

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

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

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

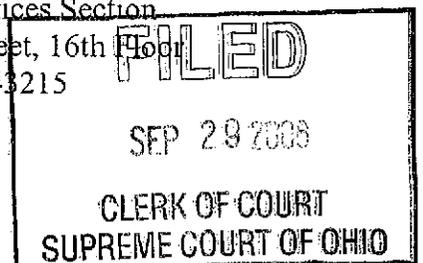
DONALD C. BREY (0021965)  
ELIZABETH J. WATTERS (0054055)  
DEBORAH SCOTT (0079253)  
CHESTER, WILLCOX & SAXBE, LLP  
65 E. State Street, Suite 1000  
Columbus, Ohio 43215  
Telephone: (614) 221-4000  
Facsimile: (614) 221-4012  
Email: dbrey@cswslaw.com  
ewatters@cswslaw.com  
dscott@cswslaw.com

Attorney for Amici Curiae,  
Iraq and Afghanistan Veterans Of  
America (IAVA), and Veterans For  
America (VFA):

ANNE M. VALENTINE (002826)  
Leeseberg & Valentine  
175 South Third Street, Penthouse One  
Columbus, OH 43215  
W: 614-221-2223  
<http://www.leesebergvalentine.com/>

Attorneys for Respondent, Secretary Of  
State Of Ohio

KENT SHIMEALL  
Chief of Ohio Attorney General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215



## 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.<sup>1</sup>

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,

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<sup>1</sup> *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 days<sup>2</sup> 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.

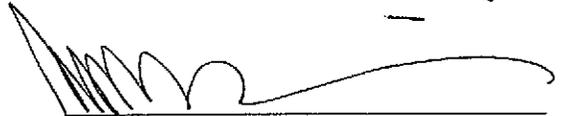
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<sup>2</sup> S. Ct. Prac. XIV, § 3(A) indicates that "when the Clerk's Office of the Supreme Court is closed to the public for the entire day that constitutes the last day for doing an act, or before the usual closing time on that day, then that act 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:

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

DONALD C. BREY (0021965)  
ELIZABETH J. WATTERS (0054055)  
DEBORAH SCOTT (0079253)  
CHESTER, WILLCOX & SAXBE, LLP  
65 E. State Street, Suite 1000  
Columbus, Ohio 43215  
Telephone: (614) 221-4000  
Facsimile: (614) 221-4012

**Attorneys for Respondent, Secretary Of State Of Ohio**

KENT SHIMEALL  
Chief of Ohio Attorney General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215



ANNE M. VALENTINE (002826)  
Leeseberg & Valentine  
175 South Third Street, Penthouse One  
Columbus, OH 43215  
W: 614-221-2223  
<http://www.leesebergvalentine.com/>