No. 20-4063

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

A. PHILIP RANDOLPH INSTITUTE OF OHIO, LEAGUE OF WOMEN VOTERS OF OHIO, OHIO STATE CONFERENCE OF THE NAACP, BEATRICE GRIFFIN, SARAH RIKLEEN, C. ELLEN CONNALLY, MATTHEW NOWLING, RYLLIE JESIONOWSKY, AND SOLI COLLINS,

Appellees

v.

FRANK LAROSE, in his official capacity as Secretary of State of Ohio,

Appellant.

On Appeal from the United States District Court for the Northern District of Ohio
No. 1:20-cv-01908

Hon. Dan Aaron Polster

APPELLEES' OPPOSITION
TO APPELLANTS' MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

The preliminary injunction that Defendant seeks to stay would simply allow county boards of election to decide whether to provide more than one location per county for their voters to drop off their ballots for the November election. The injunction was issued after a 12-hour long evidentiary hearing in which the district court heard undisputed testimony that Defendant's Directive 2020-16 against multiple locations would result in tens of thousands of voters being disenfranchised, and consequently violate Plaintiffs' right to vote. After giving Defendant every opportunity to take steps to lift the unconstitutional burden from voters caused by his Directive, the district court issued its order.

Defendant's attack on the district court's decision ignores the court's fact-finding and credibility determinations that underlay its determination. Instead, Defendant's primary challenge is not on the merits of the decision, but on the timing, claiming that Plaintiffs waited too late in the election process – until "late August" – to file this case, and that, therefore the injunction must be lifted in accordance with the *Purcell* doctrine. What Defendant does not acknowledge up front, however, is that the reason Plaintiffs did not file this action until "late August" is because Defendant did issue his Directive until *August 12*. It is not Plaintiffs who are trying to change the rules of the election in mid-stream; it is Defendant who did so. If Defendant's *Purcell* argument is accepted by this Court, then election officials will

be granted carte blanche to impose new, unconstitutional, election procedures at the eleventh-hour, and then defend against challenges on the basis that granting relief would violate *Purcell*. That cannot jibe with constitutional principles.

Here, the district court's determination of a likely constitutional violation was based on substantial facts in the record which showed that

(1) the COVID-19 pandemic will lead to a record number of Ohioans will vote in the November 2020 election by absentee ballot;

(2) concerns about timely delivery of these ballots by the postal service will lead to many of these voters choosing to use drop boxes for delivery of their ballots;

(3) Defendant's Directive that limited drop boxes to a single location, at the county election office, will result in inordinate travel burdens on voters – particularly those poorer voters without cars and communities of color – and extraordinarily long wait times at the single drop box locations on Election Day. The Election Day wait would be great because evidence showed that many voters would be expected to drop off their ballots on Election Day, and on Election Day, voters cannot mail their ballots or drop them off at their polling place. These burdens will fall most heavily in the more highly populated counties and Ohio's largest cities. Cuyahoga County, the district

court found, with 850,000 voters would have the same number of drop box locations – one – as Noble County, with under 10,000 voters.

The district court properly found the burden on voters is substantial and violates the right-to-vote under the *Anderson/Burdick* framework when weighed against the absence of a significant state interest in prohibiting counties from having the discretion to add drop box locations.

The relief granted by the district court has returned the situation to the status quo ante before Directive 2020-16 was issued. It should be up to each county – freed from the unconstitutional Directive – to make its own decision as to how to best ease the burdens on its voters. There is no basis for staying the injunction.

STATEMENT OF THE CASE

Ohio has a no-fault absentee voting system that permits anyone to cast an absentee ballot without providing an excuse. Ohio Rev. Code § 3509.02. Once a voter requests, receives, completes, and signs and absentee ballot, Ohio Revised Code § 3509.05, directs the manner in which a voter is to return that ballot—"[t]he elector shall mail the identification envelope to the director from whom it was received in the return envelope . . . or the elector may personally deliver it to the director . . ." or a close family member "of the elector may deliver it to the director."

Ohio Rev. Code § 3509(A). This statute does not mention absentee ballot drop boxes.

Under Ohio law, the legislature has conferred upon "front-line officials," bipartisan county boards of elections, each composed of two Republicans and two Democrats, "broad responsibility for administering elections." Ohio Rev. Code § 3501.11. While the Ohio Secretary of State is the state's chief election officer, id. § 3501.04, and, he plays a secondary role (though important) to the county election officials who actually administer elections. See id. Under statute, the Secretary has the authority to, inter alia, by "[i]ssue instructions by directives and advisories . . . to [county boards of elections] as to the proper methods of conducting elections." *Id.* § 3501.05.

