No. 12A-338

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2012

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 Emergency Application For Stay Pending Certiorari

MOTION TO FILE AMICUS CURIAE BRIEF IN OPPOSITION TO APPLICANTS AND TO FORMAT BRIEF UNDER RULE 33.2 BY VARIOUS MEMBERS OF THE OHIO SENATE

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(Application for Admittance to the
Bar of this Court Pending)

MOTION TO FILE AMICUS CURIAE BRIEF AND TO FORMAT BRIEF UNDER RULE 33.2

The proposed *Amici*, ten members of the Ohio Senate who also constitute the entirety of the Ohio Senate Democratic Caucus including Senate Minority Leader Eric Kearney, Senate Assistant Minority Leader Joe Schiavoni, Senate Minority Whip Nina Turner, Senate Assistant Minority Whip Edna Brown, Senate Minority Finance Chair Tom Sawyer, Senator Capri Cafaro, Senator Lou Gentile, Senator Michael Skindell, Senator Shirley Smith, and Senator Charleta Tavares, respectfully request leave to file the accompanying brief as *amici curiae* in opposition to Applicants Secretary of State Jon A. Husted's and Attorney General Mike DeWine's Application for a Stay Pending Certiorari. Timely notice of intent to file this brief was given to all parties pursuant to Supreme Court Rule 37 on October 10, 2012. Consent was requested and has been granted by Applicants. No response has been received from Respondents.

Amici also ask the Court for leave to file this brief according with Supreme Court Rule 33.2 rather than Supreme Court Rule 33.1. The Applicants originally filed on October 9, 2012 and Justice Kagan has requested a response by 7 p.m. on Friday October 12, 2012. Given the timing involved for the Court's consideration *Amici* are unable to prepare this brief in accordance with Rule 33.1.

Amici are the elected Senators representing nine of Ohio's thirty-three Senate districts. *Amici* themselves and their constituents are citizens of Ohio and therefore have a substantial interest in the constitutionality of Ohio's election system. Ohio Const. § 15.07 (requiring all state officeholders to take an oath to uphold the United States Constitution, the Ohio Constitution and the duties of their office). *Amici*, in representing all citizens within their districts, represent registered voters and voters who have voted early in-person during the final three days in past elections. As legislators *Amici* have an ongoing interest in the constitutional standards applied to

state election regulation and administration. Further, as elected officials, *Amici* have a duty to protect and promote the exercise of the right to vote.

For this good cause shown, *Amici* respectfully request that the Court grant the motion for leave to file the amicus brief appended hereto, formatted pursuant to Rule 33.2.

Dated October 11, 2012

Respectfully submitted,

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By: /s/ Eric H. Kearney
Eric Kearney

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INTEREST OF AMICI CURIAE[1]

Amici are the elected Senators representing ten of Ohio's thirty-three Senate districts. *Amici* themselves and their constituents are citizens of Ohio and therefore have a substantial interest in the constitutionality of Ohio's election system. *Amici,* in representing all citizens within their districts, represent registered voters and voters who have voted early in-person during the final three days before past elections. As legislators, *Amici* have an ongoing interest in the constitutional standards applied to state election regulation and administration. Further, as elected officials, *Amici* have a duty to protect and promote the exercise of the right to vote.

Amici have not previously filed in the instant case. *Amici* felt it was imperative to express the importance of maintaining an election process that complies with the United States and Ohio Constitutions and protects the right to vote for all Ohioans as Election Day draws ever closer. Counsel for *Amici* gave notice of the intent to file this brief timely on October 10, 2012 to Counsel for Applicants and Sixth Circuit Counsel for Respondents. Consent was requested and has been granted by Applicants. No response has been received from Respondents.

SUMMARY OF ARGUMENT

As of this writing, Election Day[2] is less than four weeks away, yet Ohio continues to face uncertainty and confusion over when voting can occur. Despite the cogent and well balanced decisions of four federal judges finding Ohio Revised Code § 3509.03 unconstitutional under the Equal Protection Clause of the 14th Amendment, Applicants Secretary of State Jon Husted and

[1] No counsel for a party authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief.

