

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

OHIO STATE CONFERENCE OF THE	:	Case No. 2:14-cv-00404
NATIONAL ASSOCIATION FOR THE	:	
ADVANCEMENT OF COLORED PEOPLE	:	Judge Peter C. Economus
Et al.,	:	
	:	Magistrate Judge Norah McCann
Plaintiffs,	:	King
	:	
v.	:	
	:	<u>PLAINTIFFS' MOTION TO</u>
JON HUSTED, et al.,	:	<u>ENFORCE THIS COURT'S</u>
	:	<u>ORDER OF SEPTEMBER 4,</u>
	:	<u>2014</u>
Defendants.	:	
	:	

Plaintiffs respectfully submit this motion to enforce this Court’s September 4 Order granting Plaintiffs’ Motion for a Preliminary Injunction. Memorandum Opinion and Order, *NAACP v. Husted*, No. 2:14-cv-404 (S.D. Ohio Sep. 4, 2014), ECF No. 72 (hereinafter “Order”).

In its Order, this Court required, inter alia, that:

1. for purposes of the 2014 general election, the EIP voting period shall consist of the 35 days prior to the election... which include September 30 through October 3, 2014 and October 6 (the “same day registration period”); and
2. for the 2014 general election, Defendant Secretary Husted shall require all county Boards of Election to set uniform and suitable EIP voting hours that include an additional Sunday (October 26) and evening hours between October 20 and October 24, and between October 27 and October 31.

Id. at 70-71.

At the time that Plaintiffs write this motion, the evening of September 10, the Secretary has had nearly seven full days *to begin* at least to comply with this Court’s Order. Instead, the Secretary has entirely failed to comply and, in fact, is disseminating *false* information to Ohio voters, information that is flatly in contravention of the Court’s Order. The Secretary’s own

website officially, but falsely, notifies voters that early in-person voting in Ohio begins on October 7, 2014 rather than on September 30, and it fails to mention any evening hours or voting hours on Sunday, October 26. Exhibit A. Additionally, the websites of County Boards of Elections throughout the State similarly misinform voters as to the beginning of early voting, incorrectly stating that it begins on October 7, rather than September 30, and also fail to mention the hours ordered by this Court. Exhibit B.

This unique and precious opportunity of same-day registration is approaching rapidly. As the days diminish, rather than using his platform to inform voters of this opportunity, the Secretary is misleading them about the availability of this important option.

The Secretary has not hesitated to trumpet his mailing of absentee ballot applications to all registered voters, *see NAACP v. Husted*, No. 2:14-cv-0404 (S.D. Ohio Sep. 9, 2014), ECF No. 80 at 1, yet that very mailing directs them to “visit www.MyOhioVote.com for all the information you need to vote.” Exhibit C. This website takes voters to a page with a link to the “2014 Voting Schedule” with the aforementioned erroneous information. Exhibit A. The Secretary also directs voters to their local county’s Board of Election, which again repeats the false information. Exhibit B.

No doubt the Secretary will claim that it would only confuse voters to establish or advertise hours if an appellate court might change them later, for this was the rationale that he claimed when he similarly flouted this Court’s order in *OFA v. Husted*, No. 2:12-cv-4636 (S.D. Ohio Sep. 10, 2012), ECF No. 56. But a dissatisfied litigant, even one who is a high-ranking public official, may not create his own *de facto* stay. It is a well-established principle that “until [a court’s] decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected.” *United States v. United Mine Workers of*

America, 330 U.S. 258, 294 (1947). See also *North American Coal Corp. v. Local Union 2262, United Mine Workers of America*, 497 F.2d 459 (6th Cir. 1974) (injunction of court, even if invalid, still must be obeyed until and unless overturned on appeal); *Blackard v. Memphis Area Medical Center for Women, Inc.*, 262 F.3d 568 (6th Cir. 2001) (parties bound by an injunction are obligated to abide by that injunction when it is in effect, even if it is later determined to be erroneous).

The Secretary must finally come to “understand[] the importance of his role as an elected official of the State of Ohio to set an example to all citizens of Ohio that the order of a federal court—or any court—must be followed, even if one personally disagrees with the decision.” Order at 2, *Obama For America, v. Husted, et al.*, 2:12-cv-636 (S.D. Ohio Sep. 10, 2014), ECF No. 56. This Court should grant Plaintiffs’ motion to enforce this Court’s September 4 Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The foregoing was filed this 10th day of September, 2014 through the Court's Electronic Filing System. Parties will be served, and may obtain copies electronically, through the operation of the Electronic Filing System.

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