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

THE NORTHEAST OHIO COALITION FOR THE HOMELESS, *et al.*,	:	**Case No. 2:06-CV-896**
Plaintiffs,	:	
v.	:	**JUDGE ALGENON L. MARBLEY**
JON HUSTED, in his official capacity as Secretary of the State of Ohio,	:	**Magistrate Judge Terence Kemp**
Defendant.	:	
and	:	
STATE OF OHIO	:	
Intervenor-Defendant	:	

OPINION AND ORDER

I. INTRODUCTION

This matter comes before the Court on Plaintiffs' The Northeast Ohio Coalition for the Homeless ("NEOCH"), Service Employees International Union ("SEIU") and the Ohio Democratic Party ("ODP") Urgent Motion to Enjoin State-Court Proceedings and for an Order to Show Cause Why Relators Thomas Niehaus and Louis Blessing, Jr. Should Not Be Held in Contempt. (Dkt. 246.) Plaintiffs' Motion seeks immediate injunctive relief, in the form of an Order from this Court enjoining Ohio Senate President Thomas E. Niehaus and Ohio House of Representatives Speaker Pro Tempore Louis W. Blessing, Jr. (jointly, "Relators") and their counsel from further prosecuting their state court action filed on behalf of Intervenor-Defendant State of Ohio in *State ex rel. Niehaus v. Husted*, Ohio S. Ct. Case No. 12-0639 (the "Mandamus Action"). For the reasons stated herein, Plaintiffs Motion for the Injunction is **GRANTED**.

II. BACKGROUND

A. The Settlement and Consent Decree

The underlying facts of this case are memorialized in the prior decisions of this Court and the Sixth Circuit. In 2006, the Ohio General Assembly (or "General Assembly") amended Ohio's Election Code to require that voters provide one of several types of identification in order to cast a regular ballot in state and federal elections held in Ohio ("Voter ID Law"). Plaintiffs filed this action under 42 U.S.C. § 1983 in response, against then Ohio Secretary of State J. Kenneth Blackwell challenging the constitutionality of several provisions of the Voter ID Law. The State of Ohio was subsequently permitted to intervene as a defendant "both in appeal . . . and in the ongoing district court proceedings," on behalf of the people of Ohio and the General Assembly. *NEOCH v. Blackwell*, 467 F.3d 999, 1002, 1008 (6th Cir. 2006) (granting the State of Ohio leave "to intervene to represent the interests of the people of Ohio and the General Assembly in defending the constitutionality of the [Voter ID Law]").

On October 26, 2006 Plaintiffs were granted a temporary restraining order by this Court, the majority of which was stayed by a subsequent order of the Sixth Circuit. That litigation resulted in this Court's entry of a Consent Order negotiated by the parties that applied to the 2006 election. Following the 2006 election, Plaintiffs believed that the Ohio Board of Elections was improperly counting provisional ballots. Consequently, the parties negotiated an Agreed Enforcement Order, which the Court entered on November 15, 2007. This case erupted into activity again during the Fall 2008 election season, and Plaintiffs filed a motion for a preliminary injunction. As a result of the parties negotiations regarding the preliminary injunction motion, the Court entered two more orders setting forth procedures that would be used in counting and processing provisional ballots.

Perhaps to the surprise of no one, the parties continued to dispute both substantive issues of compliance with the Court's orders, as well as attorneys' fees. In late 2009, the parties began negotiations to globally settle this litigation, which continued through early 2010. These negotiations, in which the State of Ohio was represented by Susan Ashbrook, (Dkt. 219-2, ¶ 6), ultimately resulted in the April 19, 20120 Consent Decree ("Consent Decree"), which was entered by the Court upon the agreement of the parties. The parties agreed to "waive a hearing and findings of fact and conclusions of law on all issues," and further agreed to the entry of the Consent Decree "as final and binding among and between themselves as to the issues raised in Plaintiffs' Complaint and Supplemental Complaint, and the matters resolved in this Decree." (Dkt. 210. p.2)

