UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LIBERTARIAN PARTY OF OHIO, et al.
Plaintiffs,

and

Robert Hart, et al.,
Intervenor-Plaintiffs,

v.

JON HUSTED,
in his Official Capacity as Ohio Secretary of State,

Defendant,

STATE OF OHIO,
Intervenor-Defendant,

and

GREGORY FELSOCI,

Intervenor-Defendant.

_____/

Case No. 2:13-cv-00953

JUDGE WATSON
MAGISTRATE JUDGE KEMP

MOTION TO EXPEDITE TRIAL DATE

Plaintiffs respectfully request that the Court expedite trial of the above-styled case in order that it might issue a decision before the general election in Ohio scheduled for November 4. 2014. Plaintiffs respectfully recommend trial the week of September 29, 2014 and suggest the trial should last no longer than three days. In support of this Motion, Plaintiffs incorporate the

following Memorandum of Law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of this Motion to Expedite and Memorandum of Law were filed using the Court's electronic filing system and will thereby be electronically delivered to all parties through their counsel of record.

s/*Mark R. Brown*
Mark R. Brown

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO EXPEDITE TRIAL DATE

BACKGROUND

This case involves a political battle between Ohio's Republicans and the Libertarian Party of Ohio ("LPO"). The former seek to remove the latter's candidates from Ohio's 2014 ballot. They do so in order that their candidates might enjoy an edge -- that is, a better chance at winning. Ohio's general election is scheduled for November 4, 2014. Time is of the essence.

As this Court is aware from previous filings and its prior injunctions, Ohio's GOP-controlled legislature (and the governor's mansion) last year passed legislation, S.B. 193, in an effort to remove the Libertarian Party of Ohio ("LPO") from Ohio's ballot. The LPO successfully sued and on January 7, 2014, was restored by this Court's Order, *see* Doc. No. 47, in the above-styled case to Ohio's primary and general election ballots.

This proved unacceptable to Republicans, who expected serious Democratic challenges to Governor Kasich and to Attorney General DeWine (as well as additional local and state-wide Republican candidates). Republicans feared that LPO candidates would draw "Tea Party" votes away from Republican candidates. Polls suggested that this was likely true.

This Court restored the LPO and its candidates to the ballot. *See* Doc. No. 47. Still, the LPO and its candidates had to comply with Ohio's rules for primary and general ballot access. Thus, the LPO's candidates had to qualify for Ohio's May 2014 primary. Qualification required gathering 500 signatures for each candidate.

Enough signatures were collected for both Charlie Earl and Steven Linnabary, who sought

to run for Governor[1] and Attorney General, respectively. The Secretary of State ("Secretary") certified each candidate for the primary ballot in early February 2014. Because Ohio provides a "protest" period, however, these certifications would not be finalized until after the close of the protest period at 4 pm on February 21, 2014.

Gregory Felsoci, a member of LPO, protested Earl's candidacy on Friday, February 21, 2014 at approximately 3:27 pm. A hearing was held on March 4, 2014, and the hearing officer (Bradley Smith) recommended that Earl be removed from the ballot on March 7, 2014. The Secretary accepted that recommendation and announced his decision just before 5 pm. Because Earl was already before this Court challenging Ohio's law that removed the LPO from the ballot, S.B. 193, Earl (together with Plaintiffs-LPO, -Harris and -Knedler) amended their Complaint to challenge Earl's removal from the 2014 primary ballot.

That amended Complaint, the "Second Amended Complaint," *see* Doc. No. 56, included three new Counts that were not present in the first Amended Complaint. *See* Doc. No. 16. Count Six in the Second Amended Complaint stated a facial challenge to Ohio's "employer-statement rule," O.R.C. § 3501.38(E)(1), described in more detail below. Count Seven stated an as-applied challenge to the Secretary's use of that rule to remove Earl from the primary ballot. Count Eight stated a Due Process challenge based on the retroactive application of a new interpretation of the employer-state rule to First Amendment activity. This Court denied Intervenor-Defendant-Felsoci's motion to dismiss the Second Amended Complaint on March 17, 2014 from the bench. *See* Docs. No. 75 & 79.

[1] Sherry Clark is Earl's running mate. She, too, was removed from Ohio's ballot. Plaintiffs

On March 19, 2014, this Court denied preliminary relief to Plaintiffs. *See* Doc. No. 80. Plaintiffs took an expedited interlocutory appeal to the Sixth Circuit, arguing only their facial First Amendment claim under Count Six and their Due Process claim under Count Eight. The Sixth Circuit affirmed. *See Libertarian Party of Ohio v. Husted,* 751 F.3d 403 (6th Cir. 2014). Emergency relief was sought from the Supreme Court and was refused. 134 S. Ct. 2164 (2014). The Sixth Circuit denied rehearing en banc.

