UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION
CIVIL ACTION NO. 3:15-CV-86 GFVT

THE LIBERTARIAN PARTY OF KENTUCKY, *et al.* Plaintiff, v. ALISON LUNDERGAN GRIMES SECRETARY OF STATE OF THE COMMONWEALTH OF KENTUCKY., *et al.* Defendants.	)	**ELECTRONICALLY FILED** **DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR EXPEDITED CONSIDERATION**

* * * * *

Defendants Alison Lundergan Grimes (in her official capacities as Kentucky Secretary of State and Chair of the State Board of Elections); Joshua G. Branscum, John Hampton, Stephen Huffman, Donald Blevins, Albert B. Chandler, III, and George Russell (each in their official capacities as Board Members of the State Board of Elections); and Maryellen Allen (in her official capacity as Executive Director, State Board of Elections) (collectively, "Defendants") by counsel, submit this response in opposition to "Plaintiffs' Emergency Motion for Expedited Consideration and Deadlines To Resolve and Hear This Matter," (Docket No. 17).

I. NO "EMERGENCY" CIRCUMSTANCES JUSTIFY DEPARTURE FROM THE ORDERLY ADJUDICATION PROVIDED BY THE FEDERAL RULES.

Plaintiffs elected to wait until eleven months before the 2016 general election to challenge candidate petition requirements that have long been the law of the Commonwealth. Nonetheless, plaintiffs attempt to rely on their own delay in bringing this lawsuit to suggest the presence of some purported "emergency" – and to further claim that the parties and the Court should depart from the typical (and orderly) procedural framework set forth by the Federal Rules of Civil Procedure. But plaintiffs' decision to delay in acting does not give rise to any

"emergency" circumstances. Instead, as the Sixth Circuit has recognized, "plaintiffs' failure to act earlier in pursing these claims significantly undermines their assertions of irreparable harm[.]" *See Serv. Emps. Int'l Union Local 1 v. Husted*, 698 F.3d 341, 346 (6th Cir. 2012).

Moreover, plaintiffs' proposed schedule completely overlooks two pending motions to dismiss (Docket Nos. 6 and 7), resolution of which may prove dispositive of certain of plaintiffs' claims. In short, plaintiffs should not be able to rely on their own delay in filing this lawsuit to justify the adoption of an overly burdensome scheduling order that would depart entirely from the discovery plan procedures set forth by the Federal Rules – and they have shown no reason why Rule 26 will not provide adequate opportunity for them to present the pending issues to the Court.

II. DEFENDANTS' NEWLY-RETAINED COUNSEL SHOULD BE PERMITTED A REASONABLE OPPORTUNITY TO FAMILIARIZE THEMSELVES WITH THE PENDING LITIGATION.

Because there is no "emergency," there is no reason to depart from the operation of the Rule 26 planning conference and scheduling mechanisms. In addition, plaintiffs' proposed "expedited consideration" is further inappropriate given that defendants have very recently retained new counsel, and anticipate that their previous counsel will seek leave to withdraw. Under these circumstances, adherence to the discovery plan procedures contemplated by Rule 26 will further ensure fairness to all parties by providing the undersigned counsel with sufficient opportunity to review the pleadings to date – and to form a view as to whether discovery is necessary to respond to the pending motion for summary judgment and motion for temporary restraining order and preliminary injunction (Docket No. 16). If such discovery is necessary, defendants should be permitted to assess how much time is reasonable for a discovery period so that both plaintiffs *and* defendants have an opportunity to develop evidence necessary to present

the underlying facts and issues to the Court in a fair and complete fashion.

Plaintiffs' strategy of simultaneously moving for summary judgment (Docket No. 16), while also proposing an extremely compressed discovery schedule (Docket No. 17-3), injects further confusion into the proceedings. If materials beyond the pleadings are necessary for adjudication of any pending claims, then plaintiffs' summary judgment is premature, as the parties have not even made initial disclosures – much less begun the discovery process. On the other hand, if the issues are of a purely legal nature, then plaintiffs should be satisfied that the orderly procedure set forth by Rule 26 for case scheduling will provide adequate time for presentation of the issues and ruling by the Court.

In sum, defendants' rights to a fair and orderly adjudication of the issues presented by this lawsuit should not be prejudiced by plaintiffs' manufactured "emergency" and request for an extremely aggressive scheduling order that circumvents the orderly administration provided for by Rule 26. For these reasons, defendants respectfully request that the Court deny plaintiffs' Motion for Emergency Expedited Consideration. A proposed Order is attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 8, 2016, I electronically filed Defendants' Response in Opposition to Plaintiffs' Motion For Expedited Consideration with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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THE LIBERTARIAN PARTY OF KENTUCKY, *et al.*	)	**ELECTRONICALLY FILED**
Plaintiff,	)	
v.	)	**ORDER DENYING PLAINTIFFS' MOTION FOR EXPEDITED CONSIDERATION**
ALISON LUNDERGAN GRIMES SECRETARY OF STATE OF THE COMMONWEALTH OF KENTUCKY., *et al.*	)	
Defendants.	)	

* * * * *

Upon the motion of plaintiffs for "Emergency Expedited Consideration of this Matter," the Court having considered the arguments of counsel and being otherwise sufficiently advised, IT IS ORDERED as follows:

Plaintiffs' Motion is DENIED. Pursuant to Fed. R. Civ. P. 26(f), the parties shall confer as soon as practicable regarding the topics set forth by Fed R. Civ. P. 26(f)(2).