The Consent Decree lists the parties bound to its terms, which are: Plaintiffs Northeast Ohio Coalition for the Homeless ("NEOCH"), the Columbus Coalition for the Homeless ("CCH"), Kyle Wangler ("the Individual Plaintiff"), and Service Employees International Union, Local 1199 ("SEIU"), Defendant Secretary of State and Intervenor-Defendant State of Ohio (collectively therein, "Defendants"). (Dkt. 210, p.1.) In addition, the Consent Decree specifically provided that "[t]his Order shall be binding upon the Defendants and their employees, agents and representatives." (Dkt. 210, ¶ 2.)

The Consent Decree's terms include detailed orders of injunctive relief, specifically requiring the Secretary to issue directives instructing Ohio's county Boards of Elections to adhere to rules regarding casting and counting provisional ballots for persons without identification other than a social security number. Moreover, the Secretary is required, before every primary and general election, to remind the Boards of Elections that they must comply with the injunctive relief as stated in the Consent Decree. The Consent Decree provides for its

continuing validity through June 30, 2013, and the parties agreed to "the continuing validity of this Decree if it or its terms are challenged in any other court." (Dkt. 210, p.2.).

B. The Relators' Original Action for Mandamus in the Supreme Court of Ohio

On April 16, 2012, Relators filed their original Mandamus Action in the Supreme Court of Ohio, seeking "to compel the Secretary of State to rescind directives issued pursuant to a consent decree," referring to the Consent Decree. (Dkt. 246-1, Ohio S. Ct. Case No. 12-0639, Compl. p.1.) The Relators' complaint asserts that "the Secretary of State does not have authority under the Ohio Constitution to change or amend Ohio laws or to nullify the votes that Ohio legislators have made in passing those laws." (*Id.*) Plaintiffs filed the instant motion on May 8, 2012, seeking an injunction against the Relators' Mandamus Action and requesting an expedited briefing schedule on the motion. On May 9, 2012, the Court held a Rule 65.1 conference telephonically in which counsel for Plaintiffs, Relators, the State of Ohio, and Secretary of State Jon Husted (the "Secretary") were present. The Court ordered an expedited response brief to be submitted from counsel for the Relators, who are the only party Plaintiffs seek to enjoin. On May 10, 2012, the Court held an additional status conference with the same parties and announced its ruling granting Plaintiffs' motion. The Court advised that its written opinion would follow.

For the reasons stated on the record on May 10, 2012, and more fully explicated herein, the Court enjoins the Relators from seeking action in violation of the Consent Decree, **ORDERS** Relators to dismiss their Mandamus Action in the Supreme Court of Ohio, without prejudice, and instructs Relators to proceed in this Court with any further challenges or modifications to the terms of the Consent Decree.

III. LAW AND ANALYSIS

Relators contend that the Plaintiffs' request for injunctive relief should be rejected for the following three reasons: (1) Relators are not a party to this lawsuit, and therefore, this Court lacks jurisdiction to enjoin them from pursuing their state law claims; (2) there is and has been no violation of this Court's orders as to make Plaintiffs' claim ripe; and (3) principles of federalism provide that the Ohio Supreme Court is the final authority on issues of state law. (Dkt. 255, p.2.) As always, the Court first addresses whether it has proper jurisdiction over the issues and parties before it. Here, this means determining whether the Court has the authority to enjoin Relators from prosecuting their mandamus action in state court. Second, this Court considers the ripeness issue, and, finally, this Court determines whether the relief requested by plaintiffs is appropriate and/or warranted.

A. This Court Has Jurisdiction Over the Relators

The jurisdiction of this Court over the Relators cannot reasonably be questioned. The State of Ohio and its "employees, agents and representatives" are bound under the Consent Decree's orders by its express terms. (Dkt. 210, ¶ 2.) The Relators are prosecuting their Mandamus Action on behalf of, and as official representatives and agents of the State of Ohio, which is a named party to the Consent Decree. (*Id.* p.1) Pursuant to the parties' agreement, as well as the inherent power of this Court to enforce its judgments, the Court has jurisdiction over the Relators and any other party, or agent of a party, to enforce the terms Consent Decree. Additionally, even if Relators were somehow considered nonparties to this action or the Consent Decree, their claimed interests as members of the General Assembly were expressly and adequately represented in the proceedings by the State of Ohio. In any event, the Court retains

the inherent authority to enjoin a collateral attack, even by nonparties, upon the Consent Decree's orders brought in another court.

