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STATEMENT OF INTEREST OF AMICI CURIAE

Amici—the Iraq and Afghanistan Veterans of America (IAVA),¹ and the Veterans for America (VFA)²—are national veterans’ organizations dedicated to promoting and protecting the rights and interests of this nation’s veterans. As veterans’ organizations, *Amici* are also deeply committed to safeguarding the rights of active duty military members. Because this nation’s veterans and active duty military members safeguard the fundamental right to vote of all Americans, it is imperative that their right to vote be steadfastly protected.

A high percentage of those serving in the military must vote by absentee ballot because they are deployed away from home. Similarly, veterans confined to VA hospitals typically must vote by absentee ballot. It is critically important that our active duty soldiers and disabled veterans be guaranteed an absentee voting process that is fair, predictable, and unencumbered by

¹ Established in June 2004, Iraq and Afghanistan Veterans of America (IAVA), a non-profit and non-partisan organization, is dedicated to improving the lives of Iraq and Afghanistan veterans and their families. IAVA is the nation’s first and largest group dedicated to those military personnel who have served and continue to serve in the wars in Iraq and Afghanistan. More than 1.5 million American troops have served in Iraq or Afghanistan, and thousands have been deployed multiple times during the five years of the war in Iraq and six years of the war in Afghanistan. IAVA focuses on critical issues facing veterans and their families, particularly those areas that are unique to new veterans. Its membership comprises active veteran members and civilian supporters, totaling more than 100,000 members in all 50 states. Many of IAVA’s members will be voting in a presidential election for the first time as veterans of the Iraq and Afghanistan wars.

² Veterans for America (VFA), is an advocacy and humanitarian organization whose primary mission is to ensure that our country meets the needs of service members and veterans who have served in Operation Enduring Freedom and Operation Iraqi Freedom. VFA focuses specifically on the signature wounds of these conflicts: psychological traumas and traumatic brain injuries. VFA concentrates much of its attention on the needs of those who currently are serving in the military, since the majority of those who have seen combat in Iraq and Afghanistan are still in the military and under the care of the Department of Defense. VFA works closely with military leaders and members of Congress on a bipartisan basis to ensure that the needs of our service members and their families are well understood and that policies and legislation are implemented to better support our troops and their families as they cope with the effects of multiple deployments, high-intensity combat, inadequate dwell time, as well as sub-standard post-combat care and family support.

confusion. The arguments made in the complaint in this action threaten the rights of a broad range of absentee voters—far beyond only those who would submit ballots during the September 30 to October 6, 2008 “window period” before the upcoming election. Relators’ arguments also raise a host of absentee ballot issues at the eleventh hour that threaten to disrupt the orderly administration of the upcoming election. As groups that represent veterans and are deeply concerned with the voting rights of active duty military members, *Amici* are troubled by the potential impact of this litigation and want to ensure that the implications of the arguments being made in this litigation are fully before the Court. *Amici* therefore submit this brief in support of Respondent, Ohio Secretary of State Jennifer Brunner.³

ARGUMENT

Relators challenge registration and absentee voting procedures that both Republican and Democratic Secretaries of State historically have implemented without incident. Specifically, Relators challenge the settled practice of allowing qualified voters to register to vote and request an absentee ballot within 30 days—a procedure that is designed specifically to protect the right of all qualified voters to cast a ballot and one that is of special importance to members of the armed forces and to veterans confined to VA hospitals. Relators attempt to frame their argument as challenging *only* the Secretary’s actions with respect to absentee balloting in the so-called “five-day [sic] ‘overlap’ period,” claiming that those who register during this period may not also request an absentee ballot at the same time. Rel. Br. at 1.⁴ But the consequences of Relators’ interpretation of Ohio law—bad as they are even for voters who register within this “window period”—actually would threaten far more sweeping harms to many first-time voters,

³ *Amici* agree with Respondent that the Court does not have mandamus jurisdiction. *See, e.g., State ex rel. Hodges v. Taft*, 64 Ohio St. 3d 1 (1992). Nevertheless, *Amici* focus their arguments solely on the merits issues that have implications for absentee voters such as disabled veterans and active duty military members.

both absentee and in-person, including significant numbers of military personnel and disabled veterans who depend on absentee voting.

