No. 12A338

In The Supreme Court of the United States

Jon Husted, Ohio Secretary of State; and
Mike DeWine, Ohio Attorney General, *Applicants*

v.

Obama for America; Democratic National Committee; and
Ohio Democratic Party, *Respondents*

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR STAY PENDING CERTIORARI

To the Honorable Elena Kagan
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Sixth Circuit

MICHAEL DEWINE
Ohio Attorney General

William S. Consovoy*
Thomas R. McCarthy
Brendan J. Morrissey
J. Michael Connolly
Wiley Rein LLP
1776 K Street NW
Washington, D.C. 20006
Tel: (202) 719-7000
wconsovoy@wileyrein.com

Special Counsel for Applicant Ohio Secretary of State Jon Husted

Stephen P. Carney
Richard N. Coglianese
Michael J. Hendershot
Assistant Attorneys General
30 East Broad Street, 16th Floor
Columbus, OH 43215
Tel: (614) 466-2872

Counsel for Applicant Ohio Attorney General Michael DeWine

**Counsel of Record*

Date: October 13, 2012

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT:

Applicants Secretary of State Jon Husted and Attorney General Michael DeWine ("Applicants") respectfully submit this Reply in support of their application for a stay pending the timely filing of a petition for writ of certiorari and their request that the Court treat the application as a petition for writ of certiorari, grant the petition, and summarily reverse the decision below ("Stay App.").

1. Respondents Obama for America, Democratic National Committee, and Ohio Democratic Party ("Respondents") argue that this Court should deny the Application based on a failure to seek a stay pending certiorari from the Sixth Circuit. Opposition to Emergency Motion for Stay Pending Certiorari ("Opp.") 17-19. But as previously explained, *see* Stay App. 21 n.5, this case presents the type of "extraordinary circumstances" that excuse this requirement, S. Ct. R. 23.3. The November election is rapidly approaching, and the three-day period at issue begins in 21 days. Opening the thousands of precincts across the State is not a simple task; it requires preparation and planning by elections officials. Given the State's urgent need to resolve this issue as quickly as possible, *see also infra* 13-15, it was simply not feasible under these circumstances for Applicants to seek a stay from the Sixth Circuit, brief the issue, wait for a decision, and then later file an application with this Court.

In short, seeking a stay pending certiorari from the Sixth Circuit would have meant forgoing this Court's review. Respondents claim that Applicants had "ample time" to seek a stay from the Sixth Circuit. Opp. 18. But Respondents do not even

believe their own argument, as they separately argue that granting a stay "at this late hour would inject uncertainty and confusion into the rapidly approaching election" and confuse voters "with just weeks to go." Opp. 38-39. It is disingenuous for Respondents to simultaneously argue that there was sufficient time to further delay seeking this Court's review but somehow there is insufficient time for the Court to grant relief from the decision below.

The exception to Rule 23.3 was designed for cases such as this. Indeed, this Court has granted an application for stay in almost identical circumstances. In *Brunner v. Ohio Republican Party*, 555 U.S. 5 (2008), the district court entered a temporary restraining order directing the Ohio Secretary of State to update the voter registration database to comply with federal law, and the Sixth Circuit, on October 14, 2008, denied the Secretary's motion to vacate the order. Instead of first seeking a stay pending certiorari from the Sixth Circuit, the Secretary immediately sought one from Justice Stevens. The Court granted the stay without suggesting that it was procedurally out of order. *See id*; *compare with Conforte v. CIR*, 459 U.S. 1309, 1312 n.2 (1983) (alternatively dismissing application because the applicant waited 56 days to seek a stay and never argued there were extraordinary circumstances). The propriety of this application follows directly from *Brunner*.

In any event, Applicants have asked this Court to treat the application as a petition for certiorari, grant the petition, and summarily reverse the court of appeals. Compliance with Rule 23.3 has no effect on whether this Court can grant such relief. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 2-4 (2006) (construing stay

applications as petitions for certiorari, granting the petitions, and vacating the decision below even though no stay pending certiorari was filed in the Ninth Circuit). The Court can follow that same approach here.

