No. 09-2227

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CHUCK BALDWIN, DARRELL R. CASTLE, WESLEY THOMPSON, JAMES E. PANYARD, and the CONSTITUTION PARTY OF PENNSYLVANIA,

Plaintiffs-Appellants,

v.

PEDRO A. CORTES, Secretary of the Commonwealth of Pennsylvania, in his official capacity,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Pennsylvania
Case No. 1:08-cv-01626-YK
Chief Judge Yvette Kane

BRIEF OF PLAINTIFFS-APPELLANTS

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STATEMENT OF JURISDICTION

The District Court possessed jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343, 42 U.S.C. § 1983, the First and Fourteenth Amendments to the United States Constitution, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202. This Court possesses jurisdiction over this matter pursuant to 28 U.S.C. §§ 1291, 1331, and the First and Fourteenth Amendments of the United States Constitution because the issue on appeal is a federal question.

The plantiffs-appellants file this appeal from a final order in the District Court on the merits of plaintiffs-appellants' claims. The District Court delivered its final judgment on March 24, 2009. Appellants filed a timely notice of appeal on April 22, 2009.

STATEMENT OF THE CASE

This is a case involving Pennsylvania's unconstitutional regulation of federal elections. The appellants are an alternative political party (the "Constitution Party") and several of its candidates for public office. They attempted to run the individual candidates-appellants and other candidates for public office in the November 2008 general election on the Constitution Party line, but the appellee ("Secretary Cortes") denied them access to the ballot. Appellants seek a reversal of the District Court's final order and an injunction prohibiting the Secretary of the

Commonwealth from setting deadlines regulating access to the ballot for federal elections.

STATEMENT OF FACTS

The Constitution Party is a national political party with numerous state affiliates. (*Appendix*, vol. II, p. 3). They have been offering candidates for election for nearly 20 years. (*Id.* at 4). For the 2008 presidential election, appellant Chuck Baldwin was the Constitution Party's candidate for President of the United States, and appellant Darrell R. Castle was the Party's vice presidential nominee. (*Id.*). Appellants Thompson and Panyard are members of the Constitution Party and registered voters who supported appellants Baldwin's and Castle's candidacies. (*Id.*). Appellants Panyard and Thompson promote the Constitution Party's policies and ideology, intended to vote for appellants Baldwin and Castle, and intend to support Constitution Party candidates in future elections. (*Id.*).

In support of their candidates, the Constitution Party circulated nominating petitions in Pennsylvania in order to get their candidates on the November 2008 general election ballot. (*Id.* at 5). According to the Election Code, (25 P.S. § 2601 *et seq.*), to gain access to the 2008 general election ballot, a minor political body was required to acquire signatures on nomination papers in a number at least equal to two percent of the total votes cast for the statewide candidate receiving the

highest number of votes in the general election in 2007; for the 2008 general election year that number was 24,566 signatures. (*App.* at 5).[1]

August 1, 2008 was the artificial deadline set and advertised by the Bureau of Elections for submission of Nomination Papers by political bodies; this deadline was included in Instructions for Filing as a Political Party Candidate 2008 General Election disseminated by the Department of State. (*Id.* at 20). This deadline was not established or set by the Pennsylvania Legislature but chosen by the Secretary of the Commonwealth. (*Id.* at 8).

On August 1, 2008, appellants submitted to the Secretary of the Commonwealth their Nomination Paper containing 21,957 valid signatures as counted by the Bureau of Elections. (*Id.* at 6). In addition to the valid signatures, appellants Baldwin and Castle also tendered the appropriate filing fee and candidates' affidavits to the Secretary of the Commonwealth. (*Id.* at 4). Because the 21,957 signatures submitted by the Constitution Party fell below the threshold requirement, the Commissioner of the Bureau of Elections, Chet Harhut, rejected the candidates' Nomination Papers and the candidates' affidavits and filing fee. (*Id.* at 6). Because appellants did not have sufficient signatures as of the advertised filing deadline, appellants and others on their behalf continued to canvas for

