UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Libertarian Party of Ohio, et al.,	:	
	:	
Plaintiffs-Appellants,	:	
	:	Case No. 14-3230
-vs-	:	
	:	On Appeal from the United States
Jon Husted, in his Official Capacity as	:	District Court for the Southern
Ohio Secretary of State, et al.,	:	District of Ohio, Eastern Division,
	:	Case No. 2:13-cv-00953
Defendants-Appellees.	:	

MEMORANDUM OF APPELLEE-INTERVENOR GREGORY FELSOCI IN OPPOSITION TO PLAINTIFFS-APPELLANTS' MOTION FOR EMERGENCY INJUNCTION

I. Introduction

Appellee-Intervenor Gregory Felsoci opposes Appellants' motion for "emergency injunction" to place the name of Appellant Charles Earl on Ohio's 2014 primary ballot. Felsoci takes no position on, and defers to, the Ohio Secretary of State with respect to Appellants' motion to restrain the Secretary from printing Libertarian Party of Ohio primary ballots and to order the Secretary to seek a waiver from federal authority under UOCAVA and MOVE concerning distribution of absentee ballots to absent military and overseas voters.

Let's be clear: by requesting the Court to order the Secretary of State to place Appellant Earl on the May 2014 primary ballot, Plaintiffs-Appellants are

asking this Court for **ultimate relief on the merits** under the guise of an emergency motion for injunction pending appeal. This is effectively the same injunctive relief Appellants sought below, which the district court correctly rejected. In other words, Appellants now request this Court to grant them the ultimate relief they seek in this case, even though they lost below. Worse yet, Appellants seek this extraordinary relief before a single shred of the record evidence below is presented to this Court, and before this Court has an opportunity to review the merits of the case.

Appellants, through the mechanism of an injunction pending appeal, are attempting to turn this case on its head. If they are granted the emergency relief of having Libertarian Party candidate Earl placed on Ohio's primary ballot, they will have effectively reversed the trial court's denial of their motion for preliminary injunction without this Court ever having reviewed the merits. They are cleverly trying to convert an injunction pending appeal, which is supposed to be a protective shield to preserve the status quo pending a merits review on appeal, into a sword to gain the ultimate, affirmative injunctive relief the trial court has already held they are not entitled to.

In short, this important case should be decided on the merits under well-established appeal procedures for adjudicating cases, not on expediency under the guise of an "motion for emergency injunction."

This is not the first time a candidate has tried to avoid exclusion from the ballot through an "emergency injunction" pending appeal after having lost at trial. In *Blankenship v. Blackwell*, 2004 WL 2390113 (6th Cir. 2004), Ralph Nader (represented by the same counsel who now represents Appellants) sought similar relief from this Court after the district court had denied his motion for preliminary injunction to be placed on Ohio's general election ballot as a candidate for President of the United States. This Court denied Nader's motion for emergency injunction because he "cannot demonstrate a likelihood of success on the merits." *Id.* at *1.

So too here. As set forth below, Appellants' motion to place Appellant Earl's name on Ohio's 2014 primary ballot should be DENIED because they cannot establish a likelihood of success on the merits of their constitutional claims. As the district court found after weighing three days of live testimony and hundreds of pages of exhibits, the record evidence is overwhelmingly one-sided against Appellants' claims and in favor of the constitutionality of Ohio Rev. Code § 3501.38(E)(1).

II. Background Facts

On February 21, 2014, Appellee-Intervenor Gregory A. Felsoci, an acknowledged member of the Libertarian Party of Ohio ("LPO"), filed a protest against the Ohio Secretary of State's certification of Charles Earl and Sherry Clark

as LPO candidates on the primary ballot for Governor and Lieutenant Governor. The protestors asserted that these candidates failed to comply with Ohio Rev. Code § 3501.38(E)(1) because certain circulators of their nominating petitions for their candidacy failed to "identify the name and address of the person employing the circulator to circulate the petition, if any."

After conducting protest hearings on March 4, 2014, a hearing officer of the Ohio Secretary of State issued an eighteen-page Report and Recommendation on March 7, 2014, recommending that the part-petitions gathered by circulators who failed to comply with Section 3501.38(E)(1)'s disclosure requirement should be ruled invalid. That same day, Secretary of State Jon Husted adopted the hearing officer's Report and Recommendation and upheld the electors' protests. As a result of the invalidated signatures on the noncompliant part-petitions, the Secretary of State determined that Earl and Clark did not have the requisite number of valid signatures to be eligible for nomination as Libertarian candidates for the offices Governor and Lt. Governor at the May 6, 2014 primary election.