[2] For the purposes of this brief, election day is November 6, 2012 and the three days prior to Election Day are Saturday November 3rd, Sunday November 4th, and Monday November 5th. Further, references to "UOCAVA" voters are those identified in the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 42 U.S.C. § 1973ff as amended along with related Ohio Revised Code Sections while "non-UOCAVA" voters are all other eligible Ohio voters.

Attorney General Mike DeWine ask this Court for the extraordinary step of a stay or summary reversal. Such reversal would unconstitutionally burden the right to vote in Ohio while increasing confusion and uncertainty in Ohio's election process. **It is therefore imperative that the Court promptly deny Applicants' requested stay and allow early in-person voting to proceed as it has for the last six years in Ohio.**

The Sixth Circuit decision rests on firm legal ground by applying the *Anderson/Burdick* balancing approach to the burden placed on the right to vote by the arbitrary curtailment of early voting during the last three days before the election for some, but not all voters. This standard is appropriate where, as here, there is evidence on the record of the preclusive effect of a state's proposed election regulation on the fundamental right to vote. Maintaining this standard will provide important guidance to legislators in Ohio and across the nation as they continue to craft election regulating legislation.

ARGUMENT

I. Applicants fail to meet the high persuasive burden required for a stay as the public interest and general equities strongly support the Sixth Circuit decision protecting the right to vote in Ohio.

Amici ask this Court to deny the stay and petition for certiorari to avoid irreparable harm to the fundamental right to vote. As was made clear by two lower court decisions, Ohio cannot justify curtailing access to the voting booth for the three days prior to the election for some, but not all voters. As Election Day quickly approaches it is imperative that access to voting be maintained for all Ohioans.

An application for a stay is an extraordinary request evaluated on three elements. "The applications to stay the judgments of the Court of Appeals call for a weighing of three basic factors: (a) whether irreparable injury may occur absent a stay; (b) the probability that the Court of Appeals was in error in holding that the merits of these controversies were appropriate for

decision by federal courts; and (c) the public interests that may be affected by the operation of the judgments of the Court of Appeals." *O'Brien v. Brown,* 409 U.S. 1, 3 (1972). Though simply stated, these factors set a high persuasive standard. A stay should not be granted "except upon the weightiest considerations, interim determination of the Court of Appeals in matters pending before it." *O'Rourke v. Levine*, 80 S.Ct. 623,624, 4 L.Ed. 2d 614, 616 (1960) (Harlan, J., in chambers)

In all requests for a stay, but particularly when addressing constitutional rights, the public interest and the potential for harm are paramount. "First a Circuit Justice should balance the equities and determine on which side the risk of irreparable injury weighs most heavily. . . . The burden of persuasion . . . rests on the applicant." *Buchanan et al. v. Evans et al.* 439 U.S. 1360, 1365 (1978) (Brennan, J., in chambers) (citing *Beame v. Friends of the Earth,* 434 U.S. 1310, 1312 (1977) Marshall, J. in chambers, internal citations omitted). Stays should only be granted when they are necessary for protection of the parties, the judicial process, or the public as a whole. "Finally and most important, I am not certain that more good than harm to the public interest will be achieved by staying the district court's order, making the imminent elections (in which some people have already casted absentee ballots) impossible. On this last point, which seems to me in the present case the determinative one, I am inclined to rely upon the judgment of those federal judges on the scene who have declined the stay." *Campos et al v. City of Houston et al.* 502 U.S. 1301 (1991) (Scalia, J. in chambers, declining to issue a stay which would halt an ongoing election)

The recent history and current status of Ohio elections weigh strongly in opposition to the stay. After a disastrous 2004 general election, Ohio wisely adopted expanded access to early and absentee voting for all citizens. For the 2006, 2008, and 2010 elections early voting was

embraced across the state, easing access to the ballot for citizens and the congestion on Election Day administration for county and state level officials. Unfortunately, in 2011 and 2012 a strained and extremely partisan legislative process resulted in conflicting standards in the Ohio Revised Code relating to the timing of early in-person voting. UOCAVA voters could vote in-person up to Election Day whereas non-UOCAVA voters were cut off after 6 p.m. on the Friday before the election. This change upended six years of increased reliance on in-person early voting and unconstitutionally burdened the fundamental right to vote.