1. The Relators are Bound by the Consent Decree as Representatives of the State of Ohio

Relators do not dispute that the State of Ohio is a party to this action. Susan Ashbrook of the Attorney General's office, in an affidavit to the Court, affirmed that the State of Ohio is "a party in this case," that she "approved the language of the final Consent Decree on behalf of the State of Ohio." (Dkt. 219-2.) Relators instead insist that they are not representatives of the State of Ohio for the purposes of this case. Relators attempt to distinguish themselves as representatives of the General Assembly only, and argue that the General Assembly and its members are not, and never have been, parties to this action or to the Consent Decree. At least in their current Mandamus Action, Relators are mistaken. When prosecuting an action on behalf of the State, in their official capacity as elected officials of the State, Relators are acting in the place of the State of Ohio.

The Mandamus Action has been brought by the Relators "*ex relatione*," which is the Latin phrase for "on behalf of" or "upon the request of," the State of Ohio. *See Ohio ex. rel. Skaggs*, 629 F.3d 527, 529 (6th Cir. 2010) ("'[R]elators,' the name given to claimants who file an action on behalf of others."); *see also* Ohio Rev. Code 2731.04 ("Application for the writ of mandamus must be by petition, in the name of the state"). The Mandamus Action was filed by Attorney General for the State of Ohio, whose office has represented the State of Ohio in this action, including in the Consent Decree proceedings.[1] Relators are prosecuting the Mandamus

[1] As stated by the Sixth Circuit in *Blackwell*:

> Under Ohio Rev. Code Ann. § 109.02, the Attorney General is "the chief law officer for the state and all its departments" and shall appear for the State in any tribunal in a case in which the state is a party when required by the governor or the general assembly. The Attorney General, then, is

Action in their official capacities as elected state officials. As such, an order from this Court enjoining the Relators is, as far as the law is concerned, an Order enjoining the State of Ohio—a named party to this action and subject to the binding terms of the Consent Decree.

Fed. R. Civ. P. 65(d) provides that "every injunction," which includes those in the Consent Decree, binds not just the parties, but "the parties' officers, agents, servants, employees, and attorneys," as well as any "other persons who are in active concert or participation with [them]." As a general doctrinal matter, it is well-established that state officials, when acting in their official capacity, stand in the place of the state. *See*, *e.g.*, *VIBO Corp. Inc. v. Conway*, 669 F.3d 675, 691 (6th Cir. 2012) (stating, in the context of sovereign immunity, that "[a] claim against a state officer acting in his official capacity is deemed to be a claim against the state") (citing *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989)).

Relators argue, however, that they are "no more agents of the State of Ohio for purposes of this case and the [Consent] Decree than the Governor, the Auditor of State, the Treasurer of State, or the individual justices of the Ohio Supreme Court." To support this proposition Relators rely on Ohio Rev. Code § 109.36(B), which states that, "'State' means the state of Ohio, including, but not limited to *the general assembly*, the supreme court, courts of appeals, *the offices of the elected state officers*, and all departments, boards, offices, commissioners, agencies, and other instrumentalities of the state of Ohio." (emphasis added.) Under Ohio law, therefore, the General Assembly, and its elected state officers, is specifically included within the definition of the "State of Ohio."

> both the State's chief legal officer and a representative of the people and the public interest, but also a representative of an individual officer-client.

467 F.3d at 1009 (citing Justin G. Davids, *State Attorneys General and the Client-Attorney Relationship: Establishing the Power to Sue State Officers*, 38 COLUM. J.L. & SOC. PROBS. 365, 372-76 (2005)).