As the Secretary of State indicates in her Answer, Relators' reading of the relevant statutory provisions is simply incorrect. Nothing in Ohio law precludes the Secretary of State from directing that voters who seek to register in the "window period" may also request an absentee ballot at the time they register, or within a few days thereafter. Indeed, this has been longstanding practice in Ohio. Thus, the Secretary's interpretation—shared by her Republican and Democratic predecessors—avoids potentially massive disruption and confusion regarding the voting process. Particularly at the eleventh hour in which Relators file this lawsuit, deference to the Secretary of State's reasonable and well-supported interpretation of the law is essential.

In this brief, *Amici* will focus first on the threat that Relators' arguments pose to the right to vote of all who depend on absentee balloting—especially members of the armed forces and veterans. *Amici* then will provide additional reasons why the Secretary's interpretation of the relevant provisions of the Revised Code is plainly the correct one.

I. The Relators' Argument Jeopardizes The Right To Vote Of All Absentee Voters In Ohio—including Substantial Numbers Of Military Personnel And Veterans Who Already Have Applied For Absentee Ballots.

The Relators' argument rests on the following premise: "[A qualified elector/voter⁵] must have been registered to vote for at least thirty days prior to voting in person or by absentee ballot." Rel. Br. at 13.⁶ From this premise, Relators argue that: a) only individuals who have

⁴ The window, which runs from September 30 until October 6, is one week long.

⁵ Relators use "qualified elector" and "qualified voter" interchangeably. *See, e.g.*, Rel. Br. at 6 ("There is no basis for distinguishing between the terms 'qualified elector' and 'qualified voter' under Ohio election law.").

⁶ Relators do not state explicitly an apparent premise of their argument—that they consider a voter "to be registered" on the date that the county election officials process a voter's registration

been registered to vote for 30 days may even *apply* for an absentee ballot;⁷ b) any individual who applies for an absentee ballot without having first been registered for 30 days has committed a felony;⁸ and c) a Board may not *issue* an absentee ballot to an individual who has been registered to vote for fewer than 30 days at the time the individual requests the ballot, even if that individual will have been registered to vote for more than 30 days by the time that ballot is actually counted on Election Day.⁹

Relators' reasoning is fallacious. As the Secretary of State has shown, there is simply no reason to interpret the Revised Code in the counterintuitive manner Relators propose. See Section II, *infra*. To the contrary, Relators' arguments—if accepted—threaten to invalidate the absentee ballot applications of thousands of absentee voters, including many who already have submitted registrations and applications for absentee ballots in reliance on the settled understanding of existing law that has heretofore governed the process. Indeed, as Relators would have it, these honest citizens seeking to exercise their solemn duty in a democracy (doubtless including many in the military) potentially could be branded as felons. Relators' unprecedented gloss on the meaning of “qualified elector” and “qualified voter” should be

form, as opposed to the date that a voter submits a voter registration form for processing. In any event, regardless of what meaning Relators give to the phrase “to be registered,” their arguments have broad and harmful ramifications for voters other than absentee voters in the “window period.”

⁷ Rel. Br. at 17-18 (stating that there is “clear constitutional and statutory requirements that an individual be registered to vote for at least thirty days before requesting an absentee ballot”).

⁸ Rel. Br. at 18 (stating that citizens who have not been registered for 30 days, “but nevertheless request an absent voter’s ballot by attesting to being a qualified voter, are potentially guilty of a felony”).

⁹ Rel. Br. at 13 (“[A]n election officer may not deliver an absent voter’s ballot to a person who has not provided the information required by [Ohio Revised Code] § 3509.03, including a statement that he or she is a ‘qualified elector,’ meaning that such person has been registered to vote for thirty days.”).

rejected, as their argument is contrary to any possible legislative intent and would lead to precisely the sort of confusion and disenfranchisement that courts refuse to allow.

A. Relators' Argument Would Require The Voiding Of Large Numbers Of Absentee Ballot Applications Already Submitted, Including Those Of Military Personnel.

