

Case No. 08-4322
IN THE UNITED STATES COURT OF APPEAL
FOR THE SIXTH CIRCUIT

Ohio Republican Party, et al.	:	
	:	
Plaintiffs-Appellees,	:	On Appeal from
	:	the United States District Court
v.	:	for the Southern District of Ohio:
	:	District Court Case No. 2:08:CV913
Jennifer Brunner,	:	
Ohio Secretary of State,	:	
	:	
Defendant-Appellant	:	

MOTION FOR INITIAL *EN BANC* CONSIDERATION AND FOR EXPEDITED
BRIEFING SCHEDULE

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Plaintiffs/Appellees Ohio Republican Party (“ORP”) and Larry Wolpert respectfully request that the Emergency Motion to Vacate or Stay be considered initially *en banc*, on an expedited briefing schedule. Such extraordinary treatment is appropriate because this is an extraordinary case, involving the integrity of the election for President of the United States (and other high offices), in a state vital to both candidates’ chances at victory. If any case “involves a question of exceptional importance,” the standard for *en banc* consideration under Federal Rule of Appellate Procedure 35(a) and Sixth Circuit Rule 35(c) (“exceptional public importance”), this is it. *See Burroughs v. United States*, 290 U.S. 534, 545 (1934) (“The importance of [the President’s] election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated.”).

Initial *en banc* consideration is merited here not just because of the importance of the issues presented, but also because of the crushing press of time. *See Cooley v. Bradshaw*, 338 F.3d 615, 617 (6th Cir. 2003) (Clay, J., concurring in grant of initial *en banc* review “because of the urgency this case involved”); *see also* District Court’s Order and Opinion Granting Renewed Motion for Temporary Restraining Order, at 12 (“The Court finds that this matter must be resolved quickly as Plaintiffs could face irreparable injury if a temporary restraining order is

not issued.”) (Oct. 9, 2008). The disposition of this Emergency Motion will, as a practical matter, dictate the resolution of the dispute. With various pre-election deadlines looming, there is simply no time for consideration by a three-judge panel, and then *further* consideration by the entire Court sitting *en banc* should that become necessary. The deadlines facing the parties and others involved in the election process are imminent:

- **October 15**: deadline for challenges to voter qualifications under Ohio Revised Code § 3503.24.
- **October 16**: deadline for challenges to voter qualifications under Ohio Revised Code § 3505.19.
- **October 21**: deadline under Ohio Revised Code § 3503.23(a) for printing of “pollbooks” listing all registered voters in each precinct, which are then, in turn, distributed to each precinct.
- **October 25**: start of “processing” of absentee ballots (including verification of voter eligibility) under Secretary of State Directive 2008-67 (issued August 15, 2008)¹.
- **November 4**: Election Day.

¹ Available at <http://www.sos.state.oh.us/SOS/elections/Directives/2008%20Directives/2008-67.aspx>

Given these impending deadlines, there is simply no time for panel and then *en banc* consideration, let alone a normal briefing schedule. Plaintiffs/Appellees therefore respectfully suggest the following briefing schedule:

1. Plaintiffs/Appellees' response to Emergency Motion to Vacate or Stay due by 7 p.m. Friday, October 10.
2. Defendant/Appellant's reply brief, and any amicus briefs, due by 5 p.m. Saturday, October 11.

For the foregoing reasons, Plaintiffs/Appellees respectfully request initial *en banc* consideration pursuant to Federal Rule of Appellate Procedure and Sixth Circuit Rule 35, on the schedule suggested above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically on October 10, 2008. Notice of the filing will be sent by the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ William M. Todd

William M. Todd