Within hours of the Secretary of State's decision, Appellants LPO and Earl filed an amended complaint in the pending federal action below, challenging the constitutionality of Ohio Rev. Code § 3501.38(E)(1). Appellants also moved to prohibit the Secretary of State from enforcing that statute against Earl "and all other LPO candidates running in Ohio's 2014 primary."

The district court held a three-day evidentiary hearing concerning Appellants' constitutional claims from March 13 to March 17, 2014. On March 19, 2014, the district court upheld the constitutionality of R.C. 3501.38(E)(1) and concluded the statute does not violate the First Amendment. [Doc. 80, 3/19/14 District Court Opinion] The court further determined that any harm suffered by the LPO candidates in being excluded from the May 2014 primary ballot for their circulators' non-compliance with the statute was "self-inflicted" because they failed to meet the statute's clear disclosure requirements. [*Id.* at 26]

The court detailed the substantial evidence offered by Intervenor Felsoci and Secretary Husted in support of the statute, and specifically determined:

> [R.C.] 3501.38(E)(1) places only a minimal burden on political speech and the disclosures it requires are substantially related [to] Ohio's significant interest in deterring and detecting fraud in the candidate petition process.
>
> [*Id.* at 1-2]

III. Law And Argument

A. The District Court Correctly Determined That Ohio Rev. Code § 3501.38(E)(1) Does Not Violate The First Amendment

The district court got it exactly right. The United States Supreme Court recognizes that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes" and, thus, States have "considerable leeway to protect the

integrity and reliability" of the initiative and election processes. *Buckley v. American Const. Law Foundation*, 525 U.S. 182, 187, 191 (1999) ("*Buckley II*"). More recently, the Court has held that laws requiring the disclosure of funding sources in connection with the electoral process – like Ohio Rev. Code § 3501.38(E)(1) – are substantially related to the States' important interest in "transparency and accountability in the electoral process" and preserving its integrity. *John Doe No. 1 v. Reed*, 561 U.S. 186, 130 S. Ct. 2811, 2820 (2010). This interest is particularly strong because it not only "roots out fraud" but prevents "driv[ing] honest citizens out of the democratic process and breed[ing] distrust of our government." *Id*. at 2819.

Even where a States' election-related disclosure laws encroach upon First Amendment rights of political speech and assembly, the disclosure requirements pass constitutional muster if there is a "'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *John Doe No. 1*, 130 S. Ct. at 2818, citing *Citizens United*, 130 S. Ct. 876, 914 (2010) (the "exacting scrutiny" test).

Not one of the federal cases on which Appellants rely was decided in the context of **candidate** petitions such as those at issue here. Instead, Appellants rely exclusively on **ballot issue** cases such as *Buckley II* as the bedrock of their constitutional argument. But Appellants fail to point out that the First Amendment

cases they cite expressly warn that their invalidation of certain disclosure requirements for **ballot issues** should not apply to cases like the present one involving money spent for **candidates**. In *Buckley II*, the Court explained: "We note, furthermore, that ballot initiatives do not involve the risk of *'quid pro quo'* corruption present when money is paid to, or for, candidates." 525 U.S. at 203. Similarly, in *Citizens in Charge v. Brunner*, 689 F. Supp.2d 992 (S.D. Ohio 2010), the court emphasized:

> [T]his Court's analysis is not affected by the Supreme Court's recent decision in *Citizens United v. Federal Election Comm'n* because that decision dealt with disclosure of the ***sources*** of independent expenditures supporting or opposing federal ***candidates***. In *Buckley [II]*, the Supreme Court emphasized the difference between payments made on behalf of a candidate compared to those made in support of a referendum. The Court noted that "ballot initiatives do not involve the risk of 'quid pro quo' corruption present when money is paid to, or for, candidates."
>
> [*Id.* at 993-94 (italics in original; bold added), quoting *Buckley II*]

Accord: *Washington Initiatives Now v. Rippie*, 213 F.3d 1132, 1139 (9th Cir. 2000) ("ballot initiatives do not involve the risk of 'quid pro quo' corruption present when money is paid to, or for, candidates"), quoting *Buckley II*.