Relators claim that they seek to prevent an “alarming” number of purported felonies in the “overlap” period by preventing individuals from even applying for absentee ballots unless they have been registered to vote for 30 days by the time they ask for an absentee ballot. Rel. Br. at 18. Yet it is Relators’ argument that is “alarming” because it threatens to nullify the votes of thousands of Ohio citizens who have every right to vote in the upcoming election because they will have been registered at least 30 days on or before Election Day. Relators simply ignore that many Ohioans—including substantial numbers of military personnel who vote in Ohio—already have submitted applications for absentee ballots prior to being registered for 30 days. This is consistent with longstanding practice in Ohio and elsewhere, which allows those voters to cast ballots because they will have been registered for at least 30 days *by the time those ballots are counted on Election Day*. Indeed, Ohio voters have submitted absentee ballot applications for the upcoming election to their local election boards since January 2008, *see* Ohio Rev. Code § 3509.03, and have done so without any need to show that they have been registered for 30 days before attesting that they are “qualified voters” for purposes of submitting an absentee ballot application. Thus, were the Relators’ arguments accepted, an “alarming” number of individuals, Rel. Br. at 18, *already* would have committed felonies by submitting absentee ballot applications

prior to being registered for 30 days. Worse still, according to Relators, these individuals' absentee ballot applications must be voided. *See* Rel. Br. at 22.¹⁰

Moreover, as Ohio law recognizes, some members of the armed services use a federal form that permits an individual to register to vote and to apply for an absentee ballot at the same time. *See generally* Ohio Rev. Code ch. 3511 (Armed Services Absent Voter's Ballots); *see also* Federal Voting Assistance Program, Federal Post Card Application, <http://www.fvap.gov/resources/media/fpca.pdf>. Like the Secretary's absentee ballot application form, under Ohio law, the application must include "[a] statement that the person requesting the ballots is a qualified elector." Ohio Rev. Code § 3511.02(a)(7). Thus, both the Federal Post Card and the Ohio Revised Code expressly contemplate that a voter may be a "qualified elector" for an absentee ballot even if she registers on the same day that she requests an absentee ballot. Yet, under Relators' argument—that a voter is not "eligible to vote" until 30 days have passed since the date of registration—Ohio voters who complete and submit both portions of the Federal Post Card are, according to Relators' argument, falsely affirming that they are "qualified electors" and "eligible to vote," because they have not yet been registered (let alone for 30 days) at the time

¹⁰ Additionally, to the extent Relators' argument assumes that an individual is not registered until their registration forms are processed, their argument also would disenfranchise absentee voters who register at or near the October 6, 2008 deadline. Under Relators' theory, voters who submit their registration forms at or near the October 6, 2008 deadline may not legally submit applications for an absentee ballot until 30 days *after* they have been registered by state officials. And, pursuant to Ohio law, state officials need not process and accept voter registration requests for up to 20 days after receipt of the registration documents, *see* Ohio Rev. Code § 3503.19(c)—a time period that does not include the time it takes for the registration request to be delivered by mail to state officials. In any event, even assuming that a voter's registration is processed soon after receipt on October 6, 2008, under Relators' argument, that voter still must wait 30 additional days before applying for an absentee ballot as a "qualified elector." Thus, if Relators were correct, voters who register at or near the October 6, 2008 deadline cannot as a practical matter cast absentee ballots because there simply will not be enough time for them to submit absentee ballot applications, receive their absentee ballots, and return those voted ballots by the close of the polls on Election Day.

they submit the Federal Post Card. That Relators' novel argument conflicts both with other provisions of the Ohio Revised Code and with this longstanding federal procedure further demonstrates that Relators' claims lack merit.

Contrary to Relators' novel and disruptive proposed procedure, under settled practice, Ohio voters simultaneously may submit voter registration paperwork and absentee ballot applications, maximizing the likelihood that they will receive absentee ballots in time to submit those ballots by Election Day. *Cf.* Ohio Voter Information Guide (2008) at 14 (“[Y]ou should submit your request as far in advance of the election as possible to ensure there is sufficient time for the board to mail you a ballot and for you to timely return that ballot.”). Relators have provided no support or justification for their novel reading of the “qualified elector” affirmation on the absentee ballot application—a reading that will disrupt the settled expectations of Ohio voters and lead to the effective disenfranchisement of absentee voters who register at or near the deadline.

