

No. 04-4311

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

Summit County Democratic Central :  
and Executive Committee, et al. :  
: On Appeal from  
Plaintiffs-Appellees, : the United States District Court  
: for the Northern District of Ohio:  
v. : District Court Case No. 5:04CV2165  
:  
J. Kenneth Blackwell, et al. :  
:  
Defendant-Appellant. :

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INTERVENOR-DEFENDANT-APPELLANT STATE OF OHIO'S  
RESPONSE TO REQUEST FOR BRIEF

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The State of Ohio asks the Court to grant a stay of the decision below for the same reasons stated in its Response to Request for Brief filed today in *Spencer v. Blackwell*, No. 04-4311. Indeed, if anything, the appropriateness of a stay is even more clearly evident here. Unlike in *Spencer*, here the district court interjected itself into Ohio's election process, and rewrote Ohio's election rules, without benefit of *any* evidence. Instead, based solely on argument from counsel, the court concluded that "challengers may not be present at the polling place for the sole purpose of challenging the qualifications of other voters." Op. at 15. In light of the dramatic change this works on Ohio election law, the potential for voter fraud that this ruling creates, and the many months that plaintiffs had in which to pursue this action in a more timely fashion that would have allowed the development of a complete record, plaintiffs were not entitled to the injunctive relief ordered below. Accordingly, for those reasons, as well as the reasons stated in the State of Ohio's brief in *Spencer*, we respectfully request this Court to stay the order below.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of Intervenor-Defendant-Appellant State of Ohio's Response to Request for Brief was sent by email, fax or regular mail this 1st day of November, 2004, to the best of our ability to all counsel of record.

*/s/ Stephen P. Carney*

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**STEPHEN P. CARNEY**