This Court held a status conference on June 5, 2014. *See* Doc. Rep. (unnumbered item). Immediately thereafter Plaintiffs moved to withdraw a previous motion to amend the Second Amended Complaint and submitted another motion to amend the Second Amended Complaint. *See* Docs. No. 110 & 111. Before doing so, Plaintiffs as early as May 21, 2014 had commenced discovery in an effort to prove their First Amendment as-applied claim made in Count Seven of their Second Amended Complaint. *See* Docs. No. 108 & 109.

Defendants resisted discovery, which led to three Court orders requiring depositions and the production of documents. In particular, the Court ordered that Felsoci and the Secretary's agents, Smith and Christopher, be deposed. *See* Doc. Nos. 133 & 134; *Libertarian Party of Ohio v. Husted,* __ F. Supp.2d __, 2014 WL 3509749 (S.D. Ohio 2014). The Court also ordered that Felsoci produce a document identifying the person who was paying his attorneys. *See* Docs. No. 157 & 162; *Libertarian Party of Ohio v. Husted,* 2014 WL 3792727 (S.D. Ohio, July 11, 2014); *Libertarian Party of Ohio v. Husted,* 2014 WL 3928293 (S.D. Ohio, Aug. 12, 2014).

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collectively refer to the Earl/Clark ticket as "Earl."

Armed with these orders and the production that followed, Plaintiffs are now prepared to prove their claim under Count Seven that Ohio's employer-statement rule was applied to Plaintiff-Earl for improper and unconstitutional reasons. Plaintiffs are also prepared to prove their claim in Count Eight that the application of the employer-statement rule to independent contractors, including Earl's circulator (Oscar Hatchett, Jr.) was a new, unforeseeable interpretation of that rule that could not under the Due Process Clause be given retroactive effect.

Success on the merits under either of these Counts would lead to Earl's restoration to the Ohio general election ballot on November 4, 2014. Success under either of these Counts would alleviate any need to quickly resolve Count Five -- Plaintiffs' state-law challenge to S.B. 193 -- since the LPO gubernatorial candidate could win 2% of the vote and thereby insure ballot access for four more years under Ohio law. Striking down S.B. 193 under Ohio's Constitution (Count Five in the Second Amended Complaint) would not be necessary, at least not on an expedited basis.

LEGAL ARGUMENT

I. An Expedited Trial is Warranted in Constitutional Actions Seeking Declaratory Relief.

Federal Rule of Civil Procedure 40 provides that precedence on the docket shall be given to actions entitled thereto by any statute of the United States. In 1984, Congress enacted 28 U.S.C. § 1657, which replaced the prior individual statutes that controlled trial preferences. Section 1657(a) provides that:

> Notwithstanding any other provision of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 [habeas corpus] or section 1826 of this title [recalcitrant grand jury witnesses], any action for temporary or preliminary injunctive relief, or any other action if good cause therefore is shown. For

> purposes of this subsection, "good cause" is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

"In enacting this legislation, Congress hoped to provide the trial courts more control over their crowded dockets and to give cases involving federal questions priority on court calendars." C. WRIGHT, ET AL., FED. PRAC. & PROC. (CIVIL) § 2351 (3d ed. 2014).

Federal Rule of Civil Procedure supplements Rule 40 with a calendar preference for declaratory judgment actions, like that here. Rule 57 states that: "The court may order a speedy hearing of a declaratory-judgment action." "Even in the absence of a controlling federal statute, cases of public importance may be given calendar precedence, as may other cases in which delay will cause unusual hardship." C. WRIGHT, *supra*, § 2351.

Given the combination of these factors, an expedited trial is warranted in this case. Plaintiffs include a request for declaratory relief under 28 U.S.C. § 2201. The case is of great public importance in Ohio, which has a general election scheduled for November 4, 2014. Most importantly, as described in detail below, Plaintiffs make claims under the Constitution of the United States in a factual context that indicates both that their claims have merit and that speedy resolution is of public importance. Delay would cause unusual hardship to the LPO, because without a gubernatorial candidate, it cannot meet Ohio's vote test in order to maintain its access to the ballot.