[1] By stark contrast, a member of either the Democrat Party or the Republican Party is required to gather only two thousand (2,000) valid signatures, less than ten percent of the signatures required by any other party.

signatures on the Nomination Paper supporting appellants Baldwin's and Castle's candidacies and their inclusion on the 2008 general election ballot. (*Id.*). On August 26, 2008, appellants attempted to re-file their nomination petitions, filing fees and candidates' affidavits by submitting in excess of 8,000 additional signatures on their Nomination Paper. (*Id.* at 7). The additional 8,000 signatures would have substantially exceeded the number of signatures required by the Pennsylvania Election Code for inclusion on the 2008 general election ballot. (*Id.*). Nevertheless, the Secretary of the Commonwealth denied the appellants inclusion on the 2008 general election ballot, despite the fact that the Constitution Party clearly established its candidates by April 26, 2008, (*Id.* at 4), more than four months before the August 1, 2008 deadline. In sharp contrast, the Democrat Party did not establish its candidates until August 28, 2008, while the Republican Party did not establish its candidates until September 4, 2008. (*Id.* at 7).

The Secretary of the Commonwealth has used the August 1 deadline since entering into a consent order with the Libertarian Party of Pennsylvania on June 1, 1984. (*See Appendix*, vol. II, p. 24). The order was entered as a decree of the court on June 13, 1984. This consent order was clearly intended as a temporary regulation, as it was set to "terminate[] upon amendment of Section 2913(c) of the Election Code of the General Assembly." (*See id.*). Nevertheless, for over 24 years the legislature has failed to amend Section 2913(c), and the Secretary of the

Commonwealth has continued to exercise a power explicitly given to the Pennsylvania Legislature by the United States Constitution.

Due to its fee and signature requirements, Pennsylvania ranks among the eleven states with the most burdensome ballot-access processes for a presidential candidate. (*Id.* at 53-54).

QUESTION PRESENTED

Whether the executive or judicial branches of a State may, in contradiction of Article II of the United States Constitution, change a legislatively established deadline for the number of electors for federal office? This issue was argued at and rejected by the District Court as shown at Appendix, vol. I, pp. 7-12.

Suggested answer: No.

STATEMENT OF RELATED CASES AND PROCEEDINGS

None.

STATEMENT OF STANDARD AND SCOPE OF REVIEW

As this is an appeal from a judgment entered after a non-jury trial, this Court may review the District Court's findings of facts for clear error, Fed.R.Civ.P. 52(a), and conclusions of law de novo. *Hooven v. Exxon Mobil Corp.*, 465 F.3d 566, 572 (3d Cir. 2006) (citing *Henglein v. Colt Indus. Operating Corp.*, 260 F.3d 201, 208 (3d Cir. 2001)). This appeal does not raise any dispute on the facts, but only the "interpretation and application of legal precepts," and therefore the

standard of review is de novo. *Gregoire V. Centennial School Dist.*, 907 F.2d 1366, 1370 (3d Cir. 1990) (citing *Universal Minerals, Inc. v. C.A. Hughes Co.*, 669 F.2d 98, 101-02 (3d Cir. 1981)).

SUMMARY OF THE ARGUMENT

The District Court erred in entering a final order that allows the Secretary of the Commonwealth of Pennsylvania to continue regulating the deadline for ballot-access in federal elections. Article II, section 1 of the United States Constitution explicitly reserves to the state legislature the right to regulate federal elections, and precedent has not detailed any exceptions to this clear enumeration. The arbitrary date selected by Secretary Cortes directly violates the United States Constitution.

Moreover, while the Secretary required the Constitution Party to submit their Nomination Papers by August 1, 2008, the major parties did not establish the names of their presidential and vice-presidential candidates until August 29, 2008 and September 4, 2008.

