

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

v.

BRETT HARTMAN,

Appellant.

On Appeal from the
Summit County Court of Common Pleas

Case No. 98-1475

THIS IS A DEATH PENALTY CASE

NOTICE OF PENDING LITIGATION II

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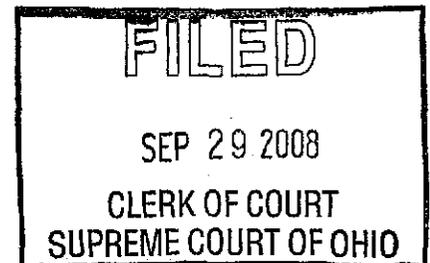
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NOTICE OF PENDING LITIGATION

This Notice is to update the Court on Brett Hartman's continuing litigation. Brett Hartman has filed his Notice of Appeal in his appeal of right from the dismissal of his Intervenor's Complaint in the lethal injection lawsuit, *Cooley v. Strickland*, Southern District of Ohio, Case No. 04-1156, to the United States Court of Appeals for the Sixth Circuit. (See Notice I filed 9/11/2008) (See, Ex. A Notice of Appeal filed 9/22/2008)

Undersigned counsel intends to give the Court continuing notice additional developments as they occur. This procedure is mandated by this Court when an execution date is pending. While no execution date is presently pending, counsel is providing Notice of the intended filing at this time in anticipation of the Court's consideration of the state's Motion to Set Execution date, as this information is relevant to the Court's consideration.

Respectfully submitted,

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By:



*Counsel for Appellant
Brett Hartman*

CERTIFICATE OF SERVICE

A true copy of this Notice was served by regular U.S. Mail this 25th day of

September, 2008 on:

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Counsel for Brett Hartman

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EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

RICHARD COOEY, et al.,)	Case No. 2:04cv 1156
)	
Plaintiff,)	Judge: Frost
)	
BRETT HARTMAN,)	
)	
Plaintiff-Intervenor)	
vs.)	Magistrate Judge: Abel
)	
ROBERT TAFT, et al,)	
)	
Defendant.)	
)	

NOTICE OF APPEAL

Notice is hereby given that, pursuant to 28 U.S.C. 1292(a)(1), Plaintiff-Intervenor, Brett Hartman, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the Order of the District Court dismissing Plaintiff-Intervenor's Complaint entered on August 26, 2008.(R. 357) Hartman has simultaneously filed a Motion for Leave to Proceed *In Forma Pauperis* on appeal. Therefore no fee is deposited with this Notice.

Respectfully submitted,

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By: /s/ David C. Stebbins
*Counsel for Appellant
Brett Hartman*

CERTIFICATE OF SERVICE

This Motion was filed through the court's electronic filing system. All parties required to be served are served through that system.

/s/ David C. Stebbins
Counsel for Brett Hartman

IN THE SUPREME COURT OF OHIO

STATE *ex rel.* RHONDA COLVIN :
 :
 and :
 :
 STATE *ex rel.* C. DOUGLAS MOODY, :
 : Case No. 08-1813
 Relators, :
 :
 :
 v. : Original Action in Mandamus
 :
 :
 JENNIFER BRUNNER, :
 SECRETARY OF STATE OF OHIO, :
 :
 Respondent. : Election Case Under
 : S.Ct. Prac. R. X, Sec. 9

MEMORANDUM OF *AMICI CURIAE*, IRAQ AND AFGHANISTAN VETERANS OF AMERICA
(IAVA) AND VETERANS FOR AMERICA (VFA), IN OPPOSITION TO
RELATORS' MOTION TO STRIKE

Attorneys for Relator Rhonda L. Colvin
and C. Douglas Moody:

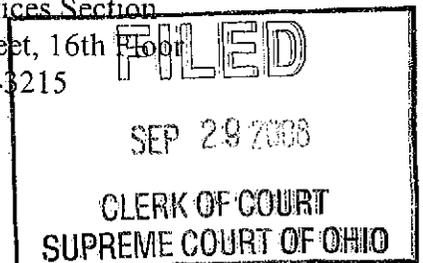
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MEMORANDUM IN OPPOSITION

Relators moved to strike the Memorandum of *Amici Curiae* Iraq and Afghanistan Veterans of America (“IAVA”) and Veterans for America (“VFA”) in Support of Respondent’s Opposition to a Writ of Mandamus for failing to comply with S. Ct. Prac. R. X, § 9 and XIV, § 2(B)(3). The motion to strike should be denied because Relators were not adversely affected by any such failure.¹

According to S. Ct. Prac. R. XIV, § 2(B)(3), in expedited election cases, parties must serve their briefs by personal service, facsimile transmission, or e-mail on the date of filing. This provision is an exception to the general rule, S. Ct. Prac. R. XIV, § 2(B)(1), which allows service to “be personal, by mail, by e-mail, or by facsimile transmission.”