The Sixth Circuit, in its opinion affirming the district court's injunction to restore early voting during the last three days thoroughly describes the factual and procedural background of the case. Applicants' Appendix ("A.App.") 4a-6a. In addition to this explanation, the importance of early voting in Ohio is highlighted in the patterns of use particularly for the 2008 presidential election. In the 2008 presidential election 1.7 million ballots were cast during the early voting period created by legislation in 2006. Early voters comprised nearly 30% of the Ohio electorate that year. See A.App. 4a. Almost a third of those (approximately 9% of the total votes) were cast in-person at local boards of elections or designated voting locations. A.App. 4a. More specifically, approximately 105,000 votes were cast during the final three days before Election Day which face elimination for some but not all voters under Applicants' interpretation of Ohio law after a confused and arbitrary legislative process. A.App. 4a-5a. Early voters tend to be women, older, and of lower income and education attainment. A.App. 5a.

Given the recent history of Ohio election administrations and the individuals likely to be burdened and harmed by any stay, the public interest falls against Applicants' request. This is further highlighted by the imminence of the election. Early voting has already begun and a last

minute decision curtailing previously granted voting opportunities would undermine the public interest in voting rights of all citizens.

Applicants ask for the Court to reverse this success and burden the right to vote while creating an absurd and arbitrary distinction between types of voters. If the stay is granted, during the last three days before the election two eligible voters, one UOCAVA and one non-UOCAVA could arrive at a board of elections that is open for business, and only the UOCAVA voter would be permitted to cast a ballot. This type of arbitrary restriction where a board of elections is required to evaluate and turn away certain classes of voters cannot be allowed to stand.

The harm to voters if the Sixth Circuit decision affirming the District Court injunction is stayed or reversed cannot be overstated. As the Sixth Circuit found, O.R.C. § 3509.03 precludes the right to vote and is not sufficiently justified by any state interest. There is no right more foundational to our democracy than the right to vote. See *Bush v. Gore*, 531 U.S. 98, 104 (2000). The ability for a voter to arrive publicly at the polls, cast a ballot, and be confident that the vote will count is crucial to perpetuation of our government and foundational to our liberties. Given the fundamental nature of the right to vote, the state's purported interests cannot trump the harm asserted by Respondents and found to be legitimate by both the Federal District and Sixth Circuit courts.

As members of the general assembly, *Amici* understand the need to regulate election procedures, but we refuse to accept policies that discriminate and burden the right to vote. As was shown in the last several elections, Ohio is capable of having a fair, accessible, and well managed election with early voting during the last three days. The partisan attempts to curtail voter access undermine the electorate's faith in the process and the fundamental right to vote. Given these reasons, Applicants cannot meet their burden of persuasion, show that a stay

prevents more harm than it causes, or serves the public interest. For these reasons the stay should be denied.

II. The Application for a Stay should be denied as Respondents are likely to succeed on the merits because the *Anderson/Burdick* standard was appropriately applied by the Sixth Circuit in finding Ohio Revised Code §3509.03 unconstitutional.

In *Anderson v. Celebrezze* 460 U.S. 780 (1983) and *Burdick v. Takushi* 504 U.S. 428 (1992), this Court developed a balancing test which provides needed guidance and flexibility for evaluation of election regulation. Any regulatory burden on the right to vote must be justified by a balancing state interest. The balancing test established in *Anderson* requires a court to consider the nature and size of the alleged injury, identify and evaluate the state interests in the regulation, and determine "the extent to which those interests make it necessary to burden the plaintiff's rights." *Anderson v. Celebrezze* 460 U.S. at 793. Applying this standard in *Burdick*, this Court found "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens . . . rights." *Burdick v. Takushi* 504 U.S. at 434. In the instant case both the Federal District Court and the Sixth Circuit Court of Appeals properly applied this standard to determine that Ohio Revised Code § 3509.03 was unconstitutional. On balance, the burden placed upon voters' rights outweighed the asserted state interest in the regulation.