B. Plaintiffs Have Uncovered Facts Supporting Their As-Applied Constitutional Claims.

Plaintiffs are prepared to prove the following facts uncovered through court-ordered discovery. Although many of the facts are documented and cannot be reasonably disputed, an

evidentiary hearing or trial is likely required because many factual inferences and conclusions needed to resolve this case present genuine issues of material fact.

1. The Protests.

Gregory Felsoci, a member of LPO, protested Earl's candidacy on Friday, February 21, 2014 at roughly 3:30 pm. Felsoci's protest was signed by him and his attorney, John Zeiger, who is a partner in Zeiger, Tigges & Little. Felsoci's lawyers are now understood to be Zeiger, Steve Tigges, Dan Mead and Stuart Parsell. At least two additional lawyers in the Zeiger firm have been engaged in the protest.

Carl Akers, an unaffiliated voter, protested Linnabary's candidacy on Friday, February 21, 2014 at roughly 3:57 pm. Akers' protest was signed by him, but was not signed by a lawyer. He was represented at the hearing by a lawyer.

2. Filing Write-In Candidates.

Earl, Linnabary, and the LPO were not notified of the protest until after the close of business on Monday, February 24, 2014. Plaintiff-Harris was the first person to learn of the protest, and that was on Tuesday or Wednesday, February 25 or 26, 2014. Harris learned from a news reporter sometime after the close of business on February 24, 2014. Official notice of the protest from the Secretary of State's office did not come until later.

Notice is important because the deadline for filing write-in candidacies was 4 pm Monday, February 24, 2014. Both Bob Bridges and Kevin Knedler did, in fact, successfully file their write-in papers with the Secretary that day in order to run in the LPO primary. They subsequently received enough write-in votes at the LPO primary (more than 500) to qualify for the ballot as the LPO's only remaining state-wide candidates. Had the LPO known that Earl and Linnabary had

been protested, the LPO could have arranged to have write-in candidates for Governor and Attorney General file that same day. This would have served as a safety net should Earl and Linnabary be removed. LPO did not because LPO did not know that Earl and Linnabary had been protested.

While Bridges was at the Secretary's office on Monday, February, 24, 2014 to file the papers for himself and Knedler, he ran into Matthew Damschroder, the Secretary's chief election officer. Bridges personally knows Damschroder, and Damschroder testified at his deposition that he knows Bridges by sight. They conversed. Damschroder said nothing to Bridges about the protests. Had he told Bridges, Bridges could have arranged to file write-in candidates for Governor and Attorney General. Damschroder said nothing.

3. Hearing Officer's Conflict of Interest.

The hearing officer selected to address the protests was a law professor at Capital University, Bradley A. Smith. Smith is a former chair of the Federal Election Commission and a recognized expert in the field of campaign finance. He has written widely on election law matters and is rightly well-respected in all political and academic circles. He was one of two outside candidates recommended by Damschroder, who had met Smith at a conference approximately two years previously. The other candidate was Steve Huefner, a law professor at Ohio State. Huefner never responded after asking for the pleadings. Smith agreed to hear the case.

Damschroder, Jack Christopher, the chief legal counsel to Jon Husted, and Halle Pelger (Husted's personal assistant who admitted at her deposition to keeping Husted informed about the protest), met to discuss the matter and agreed to extend the offer to Smith. He was to be paid by the hour with a maximum payment of $15,000, but was eventually paid more (close to $20,000).

Unbeknownst to Earl, Linnabary, Harris, Knedler and the LPO until after the protest hearing, at the time Smith accepted the offer he was also representing Mike DeWine, pro bono, in a case (*Susan B. Anthony List v. Steven Driehaus,* No. 13-193) before the United States Supreme Court. DeWine was representing the State of Ohio and was defending Ohio's law empowering its Election Commission to investigate allegedly false statements by candidates. In an odd maneuver, DeWine also filed an amicus brief on his own behalf disagreeing with his position defending the law for the State of Ohio. Smith was counsel on this brief and admitted at his deposition that he wrote it. Smith admitted that he was DeWine's lawyer on this matter, which was pending while the protest was being heard.

Linnabary was running for Attorney General, as was DeWine. Smith testified at his deposition that it is common knowledge that Republicans fear that Libertarians will draw votes from them. DeWine plainly had an interest in seeing Linnabary removed from the ballot. Smith was DeWine's lawyer while he was deciding whether to remove Linnabary. Smith therefore had an interest in seeing Linnabary removed from the ballot.

Because Linnabary and Earl were removed for the exact same reason -- that is, the circulation efforts of Oscar Hatchett, Jr. (described below) -- Smith's involvement with DeWine also impacted Earl. Linnabary could not be removed if Earl were allowed to remain on the ballot.