Narrowing the inquiry to this specific action, the record confirms the Attorney General's Office unequivocally intended for the General Assembly's interests to be encompassed within its representation of the State of Ohio. Appearing before the court seeking to intervene in this action, counsel for the State of Ohio stated that, "[i]t is the General Assembly that is asking our office to intervene on their behalf." (Dkt. 255, 06-cv-896, Oct. 27, 2006 Trans., at 19:18-20.) (stating also that "[o]ne client is the General Assembly," (*Id.* at 26:7-9)). The State of Ohio was permitted to intervene on behalf of itself and the General Assembly, a fact which was affirmed by the Sixth Circuit. *Blackwell*, 467 F.3d at 1002, 1008 ("The State of Ohio moves to intervene to represent the interests of the people of Ohio and the General Assembly in defending the constitutionality of the statute…. [T]he Secretary's primary interest is in ensuring the smooth administration of the election, while the State and General Assembly have an independent interest in defending the validity of Ohio laws and ensuring that those laws are enforced.").

To the extent it holds any relevance, therefore, the Relators' assertion that the General Assembly was not a party to this action or the Consent Decree is erroneous and misguided. The Attorney General's Office, as is logical, will only designate "separate sets of attorneys representing its 'different clients,'" (Relator's Opp., p. 5, fn. 2), when those clients have conflicting interests. In this case, counsel from the Attorney General's Office represented Secretary Blackwell, and then separate counsel from that office represented the State of Ohio on behalf the General Assembly. The Attorney General's Office, thus, intended the State of Ohio to encompass the General Assembly because their interests were aligned. The General Assembly,

as distinct from the State of Ohio, need not have had separate counsel in a particular action for its members to be bound by the judgments in that action.[2]

As there is no dispute that the State of Ohio is a party to this action, there can accordingly be no dispute that Relators, who bring the Mandamus Action "on behalf of" the State of Ohio in their capacities as elected state officers and members of the General Assembly, are bound by the terms of the Consent Decree when acting in that capacity.

2. The Court has the Power to Enforce its Judgments Against Nonparty Interference

Even if Relators were not treated as representatives of the State of Ohio, and were not parties to this action, the Court would have authority under the All Writs Act, 28 U.S.C. § 1651, and elsewhere,[3] to enjoin them from "frustration of [the] consent decree[]." *See City of Detroit*, at 517 (6th Cir. 2003) (en banc) ("[W]e hold that the All Writs Act provides district courts with the authority to bind *nonparties* in order to prevent the frustration of consent decrees that determine parties' obligations under the law.") (emphasis added.) Relators argue that the Consent Decree only places legal obligations on the Secretary, and thus they cannot be bound from taking actions to defeat the Consent Decree. This argument is meritless, because the *City of Detroit* test for binding nonparties does not require that the consent decree impose legal obligations on the nonparties themselves.

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[2] It is critical to appreciate what the Court is not holding. The Court is by no means suggesting that distinct entities and/or governmental bodies within the State of Ohio can never be considered separate parties, or represent opposed interests to one another. Such a suggestion would be absurd, given the very posture of this action, which involves distinct bodies and offices within the State of Ohio. Where, as here, the State of Ohio has intervened on behalf of its interests "and the General Assembly in defending the constitutionality" of the laws of Ohio, however, and where the State then enters into a particular Consent Decree binding its agents and officers and waiving further litigation in any court, so long as that Consent Decree is valid, its officers may not subsequently challenge those same terms, except through the mechanisms provided in the Consent Decree.

[3] *See* Fed. R. Civ. P. 65(d)(2)(C), discussed *supra*.