The Ohio Revised Code does not limit where counties can collect absentee ballots in drop boxes, whether those boxes are fixed to the ground and monitored by security camera or staffed by election workers and open for specified hours.[1] Three different courts have come to the same conclusion. As the district court in this case

[1] Plaintiffs' expert Paddy McGuire testified to the definition of drop boxes—that they include any location other than at the board of elections office where voters can return their absentee ballots and commonsense security measures. Mr. McGuire testified, in accord with the Federal Guidance, that there is a range of alternative ways to set up a ballot drop box, including establishing fixed, permanent metal boxes, and setting up temporary, staffed receptacles inside government buildings such as libraries. McGuire Trans.,RE83, PageID#2465 (including synonymous terms "ballot drop box," "ballot drop box receptacle," "ballot collection location," or "ballot drop sites," *see id*. RE83, PageID#2463).

stated, "it is now settled law that off-site drop boxes are neither prohibited nor prescribed in Ohio." Order, RE91 PageID#2915.

Despite these decisions and despite his own public statements that he would be happy to give counties the discretion utilize drop boxes at multiple locations if permitted by Ohio statute. Defendant LaRose has been persistent in permitting county board of elections discretion. On August 12, 2020, just three months shy of this upcoming election on November 3, 2020, Defendant LaRose issued Directive 2020-16, which in pertinent part, prohibits boards of elections "from installing a drop box at any other location other than the board of elections." Dir. 2020-16 (Aug. 12, 2020). Defendant LaRose took this action even though numerous counties had stated that they wanted to install drop box locations across their respective counties. Defendant LaRose decided to issue Directive 2020-16 after requesting an opinion from Attorney General Dave Yost but before the opinion was issued.

The issuance of Directive 2020-16 spawned litigation in state court and this litigation in federal court. The state court litigation, which was filed on August 25, focused on the issue of whether Directive 2020-16 was in accordance with state law. This action – which alleges violations of federal law, the constitutional right to vote and the Equal Protection Clause -- was filed the next day. In the state court action, the trial court granted a preliminary injunction after finding that the Ohio Revised Code § 3509.05 neither prescribes nor prohibits absentee ballot drop boxes in the

state. *Ohio Democratic Party v. LaRose*, No. 20CV-5634 at *4 (Franklin Cty. Ct. Common Pleas, Sept. 15, 2020). Defendant opposed this decision and appealed to the Tenth Judicial Circuit Appellate Court. The Ohio appellate court held the Ohio Revised Code neither required or prohibited the use of multiple drop box locations but found that the Defendant had the discretion to decide pursuant to his authority as Secretary of State. *Ohio Democratic Party*, No. 2AP-432 at *2 (10th App. Dist. Oct. 2, 2020).

In this action, Plaintiffs filed the motion for preliminary injunction on September 4 and the district court held a twelve-hour evidentiary hearing on September 23 in which it heard testimony from both sides the one-drop-box location rule. Plaintiffs put forth evidence from two election commissioners from Franklin and Hamilton Counties, Inajo Chappelle and Caleb Faux. Plaintiffs also introduced evidence from Washington election official Paddy McGuire, distance and queueing expert Dan Chatman, and the Executive Director of the Plaintiff League of Women Voters of Ohio.

Ms. Chappell discussed the burdens on voters of having to travel long distances to the board of elections office, the lack of parking space, long lines, and the fact that many do not own cars. She also discussed the September 14 plan passed by Cuyahoga County. This plan provides for staffed receptacles at the Chester Avenue site, which is near, but not at, the board of elections, and six library sites.

That same day the Director of Elections directed Cuyahoga County that it could not move forward with its plan.