Contrary to Appellants' argument, this Court in *Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008), did not overturn the Supreme Court's holding that the State has an even more compelling interest in requiring spending disclosures for

candidate campaigns than it does in the context of issue campaigns. *Nader* does not even speak to this issue.

Appellants do not even mention the seminal case on finance disclosure laws relating to **candidate** elections: *Buckley v. Valeo*, 424 U.S. 1 (1976) ("*Buckley I*"). In *Buckley I*, the Court applied the exacting scrutiny standard to uphold a law that required political committees and individuals to disclose money spent to "advocate the election or defeat of a clearly identified candidate" – disclosure of persons making and receiving the expenditures. *Id.* at 62-64, 79-80. The Court identified three government interests for these disclosure requirements, which "outweigh the possibility of infringement of First Amendment rights," *id.* at 66:

(1) An informational interest in "provid[ing] the electorate with information as to where political campaign money comes from … in order to aid those voters in evaluating" the candidates. *Id.* at 66-67.

(2) Preventing corruption in campaigns. Disclosure makes the public "better able to detect any post-election special favors that may be given in return." *Id.*

(3) Detecting violations of other election laws, such as contribution limits. *Id.* at 67-68.

Another more recent Supreme Court disclosure case in the ***candidate***-election context that Appellants neglect to cite is *Citizens United v. Federal*

Election Comm'n, 558 U.S. 310 (2010). In *Citizens United*, the Court found the voter-information interest alone sufficient to uphold the constitutionality of a federal campaign reform statute that requires certain persons who fund media-based political communications about a ***candidate*** to disclose "the person making the expenditure," the amount expended, and the names of other contributors. *Id.* at 366, 369. The plaintiff organization, which had made a movie critical of then-Senator Hillary Clinton, asserted that the funding disclosure requirement restricted free speech. *Id.* at 369. But the Court rejected this argument because the burden on speech was light, but the government's interest in informing the public was weighty. The Court explained: ***"[D]isclosure is a less restrictive alternative to more comprehensive regulations of speech."*** *Id.* (emphasis added).

These controlling decisions in the candidate context support the district court's ruling that the disclosure requirements of R.C. 3501.38(E)(1) are more than justified by substantial State interests.

In fact, though Appellants cite the decision *In re Protest of Evans*, 2006-Ohio-4690, 2006 WL 2590613 (Ohio App. 2006) for another proposition, it is telling that they neglect to mention that the court in *Evans* upheld the constitutionality of R.C. 3501.38(E)(1). In *Evans*, circulators of a state initiative petition for the "Smoke Free Workplace Act" had identified the American Cancer Society as the person employing them. But a professional signature-gathering

company called Arno Political Consultants had paid the circulators and directed their day-to-day work. The court ruled that, in view of these facts, Ohio Rev. Code § 3501.38(E)(1) required the circulators to disclose Arno as the "person employing" them. *Id*. at ¶ 23. This was true even though the circulators were "**independent contractors**." *Id.* at ¶ 20 (emphasis added). Because the circulators failed to make the required disclosure, the court invalidated the non-compliant part-petitions as required by Ohio Rev. Code §§ 3501.39, 3513.05. *Id*. at ¶¶ 6, 51.

In *Evans*, the petitioners also argued that requiring circulators to disclose the person employing them violated their First Amendment rights to political speech and assembly. *Id.* at ¶ 39. In a unanimous opinion, the Tenth District Court of Appeals rejected this argument. *Id.* at ¶¶ 40-50. Applying the law of *Buckley I* and *II*, the court held that the statute's disclosure requirement serves a "substantial government interest" and is constitutional. *Id.* at ¶¶ 46, 47. Specifically, "requiring the disclosure of the person hiring and paying a circulator for collecting signatures is a direct way of gathering information necessary to deter fraud, diminish corruption, and investigate potential abuse by a circulator or the entity that paid the circulator to gather signatures." *Id.* at ¶ 46.