Smith was not asked to disclose potential conflicts of interest, nor did he disclose this potential conflict of interest to Christopher, Damschroder, or anyone in the Secretary's or Attorney General's offices. Still, Damschroder and Christopher knew that Smith represented DeWine at the time of the hearing. Neither Smith, Christopher, nor Damschroder disclosed this conflict of interest to Earl, Linnabary or the LPO during the hearing, before the decision was

announced, or at anytime thereafter. Smith disclosed his involvement to LPO for the first time during his deposition in August 2014. Earl and Linnabary did not know of Smith's conflict of interest until after the decision was announced by the Secretary.

4. The Real Party-in-Interest.

Felsoci admitted at the preliminary injunction hearing that he was not paying his lawyers. With the assistance of three Court Orders, the Plaintiffs discovered that the true client is Terry Casey, a long-time Republican strategist and operative. Casey presently chairs Ohio's Personnel Board of Review, having been appointed by Governor Kasich in October of 2010. In 2013 he earned approximately $70,000 as an employee of the State of Ohio.

Casey was for a number of years an officer with the Franklin County Republican Party (FCRP). He still holds a position with FCRP. He was a Kasich advisor in 2010 when Kasich was running against Strickland, and remained so until at least October of that year. He is regularly referred to in media reports as a Republican strategist and advisor to Kasich.

Casey testified at his deposition that he has yet to pay the Zeiger firm, but has agreed to pay the Zeiger firm on Felsoci's behalf. He testified that he understands the bill he owes is presently more than $100,000. He also denied knowing the precise figure although he admits to having received at least two invoices in April and May of 2014. Casey testified at his deposition that the only entities that have paid him more than $10,000 in 2014 are Ohio (through his salary as a state employee) and one or two county republican parties running candidates for local office. He denied receiving funds from any other source.

Casey claimed at his deposition that he was going to solicit "interested persons and parties" to provide the necessary funds to pay Zeiger's bill. He also claimed, however, that he has

not yet done so and has not given the matter any thought. He claimed that he does not know who he will solicit, and that no one has yet agreed to pay any part of the bill.

Casey, Plaintiffs discovered through document production from the Secretary, was in constant contact from roughly February 17, 2014 through the hearing process and beyond with Matt Damschroder, the chief elections officer in the Secretary's office. They are long-time friends, Republicans, and run in the same Republican circles.

To use just a few examples, Casey phoned Damschroder on February 17, 2014, four days before the protest deadline, and informed him that the protests were going to be filed on February 21, 2014. For his part, Damschroder on February 21, 2014 e-mailed his staff to keep the office open past 4 pm (the statutory deadline) in order to accept protests of statewide candidates. While the Earl protest came in at about 3:30 (having been filed by Dan Mead (Felsoci's and Casey's lawyer)), documents prove that the Linnabary protest came in just minutes before the 4 pm deadline.

Damschroder was texted just before the deadline by Avi Zaffini (who is known to be the campaign manager for Secretary Husted) that Doug Preisse and the "AG campaign," to use Zaffini's words, were on their way to the Secretary's office to file the protest against Linnabary. Casey repeatedly throughout his deposition referred to the protest against Linnabary -- which he was not behind, he claimed -- as a protest filed by the "AG campaign." Carl Akers, who protested Linnabary, like Felsoci who protested Earl, was a "guileless dupe."

Before the hearing on March 4, 2014, Casey texted and e-mailed Damschroder repeatedly with inside information. He sent Damschroder blind copies of his communications with Zeiger. Damschroder relayed the blind copies to Christopher and Pelger (Husted's assistant).

Damschroder admitted at his deposition that by March 20, 2014 he knew Casey was involved with Zeiger and Felsoci. Casey testified that Damschroder must have known by March 10, 2014. The evidence will establish that Damschroder knew from at least February 17, 2014, four days before the protest was filed, that Casey was acting on behalf of the protestors challenging Earl.

Damschroder and Christopher, for example, sent each other repeated texts during the hearing on March 4, 2014. At least one of the texts involved Zeiger. Christopher texted to Damschroder that he hoped no one would ask who was paying Zeiger. Damschroder agreed, stating that it must be a "pretty penny." Christopher's texts with Damschroer indicate a high regard for the Zeiger firm. Collectively they establish that he was cheering for Zeiger, Felsoci, and Casey. Christopher (a Republican who worked with Husted before being brought over to the Secretary of State), and Damschroder (a confidante of Casey's) knew during the hearing that Zeiger was representing Casey as the true protestor. The Secretary also knew, through Helger, that Zeiger was representing Casey as the true protestor.