There is no question that voting is a fundamental right. Any restriction on the exercise of the franchise of voting "must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" *Crawford v Marion County Election Bd.*, 553 U.S. 181, 191 (2008), quoting *Norman v. Reed*, 502 U.S. 279, 288-289 (1992). States have an obligation to regulate elections and voting to facilitate the democratic process. "States may not casually

deprive a class of individuals of the vote because of some remote administrative benefit to the State." *Carrington v. Rash*, 380 U.S. 89, 96 (1965) (internal citations omitted). As a result, states have developed complex election regulations and codes. This Court has acknowledged that "[e]ach provision of these schemes, whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects – at least to some degree – the individual's right to vote and his right to associate with others for political ends. Nevertheless, the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions." *Anderson v. Celebrezze* 460 U.S. at 788. The instant case does not present a reasonable nondiscriminatory restriction justified by a legitimate state interest. Here, we face a scheme that restricts the right to vote in a clearly discriminatory fashion that was created through an arbitrary and confused legislative process.

A. *The burden on Ohio's non-UOCAVA voters created by the disparate deadlines for in-person absentee voting is of sufficient weight to require justification.*

The burden placed on voters by permitting only some voters access to in-person voting the final three days before the election is not theoretical or abstract. **While all non-UOCAVA voters are burdened by Ohio's arbitrary limitation, the burden falls heaviest on an identifiable group of voters.** "As our cases have held, it is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status." *Anderson v. Celebrezze* 460 U.S. at 793. The Sixth Circuit decision properly relies upon evidence submitted by Respondents regarding the overall use of early voting and the identity of such voters. "Voters who chose to cast their ballots early tended to be members of different demographic groups than those who voted on Election Day. Early voters were more likely than election day voters to be

women, older, and of lower income and education attainment." Opinion, United States Court of Appeals for the Sixth Circuit, dated October 5, 2012, A.App. 5a.

This Court was faced with an opposite but illuminating scenario from what Ohio would face when it upheld Indiana's Voter ID law. *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008). In *Crawford*, Justice Stevens states that the Petitioners asked the Court "to perform a unique balancing analysis that looks specifically at a small number of voters who may experience a special burden under the statute and weighs their burdens against the State's broad interests in protecting election integrity." *Id.* at 200. Here, the actions of the Applicants do the exact opposite, benefitting a small number of voters while placing a significant burden on all other qualified voters. Additionally, at no point do the Applicants make a credible argument that their restrictions are aimed at protecting election integrity. The purported argument is that such restrictions promote election efficiency. This argument not only defies the history of Ohio elections since the last three days of in person absentee voting have been in effect; it defies the legal standard of integrity over efficiency.

If Ohio had placed the burden of limited in-person voting on all voters in an evenhanded manner it would likely be a constitutional exercise of the state's election regulation function, but it did not. Ohio Revised Code § 3509.03, as passed by the legislature and interpreted by Secretary of State Jon Husted, creates different burdens for UOCAVA and non-UOCAVA voters that are similarly situated in all relevant aspects for the purpose of in-person absentee voting during the final three-days before the election. Discrimination in access to the ballot burdens all Ohio voters and the election process as a whole. Barring non-UOCAVA voters from voting at an otherwise open Board of Elections during the final three-days before Election Day is a burden because of both the limitation and the discrimination.

B. *The purported state interests are insufficient to justify the burden on Ohio voters.*

Applicants have failed to show a state interest of sufficient weight to counter the burden placed upon Ohio voters. Throughout the underlying pleadings the state has announced two interests: first, protecting the vote for military personnel and second, allowing time for county boards to prepare for Election Day itself. Neither interest, separately or together, is sufficient to justify the burden on voters. They fail through application of basic logic given Ohio's election experience. First, allowing all voters to vote on the final three days before an election (even as a matter of county discretion as has existed for the last six years) in no way limits access to the polls for military voters. Second, Ohio has run successful elections in 2006, 2008, and 2010 where all voters were permitted to vote early in-person up to Election Day.