On September 25, the district court issued an order that it was going to defer decision until the state court case was resolved but asked the state to negotiate resolution with Cuyahoga County. Order, RE 77 PageID#2265. The court also asked Defendant to file a report on progress with Cuyahoga County. *See id.* On September 30, Defendant filed a report stating that he approved the portion of the Cuyahoga County board's plan to have staff collect absentee ballots at a parking lot at the Chester Avenue site. He did not address that he prohibited the remainder of Cuyahoga County's plan. On October 5, Defendant LaRose issued Directive 2020-20 that authorized board employees to collect absentee ballots ***outside*** the office of the board of elections from electors personally delivering their absentee ballots to the board. The district court had dismissed the case because it interpreted Directive 2020-20 to mean that Defendant was authorizing board employees to staff ballot drop box locations in the county, and in particular, that Defendant would permit Cuyahoga County to implement the procedure voted by the board in September to have staff receive absentee ballots at designated libraries throughout the County. Dismissal Order. But when Plaintiffs asked the Court to reconsider its ruling based on proof that the Secretary of State was not permitting off site drop boxes the district

court reopened the case and granted Plaintiffs' motion for preliminary injunction. PI Order.

Defendant LaRose and Intervenor-Defendants the Trump Campaign now oppose this decision and have filed for an administrative stay pending appeal and Intervenor-Defendants have docketed a notice of appeal on the merits.

A. Key Expert Testimony at the September 25 Hearing

At the September 23 hearing, both sides presented testimony on the Secretary's prohibition of multiple drop boxes per county. Plaintiffs put forth evidence from two election commissioners from Franklin and Hamilton Counties, Inajo Chappelle, and Caleb Faux. Plaintiffs also introduced evidence from Washington election official Paddy McGuire, distance and queueing expert Dan Chatman, and Plaintiff League of Women Voters of Ohio. On the State's side, the Secretary of State did not testify. The State introduced evidence from two election officials and Amanda Grandjean, Defendant LaRose's Elections Director. Key testimony is detailed below:

As to the security measures, Mr. McGuire also testified that the procedures for ensuring ballot security and chain-of-custody are straightforward and not difficult, expensive or time consuming to develop and implement; and that he is unaware of any instance of fraud associated with their use in Washington and Oregon. RE83, PageID#2467-78. For example, using "chain of custody" tracking

regarding who handles a drop box, and "numbered seals" to track every time a drop box is opened or emptied, are straightforward and effective in ensuring ballot security. *Id*. PageID#2476-77.

Dr. Chatman testified to the burdens that voters would face as a result of the Secretary's prohibition on multiple drop box locations or satellite locations in counties. He conducted two analyses—a travel-burdens analysis and a queueing analysis. As to the travel-burdens analysis, Dr. Chatman determined that 75% of Ohio citizens of voting age, who reside in a household that lacks a vehicle, will face a significant travel burden in order to travel to and from the board of elections office in their county and that this burden falls disproportionately on low-income, people of color. As for the queueing analysis, Dr. Chatman concluded that there would be extremely long queue lengths and wait times in the state's most heavily populated counties, Cuyahoga, Franklin, Hamilton, Summit, Montgomery, and Lucas Counties. The wait times in these counties, when polls close on Election Day, range from in Cuyahoga County – 24 hours, 49 hours, or 157 hours in. the three scenarios – to Lucas County – 2 hours, 9 hours, or 46 hours in the three scenarios. No other expert testimony was introduced that addressed travel burdens or queue lengths and wait times, nor was any expert testimony introduced regarding the validity of the methodology used by Dr. Chatman. *See* Chatman Test., RE PageID#2553-2602. The court relied on Dr. Chatman's analyses.

The State's witness Ms. Grandjean articulated two state policy interests—uniformity and security—but provided no evidence substantiating these concerns. One of the election officials the State put forth actually said that if the installation of additional ballot drop boxes were permitted, the country boards could "make it happen" prior to Election Day. RE83 PageID#2492 ("we will make whatever we need to do, make it happen, and we'll do it with a smile on our face because we're the Franklin County Board of Elections"). As for the security concerns, Ms. Grandjean was not able to clearly articulate the security concerns and admitted that Defendant issued security requirements the day after the primary election governing the installation of drop boxes.