5. The Hearing Officer's March 7 Decision.

The protest hearing was held on Tuesday, March 4, 2014. At the hearing, the Zeiger law firm, specifically John Zeiger and Steven Tigges, represented Felsoci. Mark Brown and Mark Kafantaris represented Earl and Linnabary.

The central issue in regard to both Earl and Linnabary was whether their common signature-collector ("circulator"), Oscar Hatcett, Jr., should have filled in his "employer's" name and address in a box located on each petition he circulated. If he should have, but did not, then the entire petition is rendered invalid. All of the signatures collected on those petitions would be

thrown out. And without Hatchett's efforts, neither Earl nor Linnabary would have had enough valid signatures (500) to qualify for the primary. The LPO would have no candidates for Governor (to challenge Kasich) or Attorney General (to challenge DeWine).

The LPO admitted from the beginning that Hatchett was paid by the LPO. He was, however, never an employee of LPO or anyone else. The hearing officer, Smith, found as a factual matter that Hatchett was an independent contractor. The legal issue before the Secretary, then, was whether an independent contractor under Ohio law must identify as his "employer" the person or party who paid him. Case law on this precise point in Ohio was unclear. At least one case, *In re Protest of Evans*, 2006 WL 2590613 (Ohio App. 2006) ("the *Evans* case"), suggested that there was a distinction between independent contractors and employees. Only the latter were required to fill in the box.

On Friday, March 7, 2014, at 10:55 am, Smith delivered an un-paginated final report to Christopher. Page numbers were added by Smith approximately two minutes later in a subsequent e-mail. The final report concluded that far from distinguishing between independent contractors and employees, the *Evans* case actually required that independent contractors fill in the employer statement. Consequently, Hatchett should have identified the LPO as his employer but did not. Earl and Linnabary were removed from the ballot. The Secretary quickly embraced Smith's recommendation and made the report public just before 5 pm on Friday, March 7, 2014.

6. The Hearing Officer Changes His Mind.

As noted above, Smith delivered his decision (his "recommendation and report") at 10:55 am on Friday morning, March 7, 2014. He was in a Chicago airport when he sent this recommendation to Christopher. It had no pagination, but was quickly corrected by Smith.

Copies of e-mails prove that Pelger, Christopher, Damschroder (and others) immediately began preparations to accept the report and recommendation in favor of the protestors. From the e-mail trail discovered by Plaintiffs, there was no discussion about whether it was correct. It was embraced. The Secretary publicly accepted it just before 5 pm that day.

Through this Court's orders, Plaintiffs learned that Smith on Thursday evening, March 6, 2014, at just after 9 pm, announced to Christopher, via e-mail, a different ruling. He announced in this e-mail that his finished report and recommendation **was in favor of Earl and Linnabary**. Plaintiffs later, through discovery requests, received a copy of this report and recommendation. It in great detail analyzed the *Evans* case and drew a clear distinction between independent contractors and employees under Ohio law. Smith concluded under *Evans* that independent contractors, like Hatchett, need not identify the persons paying them as employers. The report was paginated.

Smith's e-mail announcing his decision stated that he knew his decision would "anger and disappoint a bunch of people." Christopher admitted at his deposition that he shared this information with others, likely Damschroder and Pelger. He claimed that he had no other phone conversation or communication with Smith about this e-mail that evening, and never even received a copy of the report. Phone records and e-mails, however, indicate that Christopher knew the contents of the report before Smith's e-mail.

Whether he received a copy of Smith's March 6 report or not, Christopher somehow knew (likely through phone conversations with Smith) that Smith's report relied heavily on the *Evans* case. Christopher therefore at 3:30 am on the morning of March 7, 2014 sent Smith a lengthy e-mail explaining why the *Evans* case required that independent contractors disclose who was

paying them as their employers. Smith received this e-mail no later than 5:00 am, when he replied via e-mail (on his way to the airport for a trip to Chicago) that Christopher should call him. Christopher and Smith both admitted at their depositions that a phone call occurred early that morning.