2. Respondents also wrongly argue that this application is insufficiently important to warrant review. Opp. 20-22. A decision striking down a state law as facially unconstitutional on the eve of an election is the definition of an important case. *See* Stay App. 37-38; *infra* 13-14. Moreover, *fifteen* States and *thirteen* military associations have registered their disagreement with Respondents' contention. *See* Amicus Br. of the States of Michigan, et. al., No. 12A338 (filed Oct. 10, 2012) ("Multi-State Br."); Military Groups Applicants' Joinder in Emergency Application for Stay and Summary Reversal ("Military Br."). The Sixth Circuit's decision "impinges on state sovereignty in three important ways": by deterring states from expanding access to alternative means of voting; by judicially second-guessing a state's important interest in preparing for Election Day; and by "disregard[ing] the special status of military voters." Multi-State Br. 1-2. Thus, the States "have an intense interest in the Sixth Circuit's injunction of Ohio election law and the court's rejection of state sovereignty in the area of election processes" and believe that "the questions presented raise issues of national jurisprudential significance." *Id*. 3.

The decision's detrimental impact on military voters and their families makes the Application especially important. "The Sixth Circuit's ruling will severely hamper States' efforts to make voting easier and more accessible for members of the

Armed Forces . . . . In particular, the ruling would require the invalidation of substantial parts of the Uniform Military and Overseas Voters Act ('UMOVA'), which was promulgated in 2010 and already has been adopted by 10 jurisdictions." Military Br. 2. More generally, the ripple effect from the injunction could "lead to reduced voting opportunities for military voters" because "if state and local governments cannot offer special flexibility or consideration for in-person voting to military voters without also extending it to the public at large" they "soon will stop offering military voters such assistance." *Id.* 3. This case illustrates the concern. Under the injunctive remedy endorsed by Respondent and the Sixth Circuit, it is possible that each county could decide for itself whether to remain open for *all* voters or *no* voters. Opp. 13; App. 21. But many counties—particularly smaller, rural counties with minimal resources—that would otherwise "welcome military voters during the Three-Day Period reasonably can be expected to end in-person absentee voting over the weekend before Election Day, rather than opening it up to the general public." Military Br. 24. A judicial decision risking this much harm to military voters is important.

Respondents attempt to diminish the importance of this application by suggesting that the issues involved here are unique to Ohio. Opp. 19-20. But the decision below did not turn on the uniqueness of Ohio law. Seeking to leverage Ohio's accommodation of military voters (which resembles many other state and federal laws providing special voting accommodations to the military), the decision turned on the panel's errant conclusion that certain voters would be disenfranchised

by the modest reduction of alternative voting means that Ohio was under no constitutional obligation to offer in the first place. "[T]he point underlying the court's decision is voter reliance. The claim is that voters have come to rely on the new and expanded opportunity to vote, and once Ohio granted this accommodation, Ohio could not withdraw it without a more probing scrutiny as provided in *Anderson/Burdick*." Multi-State Br. 11 (citations omitted).

This is a significant problem for almost every state in the Union. While voting systems differ, "more than 30 states . . . allow for early voting" and "at least seven . . . took precisely the same action as Ohio did here: to end early voting on the Friday before the election." Multi-State Br. 8. These states arguably "will only be able to reduce the number of days where there is a determination by a federal court that the state had a significant justification." *Id.* 9. In other words, "any state legislature that increases access to voting diminishes its sovereignty over the election process." *Id.* 11. In addition, "[f]ifteen states currently require voters to provide an excuse to cast a vote before Election Day, rather than opening up absentee voting to the general public at large." *Id.* 9 n.3. These states—including two within the Sixth Circuit—are potentially subject to constitutional challenge for offering "early voting to some citizens while denying it to others." Opp. 21. If this decision stands, Ohio will be subject to more eleventh-hour litigation any time plaintiffs can allege that their preferred means of voting has been altered or some other class of voters has been provided an accommodation through a voting change. And copycat challenges are certain to proliferate in other states in the coming

weeks and in future elections. Prompt resolution of this nationally important election-law issue is appropriate.

3. Respondents' arguments on the merits are equally unavailing. Resisting the obvious pertinence of *McDonald v. Bd of Election Com'rs*, 394 U.S. 802 (1969), Respondents ask the Court to ignore it altogether because *Anderson-Burdick* applies instead. But the cases are not in competition and, in any event, *McDonald* remains good law. Even if *Anderson-Burdick* applies to all Fourteenth Amendment ballot-access challenges, Stay App. 22, *McDonald* must have a place within that framework. Indeed, Respondents agree that under *Anderson-Burdick* "[t]he justification required from the State depends on the extent of the burden it imposes on voters." Opp. 25; *id.* 28 ("[U]nder the *Anderson-Burdick* standard, the extent to which a challenged regulation burdens constitutional rights affects the degree of scrutiny courts apply, and the gravity of the countervailing state interests necessary to justify the regulation.").

