No. 14-3877

In the United States Court of Appeals for the Sixth Circuit

OHIO STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *ET AL.*,
Plaintiffs-Appellees,

v.

MIKE DEWINE, IN HIS OFFICIAL CAPACITY AS OHIO ATTORNEY GENERAL, *ET AL.*,
Defendants-Appellants.

ON APPEAL FROM U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, CIVIL ACTION NO. 2:14-CV-00404, HON. PETER C. ECONOMUS

BRIEF FOR *AMICUS CURIAE* EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND IN SUPPORT OF DEFENDANTS-APPELLANTS' PETITION FOR REHEARING *EN BANC*

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 14-3877 Case Name: Ohio State Chptr NAACP v. DeWine

Name of counsel: Lawrence J. Joseph

Pursuant to 6th Cir. R. 26.1, Eagle Forum Education & Legal Defense Fund
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on September 26, 2014 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Lawrence J. Joseph

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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IDENTITY, INTEREST AND AUTHORITY TO FILE

Amicus curiae Eagle Forum Education & Legal Defense Fund ("Eagle Forum"), a nonprofit Illinois corporation, seeks leave to file this brief by motion.[1] As the motion explains, in the context of the elections on which the Nation has based its political community, Eagle Forum has supported efforts both to reduce voter fraud and to maximize voter confidence in the electoral process. For these reasons, Eagle Forum has a direct and vital interest in the issues raised here.

STATEMENT OF THE CASE

In this litigation, various groups and individuals (collectively, "Plaintiffs") have sued Ohio's Attorney General and Secretary of State (collectively, "Ohio") to enjoin the operation of Ohio Rev. Code §3509.01(B)(2)-(3) and the Secretary's directives on uniform statewide voting times (collectively, "Ohio Election Law"). Citing §2 of the Voting Rights Act ("VRA") and the Equal Protection Clause, 42 U.S.C. §1973; U.S. Const. amend. XIV, §1, cl. 4, Plaintiffs seek to restore *prior state law* that provided more early voting, a five-day overlap between the deadline to register and the opening of early voting, and discretion for county boards of election to set early-voting hours. Ohio appealed the District Court's preliminary injunction and now petitions the *en banc* Court to review the panel decision.

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[1] By analogy to FED. R. APP. P. 29(c)(5), the undersigned counsel certifies that: counsel for *amicus* authored this brief in whole; no counsel for a party authored this brief in any respect; and no person or entity – other than *amicus* and its counsel – contributed monetarily to this brief's preparation or submission.

Amicus Eagle Forum adopts the facts as stated in Ohio's brief. Pet. at 1, 3-4 (Ohio's early voting is more generous than the vast majority of states, and many states allow voting only on Election Day). Additionally, the relevant facts are the legislative facts that Ohio *plausibly* may have believed in support of rationales on which Ohio *plausibly* may have acted. Plaintiffs expect that Ohio's new laws will have race-correlated impacts, but they have provided neither evidence of actual race-based discriminatory intent nor evidence that would negate the *theoretical* connection between Ohio's purposes and its methods of fulfilling those purposes.

SUMMARY OF ARGUMENT

Amicus Eagle Forum submits that several rational bases support Ohio's efforts to trim back early voting. First, early voting – and particularly weekend voting – impedes political parties' ability to combat voter fraud with comprehensive poll monitoring and thus to ensure voter confidence in elections' integrity (Section I.A). Second, early voting without excuse defeats the Founders' intent that one Nation fill its elected offices on one Election Day (Section I.B). Third, by reducing the electorate's concentration on electoral campaigns timed to Election Day, early voting reduces the ability of candidates to communicate effectively with the electorate and thereby depresses voter focus and turnout (Section I.C). Any one of these rational bases supports Ohio's actions here and thus would defeat Plaintiffs' challenges under the Fourteenth Amendment and

VRA §2. With respect to the Fourteenth Amendment, Plaintiffs do not even make out a claim for intentional discrimination (*i.e.,* disparate treatment) but rather make out allegations only of disparate impacts, which are not even actionable (Section II.A). With respect to VRA §2, Plaintiffs attempt to resuscitate a retrogression action under VRA §5 by comparing changes in Ohio law to the prior Ohio baseline, when they instead must compare the new status quo to national norms (Section II.B). Finally, in light of the foregoing, Plaintiffs' claims are too insubstantial not only to support federal jurisdiction (Section III.A) but also to defeat Ohio's sovereign immunity from suit in federal court (Section III.B).