Even if the legislature were able to delegate such power to the Secretary, it has failed to expressly do so, confirming that the Secretary is in violation of Article II, section 1 of the United States Constitution. Accordingly, the establishment of the August 1 deadline has no effect and cannot be enforced against the Constitution Party. Because the Secretary's action imposes severe burdens on the associational

and speech rights of the Constitution Party and its members, the District Court should be reversed.

ARGUMENT

This Court should overrule the District Court's final order allowing the Secretary to continue establishing and enforcing deadlines regulating federal elections as the Secretary's actions are in direct violation of the United States Constitution and because the Pennsylvania Legislature has never explicitly delegated its power to regulate federal elections to the Secretary.

I. THE DENIAL OF BALLOT ACCESS IS UNCONSTITUTIONAL BECAUSE ARTICLE II OF THE UNITED STATES CONSTITUTION PROHIBITS SECRETARY CORTES FROM PASSING LAWS REGULATING FEDERAL ELECTIONS.

Two cases out of the Sixth Circuit are instructive and on-point. In *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 582-83 (6th Cir. 2006), the court struck down as unconstitutional the combination of Ohio's requirements that a minor party such as the Constitution Party nominate its candidates via primary election and that it qualify for the general election ballot by filing petition signatures, at least 120 days in advance of the primary, equal in number to one percent of the vote for governor or for presidential electors at the previous general election.

The Ohio Legislature failed to act on the *Blackwell* Court's opinion, and Ohio's Secretary of State attempted to fill in the legislative gaps with her executive

authority, issuing a directive establishing timelines by which third-parties must file nominating papers. Less than a year ago, Judge Edmund A. Sargus, Jr., in the Southern District of Ohio, declared the actions of Ohio's Secretary of State in violation of the United States Constitution. *Libertarian Party v. Brunner*, 2008 U.S. Dist. LEXIS 64375 (S.D. Oh. July 17, 2008) (attached in *Appendix* at 26).

Similarly, in Pennsylvania, the Secretary of the Commonwealth has been establishing dates for deadlines pursuant to a 1984 consent decree entered by this Court. (*See App.* 24). The consent decree specifically provides that the decree would "terminate[] upon amendment of Section 2913(c) of the Election Code of the General Assembly." (*See id.*). Like Ohio, the Pennsylvania Legislature has failed to remedy the constitutional infirmity with the Election Law, permitting the Secretary to act in violation of the United States Constitution. On May 12, 2005, the Secretary published a report to the Governor on the Pennsylvania Election Reform Task Force.[2] As page fifty-two of the appendix demonstrates, the Secretary continues to rely on the 1984 Consent Order to set deadlines, which is facially not established by the legislature and is in direct violation of the United States Constitution as explained below. Moreover, despite the admonishments by this Court that the General Assembly should consider amendments to make ballot

[2] The complete report is available at http://www.dos.state.pa.us/election_reform/lib/election_reform/PERTF_Final_Report_051705_Website.pdf. The Appendix, pages 44-54, contains the research portion published by the Secretary.

access less ponderous for minor political parties in Pennsylvania, the General Assembly has done nothing. *See Rogers v. Cortez*, 426 F. Supp. 2d 232, 242 (M.D. Pa. 2006) ("we strongly urge the General Assembly to consider enactments that will simultaneously meet the identified state interests but also allow for a less ponderous means of ballot access for minor political parties in Pennsylvania."); *Rogers v. Corbett*, 468 F.3d 188, 198 (3d Cir. 2006) ("[W]e will "affirm" the suggestion of the District Court that the Pennsylvania General Assembly 'consider enactments that will simultaneously meet the identified state interests but also allow for a less ponderous means of ballot access for minor political parties in Pennsylvania.'").

