. 1, at 5, *to* Complaint, *Judicial Watch v. Husted*, No. 2:12-cv-00792 (S.D. Ohio Aug. 30, 2012), Doc. 1, at 5 (discussing Directive 2011-15, “issued on April 18, 2011, [which] instruct[ed] the county boards of elections on procedures for conducting programs to remove ineligible voters from the voter rolls due to changes in a registrant's address”).

Second, both cases “call for a determination of the same or substantially identical questions of law [and] fact.” S.D. Ohio Civ. R. 3.1(b)(2). Both cases call for a determination of the legality of Defendant's roll-maintenance practices under the NVRA. Moreover, both cases concern substantially identical issues of fact involving the Defendant's roll-maintenance policies and practices.

Last, adjudication of the present action by a different judge could result in the Defendant being subject to conflicting obligations under the two cases. Plaintiffs in the present action seek injunctive relief to halt Defendant's unlawful roll-maintenance procedures, including its use of the Supplemental Process. At the same time, Defendant is presently under a settlement agreement with the plaintiffs in *Judicial Watch v. Husted* requiring him to engage in, arguably, the very conduct challenged by Plaintiffs in the present case. This settlement agreement thus imposes obligations on

the Defendant that may conflict with the relief sought in the present case. If that the settlement agreement were enforced by the judge in *Judicial Watch v. Husted*, it “could result in a party’s being subjected to conflicting orders of this Court.” S.D. Ohio Civ. R. 3.1(b)(4).

Accordingly, Plaintiffs respectfully suggest that this matter is related to *Judicial Watch v. Husted* under Local Rule 3.1 in order to “provide for the orderly division of the business of the Court.” S.D. Ohio Civ. R. 3.1(c).

The Present Case Is Related to
Northeast Ohio Coalition for the Homeless v. Husted.

All four Local Rule 3.1 criteria for determining whether two cases are related are present with respect to the instant case and *Northeast Ohio Coalition for the Homeless v. Husted* (“*NEOCH v. Husted*”). First, both cases arise from a substantially identical transaction, happening, or event. S.D. Ohio Civ. R. 3.1(b)(1). Plaintiff NEOCH and Defendant Husted are parties in both cases, and in both cases, NEOCH has challenged the same or similar actions taken by the Defendant that harm the ability of voters experiencing homelessness to exercise their right to vote, including by registering to vote and by casting a ballot that counts. In *NEOCH v. Husted*, a Consent Decree has been entered over which the court has continuing jurisdiction. This Consent Decree stated in its purposes that “the fundamental right to vote is fully protected for registered and qualified voters . . . including indigent and homeless voters” and that “the legal votes cast by these voters will be counted even if they are cast by provisional ballot on Election Day.” Consent Decree, *NEOCH v.*

Husted, Case No. 2:06-CV-896 (Apr. 19, 2010), Doc. 210, at 2. In the present case, Plaintiffs allege that the Supplemental Process has resulted in the cancellation of registrations of homeless voters, and that as a result, the legal votes cast by homeless voters will *not* be counted.

Second, the present case and *NEOCH v. Husted* “call for a determination of the same or substantially identical questions of . . . fact.” S.D. Ohio Civ. R. 3.1(b)(2). Both cases concern the question of whether Defendant’s actions are disenfranchising homeless voters. Specifically, a critical question in *NEOCH v. Husted* relates to the ability of homeless voters to register to vote and cast a ballot that counts. These issues are closely related to those at stake in the present case, where the ability of voters, once registered, to remain registered is at issue. In *NEOCH v. Husted*, the court has ordered the Defendant to accept voter registration applications from homeless voters, even if those voters list a non-traditional address, such as a park bench, as their residence address. In the present case, the Plaintiffs allege that the Defendant has cancelled the registrations of voters in part because of their failure to respond to a notice mailed to their registered address, including notices sent to homeless voters who frequently cannot receive mail reliably.

Third, the *NEOCH v. Husted* court has invested significant time and resources—nearly ten years—in the case, developing expertise in the legal and factual issues concerning the voting and voter registration rights of homeless voters. Moreover, the court has retained jurisdiction over the Consent Decree and presided over multiple requests to modify it. Thus, it “would entail a substantial duplication of

effort and expense by the Court and the parties if [the two cases were] heard by different Judges.” S.D. Ohio Civ. R. 3.1(b)(3).

Finally, because the Plaintiffs in the instant case are seeking injunctive relief reinstating all unlawfully removed voters—including the unlawfully cancelled registrations of homeless voters—and there is an existing Consent Decree requiring Defendant to count the ballots of registered homeless voters, related case status would avoid the possibility of Defendant “being subject to conflicting orders of this Court.” S.D. Ohio Civ. R. 3.1(b)(4). In the instant case the Plaintiffs are seeking preliminary relief in advance of the November 2016 Election relating to the counting of ballots cast by voters who have been purged pursuant to the Supplemental Process, including those cast by homeless voters. Any order issued concerning that preliminary relief may require the Defendant to take action that conflicts with the requirements of the Consent Decree.

For the foregoing reasons, Plaintiffs respectfully suggest that this matter be deemed related to *NEOCH v. Husted* under Local Rule 3.1 in order to provide “provide for the orderly division of the business of the Court.” S.D. Ohio Civ. R. 3.1(c).

Dated: April 6, 2016

Respectfully submitted,

s/ Naila Awan

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** Institutional affiliation for the purpose of identification only

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Related Case was filed this 6th day of April, 2016 through the Court's Electronic Filing System and served by mail on:

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