



## “Golden Week” restored by federal judge

September 12, 2014

Last week, Judge Peter Economus of the U.S. District Court for the Southern District of Ohio, granted a preliminary injunction restoring seven days of early in-person voting during which Ohioans may register to vote and cast a ballot on the same day, and requiring additional early in-person voting hours on Sundays and in the evenings.

The case, *Ohio State Conference of the NAACP v. Husted*, was brought as a reaction to Senate Bill 238, which amended Ohio’s voting laws to reduce the number of early in-person voting days from 35 to 28 and eliminate the week of early in-person voting when a person could both register to vote and cast a ballot on the same day — this week is commonly referred to as “Golden Week.” S.B. 238 was signed by Gov. Kasich on February 21, 2014, and became effective on June 1, 2014. Plaintiffs, including the Ohio State Conference of the NAACP, the League of Women Voters of Ohio and several churches, requested a preliminary injunction to prevent the provisions in S.B. 238 from going into effect for the 2014 election.

In addition to S.B. 238, plaintiffs also challenged the implementation of directives 2014-06 and 2014-17, issued by Secretary of State Jon Husted. These directives set uniform early in-person voting hours throughout the state. Previously, individual boards of elections in Ohio’s 88 counties were responsible for setting hours. Plaintiffs alleged that because the schedule set by these directives does not include evening hours or enough weekend hours, it disadvantages various voting groups, including African Americans, low-income voters and the homeless.

In their complaint, plaintiffs argued that the provisions in S.B. 238 and the directives violate the Equal Protection Clause and Section 2 of the Voting Rights Act of 1965. They argue that the elimination of Golden Week and the new uniform voting schedule disproportionately impact minority and low-income voters who rely on same-day registration and voting, as well as evening and Sunday voting.

In granting the plaintiff’s motion for preliminary injunction, Judge Economus stated that an effect on voter turnout is not determinative of an equal protection violation. He stated that the real question for the court to consider is “whether a burden has been imposed on the fundamental right to vote.” With respect to the shortened early

in-person voting calendar and lack of evening and weekend hours, Judge Economus notes that African-American communities often take advantage of Sunday voting through initiatives like “Souls to the Polls,” and for individuals with non-traditional work hours, evening voting hours are important.

In his analysis of the elimination of “Golden Week,” Judge Economus also cited “Souls to the Polls” efforts and the difficulties faced by low-income voters who often rely on same-day registration and voting due to transportation limitations. He also states that lower-income voters are unlikely to have the flexibility to visit a polling place during a lunch break — especially when relying on public transportation to do so.

The court was unpersuaded by the defendant’s arguments that absentee ballots are available to all voters and that this nullifies the burden on the ability to take part in early in-person voting. Judge Economus stated that the groups impacted by these changes to Ohio’s voting laws tend to be distrustful of voting by mail and the logistics of voting by mail can be similarly difficult for these individuals. The judge was similarly unpersuaded by arguments that the changes in S.B. 238 and the Secretary of State’s directives were necessary to prevent voter fraud and reduce costs for boards of elections.

Since the release of the opinion and order on Thursday, September 5, Secretary of State Jon Husted has said he will appeal the decision. In a statement released by his office, Secretary Husted stated his belief that “all voters, no matter where they live, should have the same opportunity to vote” — a goal he believes is met through a uniform statewide voting schedule.

For now, however, early in-person voting is set to start on September 30, with evening hours beginning the week of October 20, 2014. Counties are free to add additional hours if they choose. Judge Economus declined to stay his order to add early in-person voting days after a request from state officials to do so.

On September 10, 2014, Judge Economus granted a motion from the Ohio General Assembly to intervene for the purpose of appeal. Appellants, Ohio Secretary of State Husted and Ohio Attorney General Mike DeWine, filed a motion to expedite the appeals process on September 8, 2014, in hopes that the issue will be resolved before early in-person voting would start on September 30, 2014. The motion was granted by the U.S. Court of Appeals for the Sixth Circuit on September 11, 2014.