ARGUMENT

I. OHIO HAS NUMEROUS VALID INTERESTS THAT JUSTIFY LIMITATIONS ON EARLY VOTING

States have numerous rationales for limiting – or, preferably, eliminating – early voting. These reasons include not only ensuring the integrity of elections (and thus to avoid disillusioning voters) but also fostering national unity and increasing voter attention to the issues raised in our elections.

A. Limits on Early Voting Protect against Voting Fraud and Bolster Faith in the Integrity of the Ballot

Perhaps the most significant additional bases for upholding Ohio's early-voting restrictions is the state's interest in preventing voter fraud and the corollary interest in ensuring voter confidence. *See Crawford v. Marion County Election Bd.,* 553 U.S. 181, 189 (2008). "Voter fraud drives honest citizens out of the democratic

process and breeds distrust of our government." *Purcell v. Gonzalez,* 549 U.S. 1, 4 (2006). While other forms of early voting – such as voting by mail – may even be more problematic from the perspective of voter fraud, even in-person early voting presents heightened risk of fraudulent voting and voter intimidation.

By moving in-person voting away from the "main event" of Election Day, in-person early voting works against the adversary system that has developed in our elections, including such protections as oversight of elections by poll watchers (or poll monitors) from the two major political parties. Poll watchers from the political parties are "prophylactic measures designed to prevent election fraud," *Harris v. Conradi,* 675 F.2d 1212, 1216 n.10 (11th Cir. 1982), and "to insure against tampering with the voting process." *Baer v. Meyer,* 728 F.2d 471, 476 (10th Cir. 1984). For example, poll monitors reported that 199 Chicago voters cast 300 party-line Democratic votes, as well as three party-line Republican votes in one election. *Barr v. Chatman,* 397 F.2d 515, 515-16 & n.3 (7th Cir. 1968). Ohio rationally may have believed that moving toward having elections in the open on Election Day would foster voter confidence and eliminate fraud.[2]

Beyond fraudulent voting, weekend early voting also raises the prospect of

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[2] While it may not be Mayor Daley's Chicago, Ohio counts votes from the dead because of early voting. Harlan Spector, *Absentee ballot still counts if voter dies before election,* THE PLAIN DEALER, Oct. 22, 2012. Given that about 10,000 Ohioans die monthly (http://www.cdc.gov/nchs/data/nvsr/nvsr63/nvsr63_03.pdf), any of those 10,000 who vote early will have their votes counted posthumously.

increased voter intimidation by organized groups that corral and drive groups of people – *e.g.,* employees, congregants, union members – to vote over the weekend, outside of the public eye, as well as outside the view of poll watchers. Under those circumstances, the voters potentially are subject to heightened third-party supervision and coercion. Ohio rationally may have believed that holding elections in the open on Election Day would reduce intimidation and coercion.

B. Limiting Early Voting in Federal Elections Advances the Valid Goal of National Unity by Protecting the Significance of One National Election Day

The U.S. Constitution expressly *requires* that the election of the president by the Electoral College occur on one and only one day throughout the Nation. U.S. CONST. art. II, §1, cl. 4. Charles Pinckney, a signer of the Constitution, explained that the purpose of this was to minimize the potential for influence on those who vote later in a multi-day scheme. *See* Beverly J. Ross and William Josephson, *The Electoral College and the Popular Vote,* 12 J. L. & POLITICS 665, 708 (Fall 1996) (*citing* 10 Annals of Cong. 129 (1800)). Expansive early voting poses that same threat, as new media and polling will report on early voting patterns, from which the content of those votes may be inferred based on prior voting data. Indeed, as groups develop ways to game early voting for their side's benefit, it will become possible to declare winners of presidential or senatorial elections before Election Day. Ohio may properly act to prevent early voting from displacing Election Day.