The district court properly concluded that the result here should be no different than the one reached in *Evans*. As the court determined in *Evans*, Ohio Rev. Code § 3501.38(E)(1)'s requirement to disclose the person hiring a circulator

for collecting signatures serves the "substantial government interest" in gathering information necessary to deter fraud, diminish corruption, and investigate potential abuse by a circulator or the entity that paid the circulator to gather signatures. These disclosures are especially important in connection with petition circulators for candidate campaigns like the instant action, an area for which the Supreme Court recognizes an increased risk of "*quid pro quo* corruption." *Buckley II*, 525 U.S. at 203. And, as in *Evans*, Section 3501.38(E)(1) advances these substantial State interests without encroaching upon First Amendment rights.

B. As The District Court Found, The Record Evidence Establishes The Constitutionality Of R.C. 3501.38(E)(1)

As the Supreme Court made clear in *Buckley II*, the constitutionality of R.C. 3501.38(E)(1) cannot be decided as a matter of law. 525 U.S. at 190 (noting the district court ruled "after a bench trial"). Rather, the party challenging a statute on First Amendment grounds must first present ***evidence*** of the actual existence of impairment of rights; then, the Court must weigh the degree of this impairment against the ***evidence*** of the importance of the state's interests advanced by the statute. *Id.* at 191-92.

It is also well settled that a plaintiff who challenges the constitutionality of a statute on First Amendment grounds has the burden of proving the statute actually impairs First Amendment activities. *See Citizens United*, 558 U.S. at 370 (rejecting claim that election statute that required disclosure of donors had a chilling effect on

donations, because the plaintiff "offered no evidence that its members may face … threats or reprisals"); *Evans, supra* at ¶¶ 49-50 (petitioners did not establish that R.C. 3501.38(E)(1) was unconstitutional as applied to them because they failed to present evidence that its disclosure requirements "reduce the number of persons available to circulate petitions" or otherwise "inhibit[ ] circulators"); *Citizens in Charge v. Gale*, 810 F.Supp.2d 916, 927-29 (D. Neb. 2011) (upholding constitutionality of statute requiring circulators to disclose their status as paid circulators in big type on the front of election petitions, because plaintiffs failed to offer credible evidence of a "severe burden" on First Amendment rights, *i.e.*, that the disclosure "impaired their ability to obtain signatures").

Here, if this Court had the benefit of the record evidence below, it would be as apparent as it was in *Evans* and *Gale* that Appellants failed to meet their evidentiary burden. Even though R.C. 3501.38(E)(1)'s disclosure requirement has been in place for nine years, Appellants presented zero evidence that the statute's disclosure requirement has any actual chilling effect on, or results in threats, harassments or reprisals against, circulators or the persons employing them.

The district court closely examined the testimony of (1) Matthew Damschroder, the Assistant Deputy Secretary of State and Director of Elections for the State of Ohio, (2) Dana Walch, former Director of Legislative Affairs for the Secretary of State, and (3) Brandon Lynaugh, a co-owner of a governmental affairs

firm who has personally managed the collection of signatures for thousands of Ohio ballot petitions. [Doc. 80, Opinion at 16-21] After weighing the evidence, the court found their testimony was credible and convincing:

> Based on the evidence presented at the hearing in this matter, as well as other evidence submitted in this case, the Court finds by a preponderance of the evidence that the disclosure requirements of Ohio Revised Code § 3501.38(E)(1) do not significantly chill political speech. Furthermore, the Court finds by a preponderance of the evidence that the challenged statute is substantially related to Ohio's significant interest in deterring and preventing fraud in the candidate petition process. [*Id.* at 21]

And, as Appellants themselves recognize, the "district court's findings of fact underlying its decision" must be upheld unless they are clearly erroneous. *United States v. Edward Rose & Sons*, 384 F.3d 258, 261 (6th Cir. 2004). *Caver v. Straub*, 349 F.3d 340, 351 (6th Cir. 2003) ("[i]f there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous").

Here, the evidence overwhelmingly supports the district court's findings. Mr. Damschroder testified that because the circulator's disclosure of who employs him or her does not need to be completed until after the circulator gathers petition signatures, the disclosure does not result in any impairment of the circulator's anonymity while interacting with potential signers. Mr. Damschroder also stated that he is not aware of any circulator or supporter of any candidate or ballot initiative ever experiencing any difficulties in obtaining petition signatures simply

because the circulator discloses who employs him or her. And, both Mr. Damschroder and Mr. Lynaugh further attested that no circulator or person employing them has been subjected to retaliation or harassment simply because the circulator has disclosed who is paying him or her. In the numerous instances where Mr. Lymbaugh has managed paid circulators in obtaining signatures, this disclosure requirement has never been a problem; indeed, for several statewide ballot campaigns, Lymbaugh has successfully used paid circulators who fully comply with Ohio's disclosure requirements without any problem.