As previously explained, *see* Stay App. 24-27, a limitation on absentee voting calls for the minimum scrutiny possible under the balancing inquiry because such a law does not infringe the fundamental right to vote unless excluded voters "are in fact absolutely prohibited from voting," *McDonald*, 394 U.S. at 808 n.7. As Respondents begrudgingly acknowledge, then, this case is distinguishable only if "the Ohio scheme 'has an impact on [Ohioans'] ability to exercise the fundamental right to vote.'" Opp. 30 (quoting *McDonald*, 394 U.S. at 807). Respondents are thus incorrect in arguing that Applicants' reliance on *McDonald* is an implicit concession

"that they could satisfy their burden under the *Anderson-Burdick* standard." *Id.* 27. Quite the opposite, Applicants prevail under the *Anderson-Burdick* balancing inquiry precisely *because* this case parallels *McDonald*.[1]

Notably, Respondents barely defend the Sixth Circuit's conclusion that the modest reduction of in-person absentee voting *disenfranchises* thousands of voters since Ohio continues to offer non-military voters 230 hours of in-person absentee voting, 750 hours of absentee voting, and 13 hours of voting on Election Day. App. 11a-12a. Respondents do not even attempt to argue that voters who might prefer to vote during these three days—or previously did so—would be unable to vote at some other time. Nor could they. "What about the 23 days of in-person, pre-election voting? What about mailing in an absentee ballot? And, for at least some substantial portion of those 100,000 voters, what about Election Day?" Multi-State Br. 10. Respondents also do not point to even one statement in *any* of the studies and reports lodged in the district court supporting the Sixth Circuit's characterization of them or try to address Judge White's criticism of the majority opinion on this score. In short, Respondents' failure to defend the central premise of the Sixth Circuit's decision speaks volumes.

---

[1] Respondents attempt to distinguish *McDonald* by arguing that in-person absentee voting is not absentee voting at all and is not even "early voting" but is instead "a way of extending the availability of traditional Election Day voting." Opp. 7. They are incorrect. Absentee ballots—whether cast in-person or by mail—are verified and counted in a way different from traditional ballots. Stay App. 8-9. And, early voting—whether absentee or otherwise—is not a part of Election Day because there is only *one* Election Day, which is on "the Tuesday next after the first Monday in November." 2 U.S.C. § 7; 3 U.S.C. § 1; *Foster v. Love*, 522 U.S. 67, 72 n.4 (1997) ("We hold today only that if an election does take place, it may not be consummated prior to federal election day."). Absentee and other forms of early voting comply with federal law precisely because they are *not* considered Election Day. *See, e.g.*, *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169 (9th Cir. 2001); *Voting Integrity Project Inc. v. Bomer*, 199 F.3d 773, 774 (5th Cir. 2000).

Instead, Respondents would like the Court to simply ignore the decision's many flaws as judicial review would enmesh the Court in a factual dispute. Opp. 29-31. But this Court's review of the decision to declare an important state law facially unconstitutional is not so easily circumvented. Under such circumstances, the Court has made clear that it will carefully scrutinize "the record that has been made in [the] litigation" so that it can determine whether the law actually "imposes excessively burdensome requirements on any class of voters." *Crawford v. Marion Cnty Election Bd.*, 553 U.S. 181, 202 (2008) (Stevens, J.). "Supposition based on extensive Internet research is not an adequate substitute for admissible evidence subject to cross-examination in constitutional adjudication." *Id.* at 203 n.20.