Allowing the equivalent of multiple election days through expansive early voting is contrary to national unity, and Ohio has a valid interest in reducing the cacophony caused by multiple voting days. With respect to the process in the Constitution for electing president, which included the same-day requirement for Electors to vote, Alexander Hamilton wrote that it "is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents," arguing that "if the manner of it be not perfect, it is at least excellent." THE FEDERALIST PAPERS, No. 68, p. 410 (C. Rossiter ed. 1961). The Founders intended that elections bind this Nation together, *cf. Ex parte Yarbrough,* 110 U.S. 651, 661 (1884) (recognizing that "the election of members of congress occurring at different times in the different states" would give rise to "more than one evil"), and Ohio plausibly could have viewed the elimination of early in-person voting to foster that public goal. This suffices to uphold the Ohio law.

The U.S. Supreme Court struck down a Louisiana system, analogous to expansive early voting, which allowed electing congressmen prior to Election Day. *Love v. Foster,* 522 U.S. 67 (1997). Expansive early voting is not different in any meaningful way from the defects in the Louisiana system, particularly with the increasing use of statistical analysis to announce, based on scrutiny of the pattern of voting, which side has won. With current trends and if there are no limits on

early voting, winners will be announced prior to the official Election Day. Regardless of whether such expansive early voting for choosing a president is unconstitutional – it may be – it is certainly constitutional for Ohio to curtail early voting in federal elections. There was little recorded discussion about the virtues of same-day voting as embodied in the U.S. Constitution, but Ohio can surely trim back a multi-day approach that the Founders themselves rejected.

C. Early Voting Reduces Respect for Election Day and Depresses Voter Focus and Turnout, Which Gives States a Valid Interest to Limit Early Voting

In federal election years, the candidates for federal office typically debate in mid- to late October, but candidates also time their campaigns to peak even later in October. *Amicus* Eagle Forum respectfully submits that all states should prevent citizens' voting before candidates have presented their cases for election to the People. By allowing voting before candidates present their cases in full, early voting diffuses voters' focus on the issues, reduces the civic significance of the communal act of voting, and degrades the candidates' ability to time their campaigns to Election Day. As such, in our age of electronic media even more than in the days of the print media, Ohio plausibly may have determined that the electorate would benefit from reducing the opportunity for early voting.

II. LIMITS ON EARLY VOTING DO NOT VIOLATE THE FOURTEENTH AMENDMENT OR VRA §2

Having identified several important government interests in Section I, *supra,*

amicus Eagle Forum now connects those interests with the analysis and level of scrutiny applicable to those interests. As shown, Ohio's interests suffice to establish that its laws do not violate either the Fourteenth Amendment or VRA §2.

A. Ohio's Early-Voting Laws Do Not Violate the Fourteenth Amendment

Plaintiffs' evidence shows the potential for disparate impacts from Ohio's early-voting laws, without showing *disparate treatment.* But the Fourteenth Amendment does not prohibit disparate impacts. Moreover, because the rational-basis test applies, the rationales identified in Section I, *supra,* would suffice to explain any disparate treatment that Plaintiffs could show.

Under "ordinary equal protection standards," plaintiffs must "show both that the [challenged action] had a discriminatory effect and that it was motivated by a discriminatory purpose." *Wayte v. U.S.,* 470 U.S. 598, 608 (1985). The required "discriminatory purpose" means "more than intent as volition or intent as aware of consequences. It implies that the decisionmaker ... selected or reaffirmed a course of action at least in part *'because of,'* not merely *'in spite of'* its adverse effects upon an identifiable group." *Pers. Adm'r v. Feeney,* 442 U.S. 256, 279 (1979) (emphasis added). A "foreseeable" or even "volitional" impact on the non-favored class does not qualify as a "[d]iscriminatory purpose" if the state did not choose its action *because of* that impact. *Id.* at 278-79. Here, Ohio's laws are facially neutral, and Plaintiffs cannot show *disparate treatment because of race* or other protected

criteria. Plaintiffs have not even stated a claim under the Equal Protection Clause.[3]