Even if the General Assembly, and by extension, Relators, was not a fully distinct party to the Consent Decree, because its interests were represented by the State of Ohio, Relators are bound by it. In *Hansberry v. Lee*, 311 U.S. 32 (1940), the Supreme Court stated that "consistent with the Due Process Clause, 'members of a class not present as parties to the litigation may be bound by the judgment where they are in fact adequately represented by parties who are present . . . or where for any other reason the relationship between the parties present and those who are absent is such as legally to entitle the former to stand in judgment for the latter.'" *Tenn. Ass'n of Health Maint. Orgs., Inc. v. Grier*, 262 F.3d 559, 564 (6th Cir. 2001). Simply because Relators now find their particular individual interests to be in conflict with certain provisions of the Consent Decree does not magically release them from its terms; otherwise, entering the decree would have had no purpose.

Relators complain that the State of Ohio was not represented at the April 19, 2010 hearing regarding the Consent Decree's terms, and thus the State of Ohio did not agree to the Consent Decree. This argument, in addition to being untimely, smacks of disingenuousness. Two full years have passed since the Consent Decree's issuance, and the State of Ohio is a clearly designated party bound to the Consent Decree. (Decree, p. 1; p. 3, para 2.) Paragraph 11 of the Consent Decree provides that at any time, "any of the parties may file a motion with the Court to modify, extend or terminate this Decree" for good cause shown. Relators did not even attempt to utilize the mechanisms provided in the Consent Decree to challenge its terms. Relators complaint of having not been duly represented in the proceedings is a motion to be made in this Court, not the Supreme Court of Ohio.

B. The Court's Authority to Enjoin the Relators' Proceedings

1. The All Writs Act

In addition to challenging the Court's jurisdiction, the Relators argue that the matter is not ripe, there being no violation of the Consent Decree to warrant an injunction. Supreme Court and Sixth Circuit case law state otherwise. The precise relief requested by Plaintiffs—of enjoining a state court action from further prosecution before a decision has been made therein—has been previously upheld. *See Lorillard Tobacco Co. v. Chester, Willcox & Saxbe*, 589 F.3d 835 (6th Cir. 2009) (affirming the district court's order, under the All Writs Act, "enjoin[ing] based upon the terms of the permanent injunction to which they agreed, [a party] from proceeding with the Florida [state court] Lawsuit"); *City of Detroit*, 329 F.3d at 523-24 ("The force of a consent judgment is well settled within our judicial system ... The All Writs Act makes no distinction between consent judgments and court orders.").

The All Writs Act provides that "the Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651. The Supreme Court has held that a federal district court may "issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued." *U.S. v. New York Tel. Co.*, 434 U.S. 159, 172 (1977) (holding that the All Writs Act allows the court to issue orders, even to non-parties, who "are in a position to frustrate the implementation of a court order").

In the Consent Decree, the Court ordered that the Secretary adhere to certain rules and issue specific directives with respect to voting procedures, and in particular the counting of provisional ballots. The Relators' Mandamus Action seeks an order "to compel the Secretary of State to rescind directives issued pursuant to a consent decree," (Ohio S. Ct. Case No. 12-0639, Compl. p.1). The practical effect of the Relators' action is to frustrate this Court's final

judgment from being carried out, and the All Writs Acts allows the Court to enjoin Relators from proceeding with it. As the Sixth Circuit stated in *Lorillard*, the "district court's enjoining of the state-court litigation, therefore, is a proper means of enforcing its previously entered permanent injunction." 589 F.3d at 847.

Relators claim that the Anti-Injunction Act, 28 U.S.C. § 2283, prohibits the Court from enjoining Relators' action. The Anti-Injunction Act's exceptions provide, however, that the Court is within its authority. The Anti-Injunction Act provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court *except* as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283 (emphasis added).

All three exceptions apply here. First, Plaintiffs' action was brought under an Act of Congress, 42 U.S.C. § 1983's provisions for civil relief from violations of constitutionally and federally protected civil rights. The Supreme Court has held that "Congress plainly authorized the federal courts to issue injunctions in § actions." *Mitchum v. Foster*, 407 U.S. 225, 226 (1972) (concluding, therefore, that "§ is an Act of Congress that falls within the 'expressly authorized' exception of the [Anti-Injunction Act]").