STANDARD OF REVIEW

A stay "is an intrusion into the ordinary processes of administration and judicial review," and "[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the Court's] discretion." *Nken v. Holder*, 556 U.S. 418, 433-434 (2009) (internal quotations omitted). Courts are to balance four factors: "(1) whether the movant has demonstrated a strong likelihood of success on the merits; (2) whether he will suffer irreparable injury in the absence of equitable relief; (3) whether the injunction will cause substantial harm to others; and (4) whether the public interest is best served by issuing the injunction." *Miller v.*

Parker, 910 F.3d 259, 261 (6th Cir. 2018). It is not enough to show "a mere possibility" of success, and "[a] stay is not a matter of right, even if irreparable injury might otherwise result." *Nken*, 556 U.S. at 433-34.[2]

In considering a district court's "ultimate determination" to grant a preliminary injunction, this Court "review[s] de novo the legal conclusions made by the district court," reviews "its factual findings for clear error," and reviews the "ultimate decision regarding injunctive relief … under the 'highly deferential' abuse-of-discretion standard." *U.S. Student Ass'n Found. v. Land*, 546 F.3d 373, 380 (6th Cir. 2008) (quotations marks and citations omitted). Accordingly, "when considering [a] motion for a stay of [a] preliminary injunction," this Court "must determine whether the [movants] are likely to be able to show that the district court abused its discretion when it issued the preliminary injunction." *Id.*

ARGUMENT

I. The Preliminary Injunction Was Properly Granted Under the *Purcell* Principle

[2] Plaintiffs' argument that follows will focus on the *Purcell* argument and probability of success on the merits. As to the other factors, if anyone would be irreparably harmed, it is Plaintiffs and Ohio voters -– particularly those who are poorer and in communities of color -- if the stay is granted,. Similarly, the balance of equities decidedly favors the steps provided by the district court's order: easing the substantial burden on voters at minimal burden to Defendant.

Defendant's reliance on *Purcell v. Gonzalez*, 549 U. S. 1 (2006), is decidedly misplaced, as it was Defendant's action – not Plaintiffs' inaction – that has dictated the timing of this case. *Purcell* cannot possibly be read to grant election officials virtual immunity to impose late-breaking unconstitutional changes in election procedures. Yet, that is precisely what Defendant is suggesting.[3]

Even were the *Purcell* doctrine worthy of consideration in the context of this case, it would not bar the injunction. "*Purcell* is not a magic wand that . . . make[s] any unconstitutional election restriction disappear so long as an impending election exists." *People First of Ala. v. Sec'y of State*, No. 20-12184, 2020 WL 3478093, at *8 (11th Cir. June 25, 2020) (Rosenbaum, J., concurring). Rather, such cases counsel against late-breaking injunctions that "fundamentally alter the nature of the election" by changing established rules of election administration, throwing ongoing elections into chaos, and sowing "judicially created confusion" that can drive down turnout. *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207

[3] Plaintiffs filed their Complaint on August 26, 2020, a mere two weeks after the Secretary issued Directive 2020-16. At the time, there was no reason to believe that the Secretary would act to prohibit satellite receipt locations since he had publicly stated that he favored them, that his only concern was whether state law permitted them, and he had asked the state Attorney General for an opinion on the state law issue. But then, out of the blue, the Secretary abandoned his request to the Attorney General and issued the Directive. Nine days later, Plaintiffs filed their motion for a preliminary injunction, accompanied by five expert reports, declarations from the organizational and individual Plaintiffs, and a declaration from a member of the Cuyahoga County Board of Elections.

(2020); *Purcell*, 549 U.S. at 4–5. Although Defendant's Directive may have had that disruptive effect, the injunction issued by the district court cures that disruption.

In essence, the injunction provides voters with a less-burdensome way to vote. It does not affect eligibility to vote, procedures for voting, identification for voting, or deadlines for voting. Further, the injunction simply empowers county boards of elections to use their discretion to determine whether, and to what extent and in what manner, satellite drop boxes – staffed or unstaffed, temporary or permanent, available 24/7 or only on designated days and times – should be established for receipt of absentee ballots for the November 2020 election. Likewise, the preliminary injunction empowers county boards to use their discretion in deciding how to inform the public about any satellite drop boxes that are established.

Although Defendant raises the specter of voter confusion, he scarcely explains how providing voters with additional ways to cast their ballot will confuse voters. Either they will avail themselves of the additional receptacles or they will not. If, as Defendant claims, there is a chance that a voter might place their ballot in a box outside the voter's county, then one would think that there is an easy solution: put a sign on the box designating the appropriate county. And rank speculation of new litigation resulting from upholding the injunction is insufficient to support a result that would potentially deprive thousands of Ohioans from voting.