Relators also ignore the unprecedented disenfranchisement of *in-person* voters that their position will cause. Relators' argument that one must “be registered for 30 days” in order to be a qualified elector, *see* Rel. Br. at 1, means that an individual will have to be registered for 30 days not only to apply for an absentee ballot, but also to vote in person on Election Day. Relators' argument therefore precludes in-person voting by anyone who is registered on the date of the registration deadline. This is so because the registration deadline is actually 29 days before Election Day, as 30 days before Election Day falls on a Sunday (as it always does), and under Ohio law, *see* Ohio Code § 1.14, the registration deadline thus extends to Monday, October 6, 2008—29 days before the election. Accordingly, Relators' argument would lead to the absurd

result of refusing to allow voters to vote in-person on Election Day if they registered on the final day of the registration period.

Moreover, it is longstanding practice in Ohio that voters need not actually be registered for 30 days in order to vote in person on Election Day, but simply need to have mailed their applications within 30 days of the election. *See, e.g.*, Ohio Rev. Code § 3503.19; *see also State ex rel. Oster v. Lorain County Bd. of Elections*, 93 Ohio St. 3d 480, 485 (2001).¹¹ Pursuant to this longstanding interpretation of state law, the Secretary of State and county boards have expressly informed all Ohio voters through a wide variety of written materials that registrations need only be postmarked by the 30-day deadline. *See, e.g.*, Ohio Voter Information Guide (2008) at 6 (“Your voter registration form must be postmarked by the 30th day before the first election at which you want to vote.”). However, according to Relators’ argument, then county boards must preclude voters from in-person voting if their registrations are not actually processed 30 days prior to the election—regardless of whether the voters complied with longstanding practice and ensured that their registrations were postmarked by the 30th day before the election. Plainly, this Court should not accept an argument that disrupts the settled expectations of so many Ohio voters.

Military personnel have relied on the longstanding and widespread interpretation of Ohio law to allow voters to apply for absentee ballots at the same time they register, and without waiting for 30 days after registration. Although ignored by Relators, the necessary consequence of their argument—the disenfranchisement of many absentee voters who submit registrations and absentee ballot applications at or near the same time—would be devastating to many military

¹¹ Indeed, a contrary provision of state law would be preempted by the National Voter Registration Act, which requires that applicants who have *postmarked* a “valid voter registration form” no later than the thirtieth day before any federal election must be permitted to vote. 42 U.S.C. § 1973gg-6(a)(1)(B); *see also* Ohio Rev. Code § 3503.19(A).

personnel. Relators have provided no justification for their novel reading of Ohio law that has the potential to deprive many absentee voters, including military personnel and disabled veterans, of their right to vote.

B. Relators' Arguments Must Be Rejected Because They Would Disrupt The Administration Of The Election And Upset Settled Expectations.

There is no truth to Relators' assertion that the Secretary's administration of the "overlap" period will result in an "upheaval of the entire elections process in Ohio." Rel. Br. at 18. The reality is that the opposite is true. It is Relators' last-minute effort to force through a novel interpretation of Ohio law that would potentially cause disruption and upheaval, or at the very least enormous confusion—not only during the "overlap" period but also throughout the entire remainder of the election. As just explained, Relators' argument affects not only "overlap" period voters, but would call into question the ability of *all* newly registered absentee voters to vote, as well as in-person voters who submit registrations at or near the registration deadline. Changing the rules for all of these voters now will cause massive disruption to the election process in Ohio.

As the Sixth Circuit has explained, "there is a strong public interest in smooth and effective administration of the voting laws that militates against changing the rules in the middle of the submission of absentee ballots"—precisely what Relators ask this Court to do. *Ne. Ohio Coal. for the Homeless v. Blackwell*, 467 F.3d 999, 1012 (6th Cir. 2006). Such disruption should not be permitted. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 7 (2006) (cautioning that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls"); *Summit County Democratic Cent. and Executive Comm. v. Blackwell*, 388 F.3d 547, 551 (6th Cir. 2004) ("[T]he State's interest in not having its voting processes interfered with, assuming that such processes are legal and

constitutional, is great. It is particularly harmful to such interests to have the rules changed at the last minute.”).¹²