This case shows why that approach is necessary. Respondents claim that the district court made extensive factual findings and that the Sixth Circuit carefully reviewed the record. Opp. 29-30. But Respondents ask this Court to accept that on faith because the Respondents did not call any live witnesses or introduce testimony from *anyone*. They lodged a few random reports and studies in the district court, none of which addressed the issue on which the preliminary injunction hinges. App. 25a (White, J.). Furthermore, the district court did not hold an evidentiary "hearing," Resp. 11, it held an oral argument. It made no formal findings of fact—it made one naked assertion about disenfranchisement without any citation to the record. The Sixth Circuit then cast that unsupported assertion as a factual finding derived from record evidence, which is not even remotely the case. And now, Respondents ask this Court to let a decision striking down a state law as

unconstitutional rest on their quotation of the Sixth Circuit's statement quoting the district court's statement citing to *nothing* that "thousands of voters who would have voted during those three days will not be able to exercise their right to cast a vote in person" as the sole distinguishing feature of this case. Opp. 29 (quoting App. 12a) (quoting district court opinion).

The problem, then, is not that Applicants are trying to relitigate factual issues that were weighed in the courts below. Opp. 30-31. The point here is that there were no facts in the record on the key issue for the district to weigh and no factual findings for the court of appeals to review for clear error. Rather, like the plaintiffs in *Crawford*, Respondents are asking the Court to accept judicial speculation as a substitute for factual evidence that a state law is facially unconstitutional. Far more is required.[2]

Finally, it is unclear whether Respondents also rely on Judge White's theory that the loss of weekend and after-hours in-person absentee voting will lead to long lines on Election Day, which will lead to voters abandoning the polls, which she declared to be tantamount to disenfranchisement. App. 25a-26a; Opp. 5, 23. In any case, that theory is unsustainable. Stay App. 33. Even setting aside all of the other problems with Judge White's theory (including the fact that there is no evidence supporting it in the record of this or any other case) and even assuming that she is

---

[2] Only three documents from the record have been cited to support any assertion of disenfranchisement, all of which were by the Sixth Circuit: a two-page paper purporting to calculate the number of people voting in-person on the last three days in Ohio in 2008, R. 34-32 (cited at App. 11); a report of early in-person voting in Franklin County in 2008, R. 34-34 (cited at App. 26 (White, J.)); and a report of early in-person voters in Cuyahoga County in 2008, R.34-35 (cited at App. 26 (White, J.)). *None* of these documents supports such an assertion. Thus, if the Court deems the district court's discussion of these issues to constitute a finding of fact, which it should not, that finding should be overturned under any applicable standard of review.

correct that *every* one of these approximately 100,000 voters, *see* Opp. 8, would vote on Election Day (instead of voting absentee by mail or in-person on another day), it would add only 11 voters to each of Ohio's approximately 9000 polling locations over the course of a 13-hour day. It is logically inconceivable—and factually unsupportable—that adding 11 people to a polling location over the course of Election Day will lead to any lines, let alone massive lines that Judge White suggested could cause a voter to abandon the polls.

4. Although they attempt to cloud the issue by adopting the Sixth Circuit's confusing mix-and-match approach, Stay App. 29, Respondents' opposition confirms that they have never really subscribed to the disenfranchisement theory. Respondents true complaint is that the favorable treatment afforded to military voters and their families subjected them to disparate treatment under the Equal Protection Clause. *Id*. 22. In other words, their contention is not that O.R.C. § 3905.03 violates the fundamental right to vote; their allegation is that it provides "differential access" to in-person absentee voting, "selective access to voting," and "discrimination between voters," under what they term "Ohio's two deadline system" of absentee voting. Opp. 23-24. Respondents' claim that Applicants could solve the constitutional problem by allowing the counties to vote to remain closed on all three days to *all* voters eliminates any doubt. *Id*. 32. Respondents' claim of disenfranchisement cannot be taken seriously given that they propose to solve it not by expanding access to the ballot, but by a remedy that could limit the voting options of members of the military and their families. Stay App. 29.

But the fact that Respondents' honest concern is disparate treatment does not make that claim meritorious under traditional equal protection analysis. Even the Sixth Circuit found that their disparate treatment claim could not prevail without a finding of disenfranchisement. App. 8a ("If a plaintiff alleges only that a state treated him or her differently than similarly situated voters, without a corresponding burden on the fundamental right to vote, a straightforward rational basis standard of review should be used."). For good reason. As Respondents have conceded, Stay App. 16, myriad federal and state laws are predicated on the sensible understanding that military and non-military voters are not similarly situated, Military Br. 18-19; Multi-State Br. 13-14. And even if they were, O.R.C. § 3509.03 is subject to rational-basis review as it does not infringe a fundamental right or invidiously discriminate against a suspect class. *McDonald*, 394 U.S. at 803-04. The law easily survives traditional rational-basis review. Stay App. 27-28.