Christopher testified at his deposition that he remained at the Secretary's office all night on Thursday, March 6, 2014 until the morning of March 7, 2014. Damschroder testified that he may have been in the office all night. Through a subsequent sunshine law records request sent to the Secretary, Plaintiffs obtained the phone logs of Damschroder and Christopher for March 6 and 7, 2014. Phone logs reveal that Damscroder had a conversation from his office with Smith late in the afternoon (5:53 pm) of March 6, 2014. This was after Christopher e-mailed Smith that he was having a copy of the full hearing transcript delivered to him (Smith) by 4:30 pm that day. The call from Damschroder's office lasted 33 minutes. Damschroder claimed at his deposition that the call was placed by Christopher, who had wandered into his office to use the phone. Christopher failed to mention the phone call at his deposition.

7. Plaintiffs Will Prove that Earl Was Removed for Political Reasons.

Plaintiffs can prove (at bare minimum) the following facts:

(1) Damschroder and Christopher knew the contents of Smith's initial, March 6, 2014 report in favor of the candidates.

(2) Damschroder and Christopher knew the March 6 report depended on Smith's interpretation of the *Evans* case.

(3) Damschroder and Christopher jointly or separately acted to convince Smith that he was wrong.

(4) Convincing Smith to change his mind to favor the protestors, and hence DeWine, was not difficult given Smith's representation of DeWine.

(5) Damschroder and Christopher were engaged in constant ex parte contact with Casey, the true protestor, throughout the protest proceedings.

(6) Damschroder and Christopher knew during the protest proceedings that Casey was the true protestor, he was a Republican operative, and that the Zeiger firm represented him.

(7) DeWine's campaign, with the assistance of Doug Preisse, was behind the protest of Linnabary.

(8) Ohio Republicans, likely the Ohio Republican Party and/or the Kasich campaign, knew beforehand that Casey was, through Felsoci, challenging Earl.

(9) The Ohio Republican Party and the Kasich campaign encouraged and were involved in the removal of Earl from the ballot.

(10) Damschroder and Christopher acted separately and in concert to change Smith's initial report and recommendation that favored Earl and Linnabary.

(11) The Secretary would not have accepted Smith's report and recommendation had it favored Earl and Linnabary, and this information was made known to Smith.

(12) The protest process was orchestrated by Casey, Damschroder, Christopher and the Secretary to result in Earl's and Linnabary's removal from the ballot.

(13) The removal of Earl and Linnabary from Ohio's ballot was politically motivated.

8. Removing Candidates for Political Reasons Violates the First Amendment.

Plaintiffs have previously submitted briefs supporting their claim that state actors' removing candidates for political reasons violates the First Amendment. The factual conclusions outlined above support the following legal conclusions:

(14) Enforcement of Ohio's employer-statement rule was not the proximate cause of Earl and Linnabary's removal from the ballot.

(15) Enforcement of Ohio's employer-statement rule was not the cause-in-fact of Earl and Linnabary'r removal from the ballot.

(16) Earl's and Linnabary's removals from the ballot were proximately caused by the Secretary's, Casey's, Damschroder's, and/or Christopher's political concerns.

(17) Earl's and Linnabary's removals from the ballot were factually caused by the Secretary's, Casey's, Damschroder's, and/or Christopher's political concerns.

(18) The Secretary, Damschroder and Christopher are state actors acting under color of law for purposes of 42 U.S.C. § 1983.

(19) Casey is a state actor acting under color of law for purposes of 42 U.S.C. § 1983 both because (1) he is an agent of either the Ohio Republican Party, the Franklin County Republican Party, or the Kasich campaign, and/or (2) he is a board member of a public entity of the State of Ohio.

(20) Doug Preisse and the DeWine Campaign are both separately and jointly state actors acting under color of law for purposes of 42 U.S.C. § 1983.

(21) DeWine is a state actor acting under color of law for purposes of 42 U.S.C. § 1983 because he is Ohio's Attorney General.

(22) Smith is a state actor acting under color of law for purposes of 42 U.S.C. § 1983 because he was hired by Ohio to act as the hearing officer to resolve the protests against Earl and Linnabary.

(23) Separately and collectively, the actions of the aforementioned state actors were politically motivated and in violation of the First Amendment and 42 U.S.C. § 1983.

CONCLUSION

Plaintiffs certify to the Court that they have evidence supporting everything outlined in this Motion. Plaintiffs concede that many inferences and conclusions are contested. Assuming Plaintiffs can prove by a preponderance of the evidence the truth of their factual claims, they are entitled to relief under the Constitution of the United States. Earl is entitled to be restored to Ohio's ballot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of this Motion and Memorandum of Law were filed using the Court's electronic filing system and will thereby be electronically delivered to all parties through their counsel of record.

s/*Mark R. Brown*
Mark R. Brown