To begin with, Relators’ argument would result in great uncertainty and confusion with respect to all absentee ballot applications *already* submitted by individuals—including military personnel and veterans—who did not wait until 30 days after registering to submit their applications. Although Relators ignore this critical issue, under their own reasoning such applications would have to be voided by the county boards. *See* Rel Br. at 22. Yet, because Relators’ interpretation is contrary to the Revised Code and longstanding practice, there is no statutory or other guidance for how the election boards are to handle ballot applications submitted prior to 30 days after a voter’s registration. Nor are there processes or guidelines for county boards to use to determine whether a voter did in fact wait until 30 days following registration to affirm that the voter is a “qualified elector” in submitting an absentee ballot application. Given the lack of procedures or guidance to address this issue, there will be certain confusion over which pending absentee ballot applications are valid under Relators’ theory and which are not. Plainly such confusion—at this late date, after thousands of registrations and absentee ballot applications have been submitted—should be avoided.

The necessity of requesting absentee ballots sooner rather than later is particularly compelling for military personnel serving overseas. Currently, it takes 11 to 13 days for priority letters to arrive in Iraq or Kuwait and 10 to 12 days for such mail to arrive in Afghanistan. *See* Military Postal Service Agency, MPSA FAQs, <http://hqdainet.army.mil/mpsa/faq.htm#q1> (last visited Sept. 23, 2008). For this reason, overseas military personnel are more likely to have

¹² Ironically, Relators cite *Summit* out of context to support the contention that the state has a “strong interest” in the “smooth and effective administration of [voting laws].” Rel. Br. at 14. Read in context, *Summit* urges that it is *harmful* to this state interest to change the rules of election in the eleventh hour.

requested their absentee ballots already, and to have done so in conjunction with registering. *See* I.A, *supra* (describing the Federal Post Card Application). These military personnel simply would not have time before the election to request, receive, and return an absentee ballot should their absentee ballot applications be invalidated under Relators’ interpretation of “qualified elector.” Following the Relators’ skewed logic, therefore, would render unable to vote many overseas military personnel who relied on the common understanding of the requirements for requesting an absentee ballot. Notably, for all overseas military personnel, absentee voting is the *only* way they can exercise their fundamental right to vote.

Finally, under Relators’ theory, county boards also must preclude all in-person voters from voting on Election Day if they registered on the final day of the registration period—which is 29 days prior the election. *See supra* n.11. Plainly, this Court should not accept an argument that disenfranchises and disrupts the settled expectations of so many Ohio voters.

The many harmful consequences of Relators’ arguments threaten to wreak havoc in the upcoming election. If voters have to wait until they are registered for 30 days even to request an absentee ballot—as Relators claim—then county boards would be faced with an influx of requests for absentee ballots in the days leading up to the election. In stark contrast, the longstanding practice in Ohio encourages voters to request absentee ballots at the same time that they submit their registration paperwork—that is, early enough to give the county boards sufficient time to process the absentee ballot requests and the voter adequate time to receive and return the ballot.

Not only would Relators’ proposed framework be disruptive to the administration of the election and cause mass confusion, but it also would threaten—and in some cases, annul—voters’ ability to receive and cast absentee ballots. Indeed, the consequences of accepting the

Relators' argument contradict the whole point of Ohio's absent voter statute—and, in particular, the 2006 amendments—which is to increase the number of Ohioans who vote. “There is a strong public interest in allowing every registered voter to vote freely.” *Summit County*, 388 F.3d at 551. Thus, including in the context of absentee balloting, this Court rejects arguments that attempt to elevate “form over substance,” “in light of the policy of the law favoring free and competitive elections.” *In re Election of Member of Rock Hill Bd. of Educ.*, 76 Ohio St. 3d 601, 608 (1996) (discussing absentee ballots specifically). Relators' interpretation flies in the face of Ohio statutes that seek to guarantee people who cannot make it to the polls on Election Day the right to vote, particularly overseas military personnel and veterans who are unable to vote in person because of physical disability.

II. Secretary Brunner's Statutory Interpretation is Correct.

This Court need not subject the citizens of Ohio to the bizarre consequences that would flow from Relators' interpretation of the statute. Rather, Directive 2008-63—which avoids all such consequences—is a correct implementation of the Ohio statutory scheme.