Counsel for *amici* IAVA and VFA—who has not litigated in an expedited election case previously—filed the *amicus* brief on Thursday, September 25, 2008. Counsel had the clerk of court serve the parties by mail that day. Immediately upon learning of the special rule in expedited election cases, Counsel for the *amici* additionally sent a copy of the brief via e-mail on Sunday, September 28, 2008. No inconvenience of the parties was in any way intended.

Nor did inconvenience to the parties result. S. Ct. Prac. R. XIV, § 2(D)(2) contemplates that this Court may deny a motion to strike for failure to comply with service requirements if “the movant was not adversely affected.” Relators have not demonstrated prejudice and, in fact,

¹ *Amici* were not served the Motion to Strike by electronic mail, although Relators clearly had the e-mail address of Counsel for *Amici* at the time of filing. Nevertheless, *Amici* learned of the Motion to Strike because it was quickly posted on this Court’s on-line docket. This enabled *Amici* to respond quickly to the Motion to Strike. Presumably, Counsel for Relators’ learned of the *Amici* brief in the same way and, accordingly, suffered no prejudice.

did not experience any adverse effects from any failure of IAVA/VFA's *amicus* brief to comply with the special service rules for expedited election cases.

First, Relators' Reply Brief lists counsel for IAVA/VFA, indicating their knowledge of the filing of a brief on behalf of IAVA/VFA. Second, Relators filed the motion to strike on the same day they filed their Reply Brief, further evincing their knowledge of the existence of the brief.

The question of whether IAVA and VFA reasonably could have foreseen Relators' intention to file their Reply Brief three days² before it was due is irrelevant because Relators knew of the IAVA and VFA *amicus* brief when they filed the Reply Brief. Indeed, filing three days before the deadline indicates that Relators had ample time to respond to any arguments in the IAVA/VFA brief. Therefore, because the Relators knew of the IAVA/VFA brief before filing and had three days in which to consider and address the arguments set forth in the brief, they cannot claim that any prejudice exists.

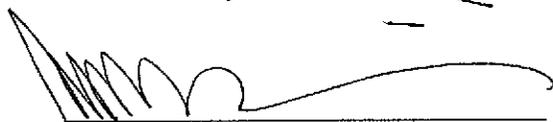
As any failure to comply with the special service rules for expedited election cases has not adversely affected the Relators, this Court should deny the motion to strike and consider this *amicus* brief filed on behalf of two national veterans organizations.

² S. Ct. Prac. XIV, § 3(A) indicates that "when the Clerk's Office of the Supreme Court is closed to the public for the entire day that constitutes the last day for doing an act, or before the usual closing time on that day, then that act may be performed on the next day that is not a Saturday, Sunday, or legal holiday" even though Saturdays, Sundays, and legal holidays are included in the computation of time for expedited election proceedings.

CONCLUSION

For the reasons stated above, *Amici* respectfully request that the Court deny Relators' Motion to Strike.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Anne M. Valentine', written over a horizontal line.

ANNE M. VALENTINE
Attorney for Amicus Curiae,
Iraq and Afghanistan Veterans of
America (IAVA)
and Veterans For America (VFA)

CERTIFICATE OF SERVICE

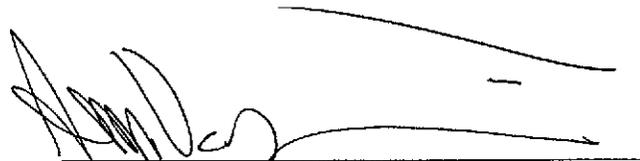
I certify that a true copy of the foregoing Memorandum in Opposition to the Motion to Strike was served by electronic mail to the following on this 29th day of September, 2008:

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