Given the tenuous relationship between the purported state interests and the reality of Ohio election law, the burden on voters need not be overly severe to require this Court to find O.R.C. § 3509.03 unconstitutional. Applicants cannot show that this substantial burden on voters is necessary or justified to promote legitimate state interests. As was repeatedly noted, military voters still have options for absentee voting beyond those of non-UOCAVA voters and the same in-person voting opportunity as every voter in the state. Their rights and access to the ballot are protected—the same should be assured for all Ohioans.

Further, County Boards of Elections in Ohio successfully administered elections in 2006, 2008, and 2010, with early in-person voting up to Election Day. Allowing this practice to continue would not create any additional administrative burden for the counties; disallowing early voting for the three days prior would most likely increase the burden to the Ohio election system due to overcrowding on Election Day. There is no indication that the duties of a county

board have changed between 2010 and 2012 to warrant the limitation on early voting, nor do the Applicants offer any proof any such change. Further, hours for the last three days can be set at a county or statewide level to properly protect state interests. An outright and discriminatory ban on such voting which is advocated by Applicants is simply unnecessary and too burdensome to stand.

The Sixth Circuit Court of Appeals correctly applied the *Anderson/Burdick* test in its striking down Ohio Revised Code 3509.03 as violative of the 14th Amendment. After weighing the burden placed upon Ohio voters and the relevant state interests, it is clear that a limiting and discriminatory election regulation cannot be upheld. When there is a defined, measurably impact on the fundamental right to vote, as is the case here, the state must assert more than just a passing interest to justify the burden.

III. Applicants' have no sovereign interest in an unconstitutional statute and the underlying fractured legislative process is not entitled to deference.

In arguing for a stay, Applicants rely upon an alleged harm to state sovereignty, but the confused and conflicting enactment of the offending provisions simply cannot be entitled to such deference. Further, a state has no sovereign interest in an unconstitutional statute. See e.g. *Bond v. United States* ___ U.S. ___, 131 S.Ct. 2355 (2011) (permitting an individual to challenge improper federal infringement on state sovereignty: In short, a law "beyond the power of Congress," for any reason, is "no law at all." *Nigro v. United States*, 276 U.S. 332, 341, 48 S. Ct. 388, 72 L. Ed. 600 (1928). The validity of Bond's conviction depends upon whether the Constitution permits Congress to enact § 229. Her claim that it does not must be considered and decided on the merits." *Id.* at 2368.)

During the 129th General Assembly, three election-related pieces of legislation were passed that together create the deadlines and confusion at the center of today's decision. First, Amended Substitute House Bill 194 attempted to eliminate the last three days of in-person voting for all voters through changes to O.R.C. §3509.01 (for all voters) and §3511.10 (for UOCAVA). H.B. 194, 129th General Assembly (June 29, 2011). Second, Amended Substitute House Bill 224 made what were called technical corrections to §§ 3509.03 and 3511.10 attempting to make a uniform deadline for all voters of 6 p.m. on the Friday before Election Day by removing pre-existing references to a Monday deadline. H.B. 224 129th General Assembly (July 13, 2011). Before H.B. 224 went into effect, H.B. 194 was put on hold by citizen referendum. A.App 5a. The referendum power is specifically reserved to the people by the Ohio Constitution §2.01(c). In a transparent and partisan effort to quash citizen participation in the democratic process and circumvent the referendum, the General Assembly passed Substitute Senate Bill 295 which repealed H.B. 194, but did not address the technical corrections made by H.B. 224. S.B. 295 129th General Assembly (May 8, 2012). S.B. 295 was passed on strict party lines over the vehement dissent of *Amici.* As a result, there are several conflicting provisions in the Ohio Revised Code related to deadlines for early in-person voting for both UOCAVA and non-UOCAVA voters.

Applicant Secretary of State Jon Husted has previously attempted to make sense of the conflict by issuing through directive his conclusion that non-UOCAVA voters had an early in-person deadline of the Friday before the election at 6 p.m., while UOCAVA voters could vote at the Board through Election Day. See Directive 2012-26, A.App. 90a, 94a. Despite conflicting deadlines for early voting for both UOCAVA and non-UOCAVA voters, Husted chose to

enforce a discriminatory and restrictive application of Ohio law by creating a distinction from whole cloth.

