IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO,	)	Case No. 2009-0678
	)	
Plaintiff-Appellant,	)	On Appeal from the
	)	Lake County Court of Appeals,
v.	)	Eleventh Appellate District
	)	
JOSEPH PEPKA,	)	
	)	Court of Appeals Case No. 2008-L-016
Defendant-Appellee.	)	

RESPONSE TO CONDITIONAL MOTION FOR STAY OF EXECUTION

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LAKE COUNTY, OHIO

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SUPREME COURT OF OHIO

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COUNSEL FOR APPELLEE, JOSEPH PEPKA

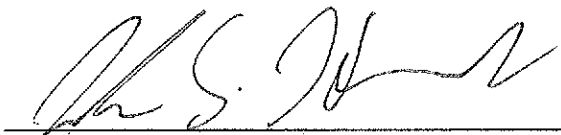
FILED
MAY 03 2010
CLERK OF COURT
SUPREME COURT OF OHIO

Now comes the State of Ohio, by and through Charles E. Coulson, Lake County Prosecuting Attorney, and Joshua S. Horacek, Assistant Prosecuting Attorney, and respectfully requests that this Court deny Joseph Pepka's conditional motion for stay of execution.

In the event that this Court denies Pepka's pending motion for reconsideration, he seeks a stay of the execution of this Court's judgment for 90 days. The only reason ascribed for this request is to allow him to file a Petition for Certiorari in the United States Supreme Court. But Pepka has not indicated how execution of this Court's judgment would hinder his ability to seek review of his case in the United State Supreme Court, and indeed, it would not. Moreover, considering the time allotted to the state to respond to the petition under Rule 15 of the United States Supreme Court's Rules of Practice (which is 30 days), and the time necessary for the Supreme Court to consider the petition, it will be well outside of 90 days before any decision is made on any petition that Pepka may file.

S.Ct.Prac.R. 11.4(A) indicates that "[a]fter the Supreme Court has decided an appeal on the merits, the Clerk shall issue a mandate." This Rule further indicates that "[i]f a motion for reconsideration is denied, the mandate shall be issued when the order denying the motion for reconsideration is filed with the Clerk." S.Ct.Prac.R. 11.4(A)(1). In the event that this Court denies Pepka's pending motion for reconsideration, the state asks that Pepka's conditional motion for stay of execution be denied and requests that this Court's judgment be executed pursuant to S.Ct.Prac.R. 11.4.

Respectfully submitted,
CHARLES E. COULSON (0008667)
PROSECUTING ATTORNEY



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JSH/klb

PROOF OF SERVICE

A copy of the foregoing Response to Application for Reconsideration was sent by regular U.S. Mail, postage prepaid, to counsel for the appellee, Mr. Albert L. Purola, Esquire, 38108 Third Street, Willoughby, Ohio 44094, on this 30th day of April, 2010.

Joshua S. Horacek (0080574)
Assistant Prosecuting Attorney

JSH/klb