Based on this testimony, the district court found that "the evidence before the Court demonstrates that the disclosure requirement at issue did not burden Plaintiffs' political speech in any meaningful way." [Opinion at 22-23] In fact, the court noted that paid circulator, Oscar Hatchett "expressed no reservations" about disclosing who employed him; all he "wanted" was for his "signatures to count." *Id.* at 23. The LPO simply chose to have him not make the disclosure.

The testimony Messrs. Damschroder, Lynaugh, and Walch also provide hard evidence of the State of Ohio's substantial interests in having circulators disclose their paid status and the identity of their payors. First, the disclosure provides important information to voters regarding who is supporting candidates and ballot initiatives. Second, it serves as a cross-check to help election officials police campaign spending and corruption, and also assists in verifying information

disclosed in campaign finance reports. Third, the disclosure reveals any suspect organizations employing circulators which may require extra scrutiny, as in the Nader campaign where nearly all of the fraud was committed by circulators paid by a single company based in Florida.

Mr. Lynaugh testified that paid circulators have a financial incentive to obtain as many signatures as quickly as possible. He also attested to several instances in recent years in which he observed paid circulators engaging in voter signature fraud, such as "going through the phone book" to obtain voter's names and forging their signatures. In fact, Mr. Walch testified that R.C. 3501.38(E)(1)'s disclosure requirement was enacted in late 2004 in direct response to the massive fraud committed by **paid circulators** in Ohio on behalf of Ralph Nader's 2004 campaign for President of the United States. Thus, the evidence supports the district court's finding that "instances of fraud by paid circulators have been significant and continue to occur." [Opinion at 16]

Appellants' denial of massive fraud by paid circulators in the *Nader* case is pure bluster. In *Blankenship v. Blackwell*, 341 F.Supp.2d 911, 923 (2004), the court specifically found:

> The record in this case is replete with credible, unchallenged instances of actual fraud in the circulation of petitions. The Ohio Secretary of State has detailed numerous and substantial instances of fraud on the part of petition circulators for the Nader petition ballot. [Circulators] engaged in outright fraud by using false addresses [of their residences]....

> In addition, circulators engaged in additional acts of fraud by falsely attesting that petitions were circulated when they were not and by falsely attesting to signatures.

In sum, as the district court found below, the evidence here demonstrates that "[R.C.] 3501.38(E)(1) places only a minimal burden on political speech and the disclosures it requires are substantially related [to] Ohio's significant interest in deterring and detecting fraud in the candidate petition process." [Opinion at 1-2]

C. Appellants' First Amendment Cases Are Inapposite

The First Amendment cases cited by Appellants are simply inapplicable for seven reasons. *First*, as discussed in detail above, Appellants' cases involve only issue campaign petitions, not candidate petitions like the instant action. Appellants' own cases stress the importance of this distinction when it comes to disclosures of monetary support and spending.

Second, unlike *Buckley II*, the record in this case includes substantial evidence that election fraud and other election misconduct are much more likely to be committed by paid circulators than by volunteers. In *Buckley II* (as in *Citizens in Charge*), there was no evidence regarding the fraudulent proclivities of paid circulators, leading the Court to hold that "***absent evidence*** to the contrary, 'we are not prepared to ***assume*** that a professional circulator … is any more likely to accept false signatures than a volunteer….'" *Buckley II*, 525 U.S. at 203-04 (emphasis added). Here, by contrast, the Court has Mr. Lynaugh's testimony to the

contrary, as well as the Secretary of State's decision in the *Nader* case that found repeated instances of fraud by paid circulators in a candidate case.

Third, another critical distinction between the instant case and *Buckley II* is that, in *Buckley II*, there was ***no proof*** of any benefit to the state from disclosure of paid circulators names. *See Buckley II*, *supra* at 203 ("[t]he added benefit of revealing the names of paid circulators … has not been demonstrated"). Here, by contrast, Mr. Damschroder explained how a circulator's disclosure of the person employing him or her can and, in fact, has assisted election officials and prosecutors in rooting out election fraud.