Ohio Revised Code § 3503.19 sets forth the voter registration deadline for Ohio elections. This law has been in effect since 1995 and provides that “[v]oter registration applications, if otherwise valid, that are returned by mail to the office of the secretary of state or to the office of a board of elections must be postmarked no later than the thirtieth day preceding a primary, special, or general election in order for the person to qualify as an elector eligible to vote at that election.” Ohio Rev. Code § 3503.19(A). For the upcoming election, that date is Monday, October 6, 2008.

Ohio Revised Code § 3509.01, the current version of which went into effect in 2001, provides that “ballots shall be designated as ‘Absent Voter's Ballots’ and shall be printed and

ready for use on the thirty-fifth day before the day of the election.” Ohio Rev. Code § 3509.01. For the upcoming election, that date is Tuesday, September 30, 2008.

Accordingly, there has been an overlap of at least 5 days (depending on when weekends fall) between the opening of absentee balloting and the close of voter registration for numerous election cycles.¹³ During that time, both Democratic and Republican state officials—including Secretary Brunner—have reasonably interpreted this “window period” as allowing voters to register to vote and to receive and vote their absentee ballots within this period.

Prior to the 2006 election, however, absentee balloting in Ohio was available only to a limited group of persons with certain specific qualifications—namely advanced age, emergency-service or militia employment, medical treatment, incarceration, religious observance, absence on Election Day, or illness/disability. In October 2005, Governor Taft signed into law Substitute House Bill 234, which created a “no-fault” absentee balloting process that allowed *any* person to vote by absentee ballot, regardless whether the person met one of the previously required qualifications. *See* Sub. H.B. 234, 126th Gen. Assem. (Ohio 2005). Notably, the bill made no change to the requirement that absentee ballots be made available 35 days prior to the election. *See id.*

The 2006 election, therefore, was the first time in which *any* new registrant could take advantage of the overlap period to both register and vote by absentee ballot. According to a recent newspaper article, “[i]n Franklin County, about 60 did so for the 2006 general election, with no recorded complaints.” *See* Alan Johnson, *GOP Crying Foul Over Law It Passed*, Columbus Dispatch, Aug. 15, 2008, at 1B. *Amici* also are unaware of any recorded complaints—

¹³ As the Secretary states in her Answer that “Ohio law has provided that a person can register to vote and at the same time obtain an absentee ballot by appearing at board of elections since at least 1981.” Answer, ¶ 29; *see also id.* ¶¶ 39, 45.

and Relators cite none—in the 25 years before 2006 pertaining to any voter fulfilling one of the then-necessary qualifications for absentee voting, and choosing to register and vote absentee during the available window.

In anticipation of large numbers of new voter registrations in the run-up to the presidential election, the Secretary of State issued Directive 2008-63 to ensure the registration and absentee-balloting laws continue to be implemented properly. The Secretary needed to implement two equally valid pieces of legislation that, on their face, create a week-long window period in which citizens may both register to vote and apply for and cast an absentee ballot. To avoid a scenario in which the law was applied unevenly and haphazardly by boards of election throughout the state, the Secretary of State, through Directive 2008-63, set forth procedures implementing both laws as written and fulfilling the General Assembly's unambiguous intent to expand the pool of electors permitted to both register to vote and cast an absentee ballot on the same day during this week-long window.

Specifically, Directive 2008-63 instructs Boards of Election to develop procedures for this window period to both register eligible electors and, once a registration is properly submitted, to allow the voter to receive and cast an absentee ballot that same day. This Directive ensures that absentee voters registering during the window period may exercise the same right as all Ohioans to cast an absentee ballot for any reason beginning on September 30, 2008.

The Secretary's Directive also lays out specific instructions to ensure that registration and absentee balloting within the window period proceed in an orderly and proper manner, consistent with the Revised Code. For instance, the Directive instructs Boards of Election that:

- Prior to allowing absentee balloting, Boards must first correctly register voters under Ohio Revised Code § 3503.19. Only after a registration has been established successfully can Boards provide electors the opportunity to exercise their right to vote absentee. *See*

Directive 2008-63 at 1 (“A board of elections must register a person as an elector before issuing an absentee ballot to that person.”).