In any event, while the right to *vote* is fundamental, the right to *vote early* is not. *McDonald v. Board of Election Comm'rs of Chicago,* 394 U.S. 802, 807-08 (1969) (absentee voting). The non-fundamental nature of the purported "right" at issue here is critical. Federal courts use elevated scrutiny to review state laws that deny fundamental rights or that target protected classes (*e.g.,* because of race), *Regan v. Taxation with Representation of Washington,* 461 U.S. 540, 547-48 (1983), but Plaintiffs make no such showing here. This Court must, therefore, use the rational-basis test here because Ohio would not trigger elevated scrutiny, *McDonald,* 394 U.S. at 807-08, even if Plaintiffs had stated a cognizable claim. The use of the rational basis test undermines Plaintiffs' analysis of this case.

A successful rational-basis plaintiff must "negative every conceivable basis which might support [the challenged statute]," including those bases on which the state plausibly *may have* acted. *Lehnhausen v. Lake Shore Auto Parts Co.,* 410

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[3] The panel applied the "*Anderson-Burdick*" balancing test because it viewed this case as falling within the equal-protection spectrum described in *Obama for America v. Husted,* 697 F.3d 423, 429 (6th Cir. 2012) ("*OFA*"). Slip Op. at 14-15. There, stateside plaintiffs begrudged early voting for overseas military personnel under the Uniformed and Overseas Citizens Absentee Voter Act, Pub. L. No. 99-410, 100 Stat. 924 (1986), and sued for equal treatment. Here, there is no unequal treatment, and the case thus falls outside the *OFA* spectrum. Moreover, *dicta* in *OFA* was off in one respect: it is not *burdening voting* but "absolutely prohibit[ing] … voting" that triggers review beyond the rational-basis test. *Goosby v. Osser,* 409 U.S. 512, 521 (1973). Because Ohio's laws neither "treat similarly situated voters differently" nor "absolutely prohibit … voting," the rational-basis test applies.

U.S. 356, 364 (1973) (internal quotations omitted); *Kadrmas v. Dickinson Pub. Sch.,* 487 U.S. 450, 462-63 (1988). Moreover, it is enough if the challenged state actor "rationally may have been considered [it] to be true" that the challenged state law would provide benefits. *Nordlinger v. Hahn,* 505 U.S. 1, 11-12 (1992). Further, because "a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data," *F.C.C. v. Beach Communications, Inc.,* 508 U.S. 307, 315 (1993); *Heller v. Doe,* 509 U.S. 312, 320 (1993), Plaintiffs cannot prevail by marshaling "impressive supporting evidence … [on] the probable consequences of the [statute]" vis-à-vis the legislative purpose, but must instead negate "the *theoretical* connection" between the two. *Minnesota v. Clover Leaf Creamery Co.,* 449 U.S. 456, 463-64 (1981) (emphasis in original). Thus, the District Judge's "courtroom fact-finding" is irrelevant. Instead, this court must only ask whether Ohio's interests suffice, even assuming *arguendo* that Plaintiffs stated a Fourteenth Amendment claim.

B. Ohio's Early-Voting Laws Do Not Violate VRA §2

Unlike the Fourteenth Amendment, VRA §2 includes a type of "effects" test, but Plaintiffs cannot satisfy that test because Ohio's voting regime remains superior to what the VRA requires. An Ohio law that makes a superior voting regime less superior to Plaintiffs, but still superior, is not actionable under VRA §2. Instead, such claims were formerly actionable under the retrogression

provisions of VRA §5, 42 U.S.C. §1973c, for "covered jurisdictions," but *Shelby County v. Holder,* 133 S.Ct. 2612 (2013), made §5 inapplicable here.