II. The District Court Properly Concluded That Plaintiffs Demonstrated a Strong Likelihood of Success on the Merits

The District Court properly found that Plaintiffs demonstrated a substantial likelihood of success on their claim that the Secretary's prohibition on satellite receipt locations for the November 3, 2020 election violates the right to vote claim guaranteed by the First and Fourteenth Amendments.[4]

This claim requires weighing the character and magnitude of the burden imposed on the right to vote against the interests put forward by the state to attempt to justify the burden. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). If the burden imposed is severe, courts apply strict scrutiny; if it is reasonable and nondiscriminatory, a rational basis test is applied. *Burdick*, 504 U.S. at 434. Most cases, such as this one, fall between the two extremes and apply the *Anderson-Burdick* flexible test. *Obama for America v. Husted*, 697 F. 3d 423, 429 (6th Cir. 2012). "In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

Courts evaluate challenges to voting restrictions under the *Anderson-Burdick* framework, under which "[a] court … must weigh the character and magnitude of

[4] The District Court concluded that Plaintiffs had not made this showing with regard to their Equal Protection claim. Plaintiffs submit that that claim provides an independent basis for sustaining the injunction for the reasons argued below, but, given the interests of time will rely on their right to vote claim for present purposes.

the asserted injury to the rights protected by the First and Fourteenth Amendments … against the precise interests put forward by the State as justifications for the burden imposed by its rule." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (internal quotation marks omitted). As the Supreme Court has held, *any* burden placed on the right to vote, "[h]owever slight, … must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191(2008) (internal quotation marks omitted).

1. *The prohibition on satellite drop box locations substantially burdens the right to vote.*

The District Court properly found that the Secretary's prohibition of satellite locations for receipt of absentee ballots for the November 2020 election significantly burdens the opportunity of absentee voters to cast their ballots.

It is undisputed by the parties that this election is being conducted in special and unique circumstances: the ongoing COVID-19 pandemic; voters' unprecedented reliance on absentee ballots to avoid voting in person and risk infection; the widespread voter concern regarding the USPS's ability to deliver absentee ballots in time to be counted; and the resulting substantial voter interest in personally delivering their absentee ballot using a ballot drop box.

Moreover, state law requires that voters who choose to cast their absentee ballot on Election Day must personally deliver their ballot to election officials. This will inevitably engender additional voter demand to use a ballot drop box.

Plaintiffs submitted expert testimony from Plaintiffs' from, Dr. Daniel Chatman, who analyzed the travel burden the Secretary's prohibition will impose on r voters seeking to personally deliver their absentee ballot their board of elections offices; and separately analyzed the queue lengths and wait times to access a board of elections drop box on Election Day. The Secretary of State offered no contrary expert testimony to challenge Dr. Chatman's methodology or results and, indeed, completely ignores Dr. Chatman's testimony in his stay application, notwithstanding that the District Court found this testimony to be highly probative. *See* Chatman Test., RE PageID#2553-2602.

Dr. Chatman found that hundreds of thousands of Ohio voting-age citizens (about six percent of all voting age citizens) will encounter a substantial travel burden if required by the Secretary to travel to their board of elections to personally deliver their absentee ballot to election officials. Dr. Chatman defined a substantial travel burden as a roundtrip time of 90 minutes or longer, a travel time which, for those who would travel to their board of elections, would more than double the average amount of daily household travel that Ohio residents already are engaging in for other purposes. These significantly burdened voters reside in households lacking a vehicle, and are disproportionately poor and African American. *See* Chatman Test., RE PageID#2553-2602

Dr. Chatman also found that these significantly burdened voters are disproportionately located in Ohio's most populated cities. In Cleveland and Cincinnati, the percentage of burdened voters is 2.5 times the statewide percentage; and in the three other cities in the top-five in population, Columbus, Toledo, and Akron, the multiples are 1.33, 1.34, and 1.40, respectively. Chatman Test., RE PageID#2553-2602.

In his queuing analysis, Dr. Chatman found that hundreds of thousands of Ohio voters who reside in the urban, heavily populated counties will encounter massive lines and wait times to access their board of elections to personally deliver their absentee ballot on Election Day. Potential lines of thousands of individuals and vehicles, and tens or even scores of hours of wait time, will inevitably result in voters leaving lines before they return their ballot or, upon hearing of the lines, will forego trying at all to return their ballot. Chatman Test., RE PageID#2553-2602.

The district court's adoption of Dr. Chatman's testimony and that of Inajo Chappell's, after having had the opportunity to judge their credibility, was not clearly erroneous, and supports the district court's finding of substantial burden.