Respondents' attempt to avoid this problem by analogizing to *Bush v. Gore*, 531 U.S. 98 (2000), and *Dunn v. Blumstein*, 405 U.S. 330 (1972), also fails. Opp. 24. Those cases triggered heightened scrutiny because they *did* involve disenfranchisement. In *Bush*, the varying vote counting standards had "led to unequal *evaluation of ballots* in various respects." 531 U.S. at 106 (emphasis added). Likewise, the Tennessee residency standard in *Dunn* "completely bar[red] from voting all residents not meeting the fixed durational standards," thus "denying some citizens the right to vote" for illegitimate reasons. 405 U.S. at 336. Both cases, then, fundamentally interfered with the right to vote either by failing to

count a lawfully cast ballot or by refusing to allow an eligible voter to cast one in the first place. Neither circumstance is present here. Stay App. 24-27.

5. As previously explained, because of the *de minimis* inconvenience imposed on non-military voters, *id.* 26-27, the State's important regulatory interests are more than sufficient to sustain the legislation. Respondents nevertheless claim that Applicants do not "make any effort to argue that the courts below erred in holding that they have provided no adequate justification for Ohio's system under the *Anderson-Burdick* standard." Opp. 31. Not true. Not only was this issue briefed in the Application, Stay App. 27-28, 34-36, but it is Respondents that have perfunctorily addressed the issue—devoting one sentence to it in their merits section. In any event, the Ohio legislature obviously has a legitimate interest in preparing for Election Day and accommodating military voters and their families. Multi-State Br. 8-10, 12-17; Military Br. 23-24. Like the Sixth Circuit, Respondents attempt to collaterally attack the legitimacy of these interests based on the fact that a few county officials disagree with the legislature's judgment in amicus briefs. Opp. Br. 11, 39. But, as *Crawford* illustrates, that is not the proper inquiry. 553 U.S. at 191. The issue is whether the Ohio legislature was pursuing legitimate regulatory interests. It clearly was. Stay App. 35.[3]

6. As anticipated, *see id.* 36-37, Respondents do not even attempt to argue that the preliminary injunction can be sustained in the absence of a finding that

[3] Respondents argue that O.R.C. § 3509.03 was both an accidental "legislative oversight" yet also a politically-motivated attempt "to identify specified groups of citizens who will be offered selective access to polling places." Opp. 10, 26. Neither is true. The legislature intentionally sought to provide additional accommodations to military voters, *see* Stay App. 13, and was motivated by *bipartisan* concerns from election officials, *see id.* 11-12.

they are likely to prevail on their constitutional claim, *see* Opp. 31. Accordingly, that is the only pertinent issue in determining whether Applicants have shown a "reasonable probability" that the Court will vote to hear the case and a "fair prospect" that it will reverse the decision below. For all the reasons set forth above, and those in the Application, the answer is "yes." Indeed, because the decision is contrary to controlling precedent, summary reversal is the appropriate course. *See id*. 21.

7. As previously explained, Stay App. 37-39, the district court's order irreparably injures Ohio's sovereign interests by declaring appropriate state election law unconstitutional and enjoining its enforcement. Stay App. 37-38 (discussing *New Motor Vehicle Bd. of California v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers); *Maryland v. King*, --- S. Ct. ---, 2012 WL 3064878, at *2 (July 30, 2012) (Roberts, C.J., in chambers)). Respondents incorrectly contend that neither case shows that the injunction "in and of itself" constitutes a form of irreparable injury to the State. Opp. 34. *New Motor Vehicle Board* makes clear that no additional harm is necessary: "*Any time* a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." 434 U.S. at 1351 (emphasis added). *King* likewise confirms that an injunction causes a distinct form of irreparable injury, as this federalism injury was the principal basis for the Court's conclusion that the State had suffered an irreparable injury. 2012 WL 3064878, at *2

(explaining that the injunction of a Maryland statute "subjects Maryland to ongoing irreparable harm").

