

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
FRANKFORT DIVISION**

|                                                       |   |                                    |
|-------------------------------------------------------|---|------------------------------------|
| <b>THE LIBERTARIAN PARTY OF<br/>KENTUCKY, et. al.</b> | : | <b>Case No. 3:15-CV-86 GFVT</b>    |
|                                                       | : | <b><i>Electronically Filed</i></b> |
| <b>Plaintiffs</b>                                     | : |                                    |
| <b>v.</b>                                             | : |                                    |
| <b>ALISON LUNDERGAN GRIMES,<br/>et. al.</b>           | : |                                    |
| <b>Defendants</b>                                     | : |                                    |

**PLAINTIFFS' MEMORANDUM IN RESPONSE TO DEFENDANTS REQUEST FOR A  
STATUS CONFERENCE AND OPPOSITION TO DEFENDANTS REQUEST TO STAY  
BRIEFING**

Plaintiffs, by and through Counsel, hereby submit the foregoing Memorandum in response to the Kentucky Board of Elections Defendants recent Motion for a status conference [RE#23]. Plaintiffs agree that resolution of this matter may warrant a status conference (including the pending Motion for Expedited Relief RE#17, 19, 20). Nevertheless, Plaintiffs submit that staying further briefing is inappropriate, particularly since the pending motions include Motions for a Temporary Restraining Order and Preliminary Injunction [RE#16].

Staying a lawsuit without considering the merits of a preliminary injunction motion, in the present case, effectively denies Plaintiffs their rights to appropriate relief. *Mailblocks, Inc. v. Spam Arrest, LLC*, 2003 U.S. Dist. LEXIS 28611 (WD Wash. 2013). Indeed, “[i]f a district court decides to stay proceedings for an indeterminate period and a party has competent and specific evidence tending to show that it will be unable to secure effective relief when the stay is terminated, the party in such jeopardy, in the absence of extraordinary circumstances, is entitled

to have a motion for *pendente lite* relief considered on the merits" *Rolo v General Dev Corp*, 949 F.2d 695, 702 (3d Cir 1991).

"[T]o the extent that [the moving party] can establish a likelihood of success on the merits of its First Amendment claim, it also has established the possibility of irreparable harm as a result of the deprivation of the claimed free speech rights." *Connection Dist. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (*quoting Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)). After all, the United States Supreme Court has repeatedly recognized, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Id.* (*quoting Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)). The same is true of Equal Protection. *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 578 (6th Cir. 2002) ("Courts have also held that a plaintiff can demonstrate that a denial of an injunction will cause irreparable harm if the claim is based upon a violation of the plaintiff's constitutional rights.").

Granting a stay of briefing in the present matter deprives the Plaintiffs of effective relief – namely ballot access in an upcoming election. And, because the evidence on the temporary restraining order and preliminary injunction is the same as the motion for summary judgment, there is no material or significant additional burden or harm in having Defendants respond to the current motions.

Nor is this a case where there is nothing that has occurred and the summary judgment motion was filed right after service of process. In *CBS Interactive, Inc. v. NFL Players Ass'n*, 259 F.R.D. 398, 417 (D. Mn. 2009), the Court noted that granting a stay or dismissing a pending Motion for Summary Judgment with prejudice was not proper where the parties had “filed several briefs and voluminous supporting documents that respond substantively to CBS

Interactive's motion and the factual allegations that form the basis of its claims.” The Court concluded that it “finds Defendants' prematurity argument unavailing in the face of the evidentiary record that has been submitted by the parties, the pre-trial discovery allowed, and the several months that have elapsed since the suit was filed.” *Id.*

Compare that harm to the irreparable harm involving the loss of the Constitutional rights of Plaintiffs, and the answer becomes clear: the current request for a stay of briefing should be denied.<sup>1</sup>

Finally, some brief comment is warranted regarding the reason Defendants seek to delay a response: the pending motions to dismiss [RE#6 and #7]. Those motions are devoid of merit, particularly in light of *Russell v. Lundergan-Grimes*, 784 F.3d 1037 (6th Cir. 2015), that adjudicated the same standing issues, on this same Chapter of Kentucky law enforced and administered by these same Defendants, adversely to these same Defendants, that they should not be permitted to serve as any sort of roadblock to moving forward.

## **CONCLUSION**

Plaintiffs agree that a status conference with the Court would be helpful. Plaintiffs disagree that any briefing should be stayed, particularly given the pendency of Temporary Restraining Order and Preliminary Injunction requests for relief. Plaintiffs have no objection to a discrete additional amount of time to respond to the pending motions, if it is needed, and accompanied by a swift schedule for resolution of this matter, given the irreparable harm to Plaintiffs that is at stake. But Defendants have not asked for that relief.

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<sup>1</sup> If Defendants believe the pending motions are dispositive, they are free to rest their defense of the pending motions on those defenses.

Plaintiffs note their availability for a status conference tomorrow (February 19), the morning of February 22, the afternoon of February 23, February 24, the morning of February 25, and February 26, 2016.

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing upon all counsel of record, this 18<sup>th</sup> day of February, 2016, via the Court's CM/ECF system.

/s/ Christopher Wiest  
Christopher Wiest (KBA 90725)

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EASTERN DISTRICT OF KENTUCKY  
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| ALISON LUNDERGAN GRIMES,<br><i>et. al.</i>           | : |                             |
|                                                      | : |                             |
| Defendants                                           | : |                             |

**ORDER GRANTING STATUS CONFERENCE AND DENYING DEFENDANTS  
REQUEST TO STAY BRIEFING**

The Court GRANTS the request for a status conference, and hereby schedules same for \_\_\_\_\_, 2016, at \_\_:\_\_.

The Court DENIES the request to stay this matter or to dismiss without prejudice the current pending Motion for Summary Judgment (and Motion for Temporary Restraining Order and Preliminary Injunction).

IT IS SO ORDERED:

\_\_\_\_\_  
Judge Van Tatenhove