As legislators serving throughout this process, *Amici* are uniquely positioned to understand the partisan maneuvering that created this confusing and unconstitutional state of Ohio election law. At best, this chain of events represents a fractured and incompetent legislative process. At worst, it is a clear effort to suppress the vote of historically disenfranchised groups and voters who tend to vote against the interests of majority legislators who enacted this scheme. Applicants' attempt cite this process as the type of deliberative state regulation of elections entitled to sovereign deference completely rewrites what happened on the ground in Ohio.

The absurdity of Applicants' claim of appropriate state regulation is obvious in the asserted harm to state sovereignty as justification for the stay. As officers of this state *Amici* value its sovereignty, but not to eviscerate individual constitutional rights of Ohio citizens who we represent. The fact is that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). At this late stage, after four federal judges have found O.R.C. §3509.03 unconstitutional, the Court should not intervene to harm Ohio's voters and undermine the overall legitimacy of the electoral process.

IV. Summary Reversal of the Sixth Circuits' Decision is Both Inappropriate and Unwarranted.

This Court should not entertain the Applicants' request to treat the stay application as a petition for certiorari, grant the petition, and summarily reverse the decision below. Granting a

petition for a writ of certiorari, particularly in a summary fashion, is not justified when as here there is no split between circuits and lower courts have properly applied existing Supreme Court precedent. At a minimum, this Court should require additional briefing on the merits before reaching any decision on reversing the Sixth Circuit's decision. The Applicants' argument rests simply on an erroneous application of *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969) as controlling law in the instant case. All attempts by the Applicants to equate the case at hand to *McDonald* fail once evidence of the burden to the Respondents is entered into the record.

In *McDonald*, the Court established a burden only on absentee voting stating, "there is nothing in the record to indicate that the Illinois statutory scheme has an impact on appellants' ability to exercise the fundamental right to vote." *Id.* at 808. In the instant case, significant evidence was submitted by Respondents supporting the conclusion that the right to vote itself was burdened, not some tangential aspect of that right. This is sufficient to reach the *Anderson/Burdick* balancing approach rather than the narrow application found in *McDonald.*

Here, the injury to the State (if any) from the denial of the stay is substantially outweighed by the injury to Respondents and to the public interest from the grant of the stay. The overriding public interest, which should be dispositive, is ensuring the integrity of the election and promising public confidence in that process. See *e.g. Purcell v. Gonzalez,* 549 U.S. 1, 4 (2006) ("Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy"). In the case at hand, what undermines confidence in the electoral process is the Applicants' refusal to provide UOCAVA and non-UOCAVA the same meaningful access to the ballot.

Finally, should the Court feel the need to grant certiorari and decide the case without allowing additional briefing, the Court should affirm the decision of the Sixth Circuit. As the Applicants' complete reliance on *McDonald* is severely misguided and misplaced, this Court would have no reason to reverse the Sixth Circuit's decision. Both the District Court and the Court of Appeals correctly applied the facts and law of *McDonald* to the instant case. As such, those courts who have been fully briefed should be given some deference.

Early voting has already begun in Ohio. The decisions of the District Court and the Court of Appeals accurately describe the unequal access that threatens Ohio's election and has been endorsed by Applicants. Both lower court decisions rely on sound legal reasoning and take into consideration the unconstitutional burdens that will be placed on non-UOCAVA voters the last three days before the election.

CONCLUSION

For the foregoing reasons, the court should deny the application for a stay and deny the application as a petition for certiorari, or in the alternative, accept the application for certiorari and affirm the ruling of the Sixth Circuit Court of Appeals.

Dated October 11, 2012

Respectfully submitted,

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By: _____/s/ Eric H. Kearney_____
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CERTIFICATE OF SERVICE

I, Eric H. Kearney, admittance as a member of the bar of this Court pending, certify that a copy of the Motion File Amicus Curiae Brief in Opposition to Applicants and to Format Brief Under Rule 33.2 by Various Members of the Ohio Senate with the associated brief was served as indicated below. I certify that all required persons have been served. In addition, a PDF copy was emailed as a courtesy to each attorney's listed email addresses.

Served by Federal Express Priority Overnight sent on October 11, 2012:

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