2. *The State has no countervailing interest that outweighs the burdens on voters.*

The Secretary's sole official justification for the prohibition on satellite locations for receipt of absentee ballots was that, allegedly, they are prohibited by state law. Directive 2020-16 failed to set forth any justification for the prohibition.

Directive 2020-22 – issued after the ruling by the Ohio Court of Appeals that state law does not preclude satellite receipt locations – expressly (and surprisingly) set forth the state law justification, despite the contrary ruling by the Ohio court.

Similarly, in his brief to this Court, the Secretary misleadingly states that "the Secretary prevailed in the . . . state suit; the Ohio Court of Appeals held that Secretary LaRose lawfully issued Directive 2020-016, and it reversed a trial-court order enjoining the Directive." The brief, however, fails to note that the Court of Appeals actually affirmed in part and reversed in part, holding that the Secretary did not prevail on the core question whether state law allows boards of elections to establish satellite drop-off locations. Br. at 6.[5]

In this litigation, the Secretary advances four policy interests to belatedly attempt to justify the prohibition on satellite locations: uniformity; secure and orderly elections; avoidance of voter confusion; and public confidence in the integrity of the electoral process.

At the outset, the Secretary's claims regarding policy justifications is substantially undercut and belied by his public assertions prior to the issuance of Directive 2020-16 that, but for the state law issue, he believed that satellite drop

[5] The Court of Appeals reversed as to the state trial court injunction because the lawsuit only challenged the Secretary's interpretation of state law, and did not challenge the Secretary's prohibition insofar as it constituted an exercise of discretion by the Secretary.

boxes for the November 2020 election are good public policy and are doable. In any event, the Secretary policy justifications are not credible or convincing.

The Secretary's uniformity claim is a pure example over form over substance. His prohibition requires every county, regardless of whether it includes hundreds of thousands of voters or only a few thousand, to have but one drop-off location at the board of elections. The evidence demonstrates that this will substantially burden voters in the large counties.

With regard to secure and orderly elections, the Secretary completely ignores the fact that the District Court injunction simply empowers boards of elections to determine whether, at this point in time, they are able to establish satellite locations (e.g., by doing what Cuyahoga County wants to do – send board staff to local libraries on designated dates and at designated times to receive absentee ballots). Boards of elections make numerous decisions in each election regarding the administration of elections, and they certainly can use their local knowledge and expertise to resolve these issues. Moreover, the Secretary of State already has provided guidance to the boards about these issues: Directive 2020-16 addresses security and order for fixed drop boxes (similar to a Postal Service blue mail box); and Directive 2020-22 addresses security and order for staffed locations like the libraries in Cuyahoga County.

Plaintiffs' expert regarding the use of satellite receipt locations, testified that there is a range of alternative ways to set up these up, including establishing fixed, permanent metal boxes, and setting up temporary, staffed receptacles inside government buildings such as libraries. McGuire Test. at 171:11-18; 178:10-19. As to the security measures, he testified that the procedures for ensuring ballot security and chain-of-custody are straightforward and not difficult, expensive or time consuming to develop and implement. McGuire Test. at 173:9-13; 182:4-9; 182:21-184-18.

Likewise, the Secretary's concern about voter confusion ignores the role of the county boards of elections. There can be no doubt that any board that decides to add satellite locations will advertise those locations to their voters. The speculative concern that some voters might return their absentee ballot to a satellite location in the wrong county also can be easily addressed by the boards: at staffed satellite locations, staff can ensure that voters do not make this mistake; and at any unstaffed locations, boards can place appropriate signage.

Lastly, the Secretary's concern regarding public confidence is misplaced. Testimony from Plaintiffs' expert regarding drop boxes is that they are extremely popular with voters. In addition, contrary to the Secretary's assertion, allowing for staffed or unstaffed satellite sites will not involve any "on the fly" (Br. at 20)

development of safeguards since the Secretary already has promulgated such standards.

CONCLUSION

For the reasons articulated herein, this Court should deny the motion for stay.

Dated: October 9, 2020 Respectfully submitted,

/s/ James Schuster

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 6th Cir. R. 32(b)(1), it contains 4,806 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface with 14-point Times New Roman font.

Dated: October 9, 2020 */s/ James Schuster*

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2020, I electronically filed this brief with the Clerk of Court for the United States Court of Appeals for the Sixth Circuit, causing notice of such filing to be served upon all parties registered on the CM/ECF system.

/s/ James Schuster