The second exception, discussed by the *Lorillard* Court at length, applies here as well. The Sixth Circuit there held that the second, "necessary in aid of its jurisdiction" exception "is applicable to a district court's continuing authority to enforce a settlement agreement where the agreement is either incorporated into the court's final judgment or the court expressly retains jurisdiction over the agreement in such judgment." *Lorillard*, 589 F.3d at 845 (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380–81(1994)). The continuing jurisdiction of the Court to enforce the terms of the Consent Decree "until June 30, 2013," as agreed to by the

parties, brings any injunction order enforcing the Consent Decree squarely within the exception to the Anti-Injunction Act. (Dkt. 210, p.2; ¶ 9.)

Finally, an injunction is permitted under the third exception to the Anti-Injunction Act where it is necessary to protect the Court's judgments. An order enjoining a collateral attack on the Consent Decree, a final judgment from this Court which is still in effect, is one made under the third exception.

Relators' argument that only "in rem" jurisdiction cases apply for the exception of the Anti Injunction Act is erroneous. *Lorillard* was not an "in rem" jurisdiction case, but the injunction there was upheld. *Lorillard* dealt with a class action settlement which was merely "*analogous* to ... an in rem action ..., where it is intolerable to have conflicting orders from different courts." *Lorillard*, 589 F.3d at 848; *see also Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877, 882 (11th Cir.1989) (reasoning that a "lengthy, complicated litigation is the virtual equivalent of a res" (citation and internal quotation marks omitted)).

Indeed, "[s]o long as the court is acting pursuant to this authority, the All Writs Act 'authorizes a federal court to issue such commands as may be necessary or appropriate to effectuate and prevent the frustration of its orders it has previously issued in exercise of jurisdiction otherwise obtained.'" *Id.* at 844 (quoting *City of Detroit*, 329 F.3d at 522). Because this Court has retained jurisdiction over the Consent Decree, and over the Relators to prevent their frustration of that decree, "[s]uch orders are excepted from the prohibition of the Anti-Injunction Act." *Id*.

C. Necessity of Plaintiffs' Requested Injunction

Relators claim that despite the nature of their Mandamus Action, to compel the Secretary to make orders contrary to those required by the Consent Decree, enjoining Relators' action is

not necessary because the Mandamus Action addresses only issues of state law, and does not threaten the Court's judgment. The Supreme Court has specified the three conditions precedent to issuance of a writ pursuant to the All Writs Act:

> First, the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires, --a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process. Second, the petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable. Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.

Cheney v. United States Dist. Court for the Dist. of Columbia, 542 U.S. 367, 380-81 (2004) (internal quotations and citations omitted).

First, the Plaintiffs have made a compelling showing that an order enjoining the Relators from pursuing their collateral challenge to the Consent Decree is necessary. No alternative means exist which would ensure against rulings issuing contrary to the Consent Decree. Conflicting orders to the Secretary from the Ohio Supreme Court would not only undermine the jurisdiction of this Court, but would further confuse an already well-muddied electoral landscape in these critical months leading up to a Presidential Election.[4]

As discussed in Sections A and B of the Court's Opinion, Plaintiffs have satisfied their burden of showing that the Court's authority to issue an injunction in this case is clear and indisputable. Finally, the requested relief is warranted given the Relators' extraordinary act of lodging a direct collateral attack on a Consent Decree of this Court which is still in effect. The severity of any injunction is lessened, once again, by the fact that the Consent Decree provides

[4] Counsel for the Secretary affirmed, at the Court's May 9, 2012 hearing, that, despite conflicting language from the Ohio Supreme Court in *State ex rel. Painter v. Brunner*, 128 Ohio St. 3d 17 (Ohio 2010), the Secretary believes he is bound by the Consent Decree. While the Secretary's conclusion that he is bound by the Consent Decree may seem clear enough, further conflicting directives is precisely what this Court seeks to avoid with this injunction.