The individual appellants were nominated for public office by party convention and they clearly demonstrated that the Constitution Party enjoyed a substantial modicum of public support in Pennsylvania by tendering 21,957 petition signatures to the Secretary on August 1, 2008. (*See App.* at 6, 18, 56). Yet in prior cases where courts have invalidated state ballot access frameworks, non-major party candidates have been granted access to the ballot without having filed *any* petition signatures. *See, e.g., McCarthy v. Briscoe*, 429 U.S. 1317 (1976); *Goldman-Frankie v. Austin*, 727 F.2d 603 (6th Cir. 1984); *McCarthy v. Askew*, 540 F.2d 1254 (5th Cir. 1976); *Hall v. Austin*, 495 F. Supp. 782 (E.D. Mich. 1980); *McCarthy v. Slater*, 553 P.2d 489 (Sup. Ct. Okla. 1976).

Not only does the Constitution Party enjoy a modicum of support in Pennsylvania, the United States Constitution prohibits the manner in which the Commonwealth has established deadlines. Section 1 of Article II of the United States Constitution provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" to vote for President. *U.S. Const.*, art. II, § 1, cl. 2. This clause dictates that *only* Pennsylvania's legislature can prescribe the manner of electing the President of the United States. Pennsylvania's Secretary of the Commonwealth does not and cannot have that power. "As to federal offices, . . . Article II, Section 1 vests *exclusive* power to establish such a structure in the state legislature." *Brunner*, 2008 U.S. Dist. LEXIS 64375, at *12 (emphasis added).

Brunner establishes that nothing but legislative approval can validate federal election regulations. In that case the directive issued by the Secretary of State of Ohio neither "interpret[ed] provisions of legislation," nor "resolve[d] factual disputes arising under Ohio law," but established a "new structure." *Id.* at 8. The court found that the signature requirements and deadlines imposed by the Secretary of State were unconstitutional because they were "not approved by the Ohio [L]egislature," and were a non-legislative alternative not contemplated by the Ohio Legislature. *Id.* at 5, 8. They held this despite the fact that the new regulations

only slightly altered the original, legislative regulations,[3] thereby confirming that nothing short of direct, legislative action can validate regulations of federal elections. Similarly, the date selected by Secretary Cortes was neither an interpretation of the legislature's selection, nor a resolution of some conflict under law, nor approved by the Pennsylvania Legislature, nor contemplated by the Pennsylvania Legislature. The legislature made clear both the law and its intentions when it set the date for ballot access in federal elections. Selecting a new date is entirely unjustified by this precedent and cannot be upheld under the federal Constitution.

This issue also arose in *Bush v. Gore*, 531 U.S. 98 (2000), where the Court ultimately ruled that Florida's method of counting votes for President violated the Equal Protection Clause of the federal Constitution. In the lead-up to that decision, the Supreme Court in *Bush v. Palm Beach County Canvassing Board*, 531 U.S. 70 (2000), first addressed whether the Florida Supreme Court's interpretation of Florida's election laws strayed beyond what Article II, section 1 allowed. "As a general rule," it stated:

> This Court defers to a state court's interpretation of a state statute. But in the case of a law enacted by a state legislature applicable not only to elections to state offices, but also to the

[3] The directive from the Secretary of State of Ohio changed the signature requirements from one percent of the votes cast for governor in the 2006 election to one half of a percent of the votes, and changed the deadline from 120 days before the primary to 100 days before the primary election. *Brunner*, 4-6.

> selection of Presidential electors, the legislature is not acting solely under the authority given it by the people of the State, but by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution.

Id. at 76. Because it was "unclear as to the extent to which the Florida Supreme Court saw the Florida Constitution as circumscribing the legislature's authority under Art. II, § 1, cl. 2," *Id.* at 78, the Court accordingly vacated the Florida Supreme Court's interpretation of the election code and remanded for further proceedings. *Id.*

When the case returned to the Supreme Court, the Chief Justice, joined by Justices Scalia and Thomas, concurred in the result - reversing the Florida Supreme Court's "count every vote" remedy - but added another reason for striking down the Florida Supreme Court's scheme. The Chief Justice concluded that the Florida Supreme Court violated Article II, section 1 by deviating from the directions of the Florida Legislature: "[In] a Presidential election, the clearly expressed intent of the legislature must prevail." *Id.* Because the meaning of Article II presented a federal question, the Chief Justice found that he did not have to defer to the Florida Supreme Court's interpretation of state law. *Id.*