Unlike the retrogression (*i.e.,* "no backsliding") provisions of VRA §5, the VRA §2 effects test compares the status quo to what it ought to be:

> In § 5 preclearance proceedings – which uniquely deal only and specifically with *changes* in voting procedures – the baseline is the status quo that is proposed to be changed: If the change "abridges the right to vote" relative to the status quo, preclearance is denied, and the status quo (however discriminatory *it* may be) remains in effect. In § 2 or Fifteenth Amendment proceedings, by contrast, which involve not only changes but (much more commonly) the status quo itself, the comparison must be made with an hypothetical alternative: If the *status quo* "results in [an] abridgement of the right to vote" or "abridges [the right to vote]" relative to what the right to vote *ought to be*, the status quo itself must be changed. Our reading of "abridging" as referring only to retrogression in § 5, but to discrimination more generally in § 2 and the Fifteenth Amendment is faithful to the differing contexts in which the term is used.

Reno v. Bossier Parish Sch. Bd., 528 U.S. 320, 334 (2000) (alterations and emphasis in original), *superseded in part on other grounds,* Pub. L. No. 109-246, §5, 120 Stat. 577, 580-81 (2006). Here, a finding that current Ohio law on early voting violates VRA §2 would compel the conclusion that the many states that fail to allow *any* early voting also violate the VRA. There is, of course, absolutely no evidence that Congress intended that result: "Unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state

balance." *U.S. v. Bass*, 404 U.S. 336, 349 (1971); *accord Gonzales v. Oregon*, 546 U.S. 243, 275 (2006) (same). This Court cannot credibly infer that intent.

III. THE RELIEF THAT PLAINTIFFS REQUEST IS BEYOND THE POWER OF THE LOWER FEDERAL COURTS TO GRANT

Because the issues that Plaintiffs raise have been decided by the Supreme Court, this litigation raises issues too insubstantial for a federal court to review and seeks relief that Ohio's immunity prevents a federal court from granting. Each of these two related issues denies the lower federal courts power to act here. If Plaintiffs wish to press these spurious claims, they must sue in Ohio's state courts.[4]

A. Plaintiffs' Claims Are Too Insubstantial for Federal Review

Claims are too insubstantial for federal review if they are "so attenuated and unsubstantial as to be absolutely devoid of merit," "wholly insubstantial," "obviously frivolous," "plainly unsubstantial," or "no longer open to discussion" based *inter alia* on controlling Supreme Court decisions. *Hagans v. Lavine,* 415 U.S. 528, 536-37 (1974). As set forth in Section II, *supra,* controlling Supreme Court decisions foreclose Plaintiffs' efforts to invent a constitutional or statutory right either to early voting or against retrogression outside of a VRA §5 claim.

Similarly, it is not clear that many actual members of Plaintiffs' coalition

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[4] States courts have concurrent jurisdiction over Plaintiffs' constitutional claims, *Haywood v. Drown,* 556 U.S. 729, 735 (2009), and (although they lack concurrent jurisdiction over *VRA §5 claims*) also have jurisdiction for claims under VRA §2. *See Hathorn v. Lovorn,*457 U.S. 255, 266-68 (1982).

suffer sufficient injury to satisfy Article III's case-or-controversy requirement. If a particular person will be in Ohio for one of the cancelled days but none of the others, perhaps that person could get an injunction to allow him an alternate means of voting. *See, e.g., Goosby,* 409 U.S. at 518-19. But the standing of one person does not convey standing to all others to share the same injunctive relief. Instead, "[a]s-applied challenges are the basic building blocks of constitutional adjudication." *Gonzales v. Carhart,* 550 U.S. 124, 168 (2007). As to most (if not all) members of Plaintiffs' coalition, it is too early to say whether this or that Sunday or Saturday or evening will suffice over the several weeks until Election Day, which is insufficient for Article III:

> And the affiants' profession of an "inten[t]" to return to the places they had visited before – where they will presumably, this time, be deprived of the opportunity to observe animals of the endangered species – is simply not enough. Such "some day" intentions – without any description of concrete plans, or indeed even any specification of *when* the some day will be – do not support a finding of the "actual or imminent" injury that our cases require.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 564 (1992) (emphasis in original). While "some day in the next couple months" is more concrete that just "some day," it is not concrete enough to show actual or imminent injury. Moreover, the Court cannot satisfy Article III by looking out over the coalitions' many members and inferring that *some of them* – without knowing *which ones* – will suffer an

acute enough injury for Article III. A collection of individuals without standing cannot aggregate to a group with standing, *Pub. Citizen, Inc. v. NHTSA,* 489 F.3d 1279, 1294 (D.C. Cir. 2007), because "[t]he law of averages is not a substitute for standing." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464, 489 (1982). Plaintiffs therefore lack the required "*substantial* probability that they would have been able to [vote] and that, if the court affords the relief requested, the asserted inability of petitioners will be removed," *Warth v. Seldin,* 422 U.S. 490, 504 (1975) (emphasis added); *DeBolt v. Espy,* 47 F.3d 777, 780 (6th Cir. 1995) ("plaintiff must show a likelihood or substantial probability that the defendant's policies caused his [deprivation] and … that favorable action by the court would cure [it]"). Plaintiffs have not shown that.

B. Ohio's Immunity Bars Plaintiffs' Requested Relief

Unless a state waived its immunity or Congress abrogated immunity under the Fourteenth Amendment, sovereign immunity bars suits for both damages and injunctive relief. *Alden v. Maine,* 527 U.S. 706, 712-16 (1999). Where (as here) abrogation is not express, it must be "unmistakably clear in the language of the statute." *Nevada Dep't of Human Res. v. Hibbs,* 538 U.S. 721, 726 (2003). As signaled in Section II.B, Plaintiffs' theory is a VRA §5 retrogression claim dressed up as a VRA §2 claim, something Congress did not "unmistakably" allow. Where Congress did not abrogate it and Ohio did not waive it, Ohio's immunity bars this

suit. *McCormick v. Miami Univ.,* 693 F.3d 654, 664 (6th Cir. 2012). Further, Ohio's Attorney General lacks authority to waive immunity, so Ohio can raise it for the first time on appeal, and this Court can raise it *sua sponte. Mixon v. Ohio,* 193 F.3d 389, 396-97 (6th Cir. 1999). The *Ex parte Young* doctrine requires "an ongoing violation of federal law," *Verizon Md., Inc. v. Public Serv. Comm'n of Md.,* 535 U.S. 635, 645 (2002), which is absent here.

Without a clear violation of federal law, *see* Section II, *supra,* Plaintiffs in essence are complaining that the current Ohio Election Laws reduce early-voting opportunities from Ohio's *prior election laws.* At bottom, that seeks to enforce former Ohio law against Ohio in federal court, which – in addition to discouraging innovation – trenches upon Ohio's sovereign immunity and falls outside *Young:*

> This need to reconcile competing interests is wholly absent, however, when a plaintiff alleges that a state official has violated *state* law. In such a case the entire basis for the doctrine of *Young* … disappears. A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law.

Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 106 (1984). This case simply has no place in federal court.

CONCLUSION

The emergency petition for rehearing *en banc* should be granted.

Dated: September 26, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. The foregoing brief complies with FED. R. APP. P. 32(a)(7)(B)'s type-volume limitation because the brief contains 3,874 words and fifteen pages, excluding the parts of the brief that FED. R. APP. P. 32(a)(7)(B)(iii) exempts.

2. The foregoing complies with FED. R. APP. P. 32(a)(5)'s type-face requirements and FED. R. APP. P. 32(a)(6)'s type style requirements because the brief has been prepared in a proportionally spaced type-face using Microsoft Word 2010 in Times New Roman 14-point font.

Dated: September 26, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2014, I electronically filed the foregoing brief with the Clerk of the Court for transmittal of a Notice of Electronic Filing to the participants in this appeal who are registered CM/ECF users.

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