It is for this very reason that the Court will not hesitate to stay lower court injunctions rewriting election rules, especially in the waning days before an election. *See, e.g., Brunner*, 555 U.S. at 5 (granting stay on October 17, 2008, eighteen days before Election Day); *Purcell*, 549 U.S. at 6 (vacating injunction on October 20, 2006, eighteen days before Election Day); *Norman v. Reed*, 502 U.S. 279, 287 (1992) (noting the stay granted on October 25, 1990, 12 days before Election Day). No further showing is necessary.

In addition, Applicants will likely suffer irreparable injury in the absence of a stay because they will be left with inadequate time and resources to prepare for Election Day. Stay App. 38-39. Respondents try to downplay the extent to which the preliminary injunction will interfere with Ohio's administration of the 2012 elections, arguing that it "does not interfere with the discretion of local election boards in determining the days and hours of their polling places within three days of Election Day." Opp. 32. But irreparable injury will occur regardless of the choice a county might make. If the county is open, it will need to spend critical time and resources conducting early voting during a time when it should be preparing for Election Day. Stay App. 38.[4] And if a county is closed, military voters will lose an

[4] Because of the limited number of UOCAVA voters, offering them in-person voting for three days does not require a large investment of limited state resources; opening the polls on those days to non-UOCAVA voters, however, will substantially increase the number of voters and thereby require a much greater expenditure of time and resources polls. App. 104a-107a

accommodation that may otherwise have been afforded in the absence of the preliminary injunction. Military Br. 23-24; App. 104a-107a.

Respondents ultimately acknowledge, as they must, that States have a "strong . . . interest in smooth and effective administration of the voting laws" and that protection of military voters is likewise an important interest, but argue that "granting an emergency stay at this late hour would inject uncertainty and confusion into the rapidly approaching election." Opp. 38. Yet it is Respondents that have upset the status quo through this litigation. There is little interest in insulating badly reasoned lower court opinions from this Court's review. *See Lux v. Rodrigues*, 131 S. Ct. 5, 6 (2010) (stay applications require lesser justification because a stay "simply suspend[s] judicial alteration of the status quo" (citation omitted)). Moreover, Respondents argued the exact *opposite* below in opposing Applicants' request for a stay: they argued that if the Sixth Circuit reversed the district court there would be ample means to prevent any voter confusion because "the State, the media, the candidates, the parties and the many organizations engaged in voter education will commit, as they always do, substantial resources to confirm for voters the schedule for voting in the State of Ohio, including early voting." R.57, PID 1652. This Court should reject such gamesmanship.

* * *

For the foregoing reasons, this Court should grant the application for a stay and, or in the alternative, treat the application as a petition for certiorari, grant the petition, and summarily reverse the decision below.

Respectfully submitted,

/s/ William S. Consovoy

MICHAEL DEWINE
Ohio Attorney General

William S. Consovoy*
Thomas R. McCarthy
Brendan J. Morrissey
J. Michael Connolly
Wiley Rein LLP
1776 K Street NW
Washington, D.C. 20006
Tel: (202) 719-7000
wconsovoy@wileyrein.com

Special Counsel for Applicant Ohio Secretary of State Jon Husted

Stephen P. Carney
Richard N. Coglianese
Michael J. Hendershot
Assistant Attorneys General
30 East Broad Street, 16th Floor
Columbus, OH 43215
Tel: (614) 466-2872

Counsel for Applicant Ohio Attorney General Michael DeWine

**Counsel of Record*

Date: October 13, 2012

CERTIFICATE OF SERVICE

I, William S. Consovoy, a member of the bar of this Court, certify that on October 13, 2012, I served a copy of the Reply to the Emergency Application for Stay Pending Certiorari on the listed counsel to the listed email addresses, and that all persons required to be served have been served.

Donald J. McTigue
John Corey Colombo
Mark A. McGinnis
McTigue & McGinnis
545 E. Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com
mmcginnis@electionlawgroup.com

Robert F. Bauer
Perkins Coie
700 Thirteenth Street, N.W.
Suite 600
Washington, DC 20005
rbauer@perkinscoie.com

Counsel for Plaintiffs-Respondents

James M. Dickerson, Jr.
Bingham Greenebaum Doll
255 E. Fifth Street, Suite 2350
Cincinnati, OH 45202
jdickerson@bgdlegal.com

Counsel for Defendants-Intervenors

Dated: October 13, 2012

/s/ William S. Consovoy
WILLIAM S. CONSOVOY