Fourth, the instant case involves a "one-time only" disclosure – a paid circulator needs to fill out the employer box only once – whereas in *Buckley II* (and *Citizens in Charge*), the statute required multiple periodic disclosures in the form of monthly reports and then a final report.

Fifth, here, the circulator is not required to disclose the amount of his compensation; rather, R.C. 3501.38(E)(1) only requires disclosure of the person employing the circulator. In *Buckley II*, by contrast, the required disclosure was not only the identity of each employer and circulator but also the amount paid to each circulator. In fact, other language in *Buckley II* suggests that the Supreme Court would approve a much more limited disclosure like the one required by R.C. 3501.38(E)(1). The Court specifically noted that "[t]hrough the disclosure

requirements that remain in place … voters will be told 'who has proposed a measure' and 'who has provided funds for its circulation.'" 525 U.S. at 203.

Sixth, here, the names of paid circulators and the persons employing them are available from other public sources – namely, campaign disclosure reports and forms required to be filed by funding sources with the Secretary of State. In *Buckley II*, by contrast, the information that was required to be disclosed was not otherwise available from public sources. Here, how can the First Amendment rights of circulators and their payors be impaired when the information is already publicly available? This critical distinction was one of the bases for the federal court in *Walker v. Oregon*, 2010 WL 1224235, *10 (D. Or. 2010), to uphold the constitutionality of a comparable disclosure requirement.

Seventh, and perhaps most notably of all, the timing of the required disclosure is vastly different here than in *Buckley II*. In *Buckley II*, the statute at issue required identification of a paid circulator when she was interacting with potential petition signers, *i.e.*, "the precise moment when the circulator's interest in anonymity is greatest." *Buckley II*, *supra* at 199. Here, as the district court found, the one-time disclosure is not made until the part-petition is filed with the Secretary; the disclosure need not be filled out when the circulator is interacting with signers, so a circulator's anonymity is not compromised. In *Buckley II* itself, the Court strongly suggested this type of after-the-fact disclosure is permissible.

In view of these critical differences between the record here and the record that was before the Court in *Buckley II*, Ohio Revised Code § 3501.38(E)(1) does not raise First Amendment concerns.

As the district court and the state court in *Evans* held, Ohio Rev. Code § 3501.38(E)(1)'s requirement to disclose the person hiring a circulator serves the "significant" and "substantial" State interest of gathering information necessary to deter fraud, diminish corruption, and investigate potential abuse by a circulator or the entity that paid the circulator to gather signatures. And, the evidence establishes that Ohio Rev. Code § 3501.38(E)(1) advances these substantial State interests without encroaching upon First Amendment rights.

D. Appellants Will Not Be Irreparably Harmed By Denial Of Their Motion For Emergency Injunction

Appellants' emergency motion should be denied for another reason: No irreparable harm would result from this Court's denial of their motion. In the unlikely event this Court reverses the district court's decision on the merits, Appellant Earl would still be able to qualify for the general election ballot. As the district court noted, Earl needs only "*a single vote* [at the May primary] to qualify for the November 2014 Ohio general election ballot as [he] would be the only Libertarian candidate[ ] [for governor] who would appear on the primary ballot." [Doc. 85, Order at 2 (emphasis in original)] Thus, given the "extensive use of electronic ballots" in Ohio's larger cities, "the fact [Appellants] might not be

included on paper ballots does not realistically reduce their odds of qualifying for the November 2014 Ohio general election." *Id*. at 2-3.[1]

IV. Conclusion

For all of these reasons, Appellants' "motion for emergency injunction" to place Appellant Earl on the May 2014 primary ballot should be denied. This case should be heard on the merits with the benefit of the full record that was before the district court.

Respectfully submitted,

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[1] Appellants' last constitutional challenge is baseless (and not raised below). Appellants assert: "**Assuming** that [non-party] Linnabary [LPO's candidate for Attorney General] prevails in his parallel proceeding before the Ohio Supreme Court, … the Secretary's application of § 3501.38(E)(1) to Earl cannot be constitutionally sustained." [Appellants' Motion at 21] This is wholly speculative. Assumptions about a state court possibly granting extraordinary mandamus relief against the Secretary of State in the future is not the stuff upon which this Court should grant affirmative injunctive relief changing Ohio's primary ballots.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2014, the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system, and notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

/s/ John W. Zeiger
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