Relators the opportunity for challenges and/or requests for modifications. The Relators, instead of attempting to circumvent the Consent Decree's terms through a collateral challenge in state court, should have filed a motion under Paragraph 11 the Consent Decree which states that "any of the parties may file a motion with the Court to modify, extend or terminate this Decree for good cause shown." (Dkt. 210, ¶ 11.) Far from Relators being forever denied their only day in Court to protect their interests as members of the General Assembly, as they dramatically assert, the Consent Decree contemplated the parties' changing interests, which is why it provided for future modifications upon motion in this Court. The Court has already scheduled further proceedings in which Relators may bring such a motion if necessary. (Dkt. 259.)

The Relators, finally, attempt to cast the Mandamus Action as unrelated to the Consent Decree and the constitutional issues resolved therein, claiming that the Mandamus Action "is much broader than the particulars of a single case" and merely asks the Ohio Supreme Court to decide a "narrow issue of Ohio state law." (Dkt. 255, p.1) The Relators' complaint in the state court, however, plainly states the primary purpose, aim, and relief requested in the Mandamus Action is "to compel the Secretary of State to rescind directives issued pursuant to a consent decree," (Ohio S. Ct. Case No. 12-0639, Compl. p.1); that is, to compel the Secretary to disobey this Court's orders pursuant to the Consent Decree.

That the Relators couch their grounds for seeking mandamus chiefly in terms of Ohio law does not alter the nature of their collateral attack on the decree of this Court. As the district court stated in *Lorillard,* "[r]egardless of how [plaintiff]'s [state court] claims are captioned, or in what form [plaintiff] seeks payment of the Supplements, the claims in the [state court] Lawsuit 'relate to any matter set forth in the Settlement Agreement.'" *Lorillard*, Case No. 04-cv-715, 2008 WL 4326466, at *3 (S.D. Ohio 2008) (ordering that "[plaintiff] is therefore enjoined, based upon the

terms of the permanent injunction to which they agreed, from proceeding with the [state court] Lawsuit").

Upon entering into the Consent Decree, and upon the Court's approval of the Consent Decree, the parties agreed they would be "subject to the continuing validity of this Decree if it or its terms are challenged in any other court." (Dkt. 210, p.2.) The Court's present injunction is a limited intrusion into the Ohio Supreme Court proceedings necessitated by the Relators' prior commitments in this Court. The injunction in no way challenges the Ohio Supreme Court's power to decide Ohio law. *See Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 295 (1970) (acknowledging that the exceptions to the Anti–Injunction Act "imply that some federal injunctive relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case").

The Secretary cannot obey conflicting orders on how to direct the Board of Elections. Where, as here, the real possibility of such conflicting orders threatens to create an "unseemly conflict" between state and federal courts "whose jurisdiction embraces the same subject and persons," an injunction is appropriate. *See Kline v. Burke Const.* 260 U.S. 226, 235 (1922) ("The rank and authority of the courts are equal, but both courts cannot possess or control the same thing at the same time, and any attempt to do so would result in unseemly conflict."). Unlike the state-court action involved in *Hunter*, which "[did] not in any way challenge the district court's conclusion," (*Painter* Compl. ¶ 4, Dkt. 257-1), the Relators' Complaint is an action with the direct aim and purpose of compelling the Secretary to rescind directives ordered by the Consent Decree. Even moreso than in the class action settlement context of *Lorillard*, the interests of maintaining clear voting requirements in the upcoming months and weeks preceding a

Presidential election make "'it is intolerable to have conflicting orders from different courts.'" *Lorillard*, 589 F.3d at 848 (citations omitted). Likewise, the Secretary cannot be ordered to implement separate contradicting directives at the same time.

IV. CONCLUSION

Plaintiffs Motion to Enjoin the Relators' State Court Proceeding is **GRANTED**. Relators are **ORDERED** to voluntarily dismiss their action in the Supreme Court of Ohio, without prejudice. Plaintiffs request for an order to show cause why Relators should not be held in civil contempt is **DENIED**, pending Relators compliance with this Order.

IT IS SO ORDERED.

s/ Algenon L. Marbley
Algenon L. Marbley
United States District Judge

Dated: May 11, 2012