## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO WESTERN DIVISION

MARIAN SPENCER, et al.	) Case No. 1:04-cv-00738
Plaintiff,	) (Judge Dlott)
-V-	)
J. KENNETH BLACKWELL, et al.	) MOTION OF INTERVENING ) DEFENDANTS FOR STAY PENDING ) APPEAL
Defendant.	) ATTEAL )

Intervening Defendants, Charles H. Winburn, Sam Malone and Clara Pugh ("Intervenors") hereby move this Court for a stay pending appeal. In support of this motion, Intervenors state as follows:

- 1. Ohio has a carefully crafted system to prevent election day fraud and to ensure that every citizen's right to vote is fully protected.
- 2. The system allows the use of witnesses and challengers by political parties to ensure transparency in the process and to ensure that all sides have equal confidence in the results.
- 3. In reliance upon this statutory construct, both political parties as well as independent groups, have arranged for challengers and witnesses to be present in polling places on November 2, 2004.
- 4. Removing challengers at this late juncture would only sow more confusion, increase the likelihood of fraud, and undermine confidence in the electoral process.

- 5. The evidence was clear that if challengers are barred from the polling places, there will be numerous precincts where there will be no Republican observers of the voting process.
  - 6. Intervenors intend to seek immediate and expedited relief in the Court of Appeals.

Accordingly, this Court should grant a stay pending appeal to allow the Court of Appeals to rule on Intervenors request for expedited relief.

Respectfully submitted,

## /s/ Patrick F. Fischer

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## OF COUNSEL:

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing MOTION OF INTERVENING DEFENDANTS FOR STAY PENDING APPEAL was served upon counsel of record via the Court's ECF/CM system this 1st day of November, 2004.

/s/ Patrick F. Fischer

Patrick F. Fischer