- Boards must delay registration and absentee voting if the Boards are not satisfied as to an application’s validity and the applicant’s qualifications. *See id.* at 2 (“Boards of elections are required to . . . reserv[e] the right to delay registration and immediate absentee voting if a board is not satisfied as to validity of the application and the applicant’s qualifications.”)

In sum, Secretary Brunner’s Directive correctly implements the Ohio General Assembly’s creation of an overlap period in which Ohio citizens can first register and then subsequently receive and cast an absentee ballot. This Directive also comports with the General Assembly’s purpose of expanding electoral opportunities for Ohio citizens, while ensuring orderly and proper voter registration. Furthermore, as noted above, Secretary Brunner’s Directive merely follows a precedent that began under her Republican predecessor. Indeed, the procedures she has set forth track precisely how the law was implemented under Secretary of State Blackwell during the 2006 general election.

Although Relators read great significance into the requirement that an elector must have “been registered to vote for thirty days,” Ohio Rev. Code § 3503.01, that language merely requires that voter registration close 30 days prior to Election Day. This is evident from the history behind the provision: it was added to the Ohio Constitution in 1977 to overturn legislation passed earlier that year that would have allowed registration on Election Day, i.e. the same day votes would be counted.. *See* Michelle R. Smith, Policy Matters Ohio, Election Day Registration: Expanding the Ohio Vote 5 (July 2003), *available at*: http://www.policymattersohio.org/pdf/EDR_report.pdf. There is no support for Relators’ argument that the statutory language creates an *additional* requirement—beyond the required close of voter registration 30 days before the election—much less dictates who can cast an absentee ballot and when.

The Secretary's proper reading of Ohio law finds additional support in this Court's decision in *State ex rel. Oster v. Lorain County Board of Elections*. In that case, the Court was called upon to interpret the Revised Code's provision that a referendum petition signer must be "qualified to vote" on the candidacy/issue that is the subject of the petition, and that "the facts of qualification shall be determined as of the date when the petition is filed." *Oster*, 93 Ohio St. 3d at 485 (quoting Ohio Rev. Code § 3501.38(A)). This Court determined that as long as the signer *filed* his/her registration application before the referendum petition was filed, and the registration application was eventually approved, then the signer would be considered "qualified to vote . . . as of the date when the petition is filed" under Ohio Revised Code § 3501.38(A). *Id.* Likewise here, at the moment that an otherwise qualified voter *files* his/her registration application (so long as the voter does so by the registration deadline), the voter is qualified to vote in the election. *See id.* Indeed, the Secretary's Directive ensures additional safeguards that are not even required by *Oster*, as her Directive ensures that for "window period" voters, registrations not only will be filed but also will be processed before a voter may receive and cast an absentee ballot.

Given the statutory and constitutional history, the settled practice prior to 2008, this Court's precedents, and the bizarre consequences of Relators' arguments, the Secretary's interpretation of the relevant provisions is both correct and most reasonable. Moreover, it accords with the common-sense notion that even if an absentee ballot is filed prior to Election Day, the elector does not actually vote until Election Day, when the elector's ballot is opened and tabulated, along with all other eligible citizens' votes—all of whom will, at that point, have been registered for at least 30 days. Accordingly, in requesting and voting absentee ballots, electors attest to the fact that they will be qualified voters at the time their votes are

effectuated—when the ballots are opened and tabulated—which will be at least 30 days after they submitted their registration forms. And even if Relators’ and the Secretary’s interpretations of the statutory provisions at issue are in equipoise, this Court has “repeatedly held [that] ‘[w]hen an election statute is subject to two different, but equally reasonable, interpretations, the interpretation of the Secretary of State, the state’s chief election officer, is entitled to more weight.’” *Id.* at 486 (quoting *State ex rel. Stevens v. Geauga County Bd. of Elections*, 90 Ohio St. 3d 223, 227 (2000)).

CONCLUSION

For the reasons stated above, *Amici* respectfully request that the Court dismiss the Relators’ Petition for Mandamus.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Memorandum of *Amici Curiae*, Iraq and Afghanistan Veterans of America (IAVA) and Veterans For America (VFA), in Support of Respondent was served by regular U.S. mail, postage pre-paid, on the following persons at the following addresses on this 25th day of September, 2008:

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