The Chief Justice in *Bush v. Gore* relied on *McPherson v. Blacker*, 146 U.S. 1 (1892), for the proposition that Article II delegates regulatory power over Presidential elections to the states' legislatures, not their courts:

> In *McPherson v. Blacker*, 146 U.S. 1 (1892), we explained that Art. II, § 1, cl. 2, 'convey[s] the broadest power of determination' and 'leaves it to the legislature exclusively to define the method' of appointment. A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.

531 U.S. at 113. Chief Justice Rehnquist concluded that "in a Presidential election the clearly expressed intent of the legislature must prevail. And there is no basis for reading the Florida statutes as requiring the counting of improperly marked ballots ...." *Id.* at 121.

The same issue arose in the context of congressional elections in *Lance v. Coffman*, 549 U.S. 437 (2007), where a state court drew Colorado's congressional districts in the absence of a legislative plan. Not long after the state court's action, the legislature passed a new plan, which was duly challenged before the Colorado Supreme Court. Those favoring the judicial plan argued that Colorado's constitution prohibited a mid-census apportionment. Those who supported the legislative plan argued that Article I, section 4 of the federal Constitution precluded a state court from drawing districts for congressional elections. The Colorado Supreme Court ruled in favor of the judicial plan in *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1231 (2003) (en banc). Specifically, it found that judicial apportionment did not offend the Elections Clause of Article I, section 4 of the United States Constitution. *Id.* at 1231.

Following the dismissal of a collateral challenge filed by voters in federal court, the Supreme Court was asked in *Lance v. Coffman*, *supra*, to overturn the state court's apportionment plan. The Supreme Court, however, was prevented from reaching the merits of the Elections Clause question by the appellants' lack of standing. *Id.* at 1198.

Lance v. Coffman demonstrates that the Secretary's policy here presents a serious federal constitutional question under Article II. Although the Court in *Coffman* did not reach the merits, it most assuredly would have ruled in favor of the Colorado Legislature if it had. The Court, after all, has made it clear on a number of occasions that the federal Constitution's use of the term "State Legislature" means exactly that. It does not mean "legislative power," nor does it countenance "legislative delegation." The Framers in 1787 were not familiar with the modern administrative state's frequent delegation of legislative power. They could not have imagined a legislature awarding executive agents lawmaking authority. Thus, notwithstanding more modern understandings of lawmaking power - which include easy recognition of "quasi-legislation" passed by administrative agencies - Article II of the United States Constitution continues to command action by a State's Legislature.

Justice Stevens (joined by Justice Ginsburg) made this point in *California Democratic Party v. Jones*, 530 U.S. 567, 602 (2000) (Stevens, J., dissenting),

where the Court invalidated California's adoption of a "blanket primary" under the First Amendment. While Justice Stevens disagreed with the majority over its application of the First Amendment, he agreed that the law was likely invalid. This was so, he argued, because the blanket primary - which was also applied to congressional elections - was adopted by popular initiative, rather than by the California Legislature: "Although this distinction is not relevant with respect to elections for state offices, it is unclear whether a state election system not adopted by the legislature is constitutional insofar as it applies to the manner of electing United States Senators and Representatives." *Id.* at 602.

Justice Stevens, moreover, balked at the suggestion that Article 1, section 4 necessarily receives the state's legislature as created by the state's constitution, which "provides that '[t]he legislative power of this State is vested in the California Legislature but the people reserve to themselves the powers of initiative and referendum." *Id.* at 602-03. "The vicissitudes of state nomenclature," he responded, "do not necessarily control the meaning of the Federal Constitution." *Id.* at 603. "Moreover, the United States House of Representatives has determined in an analogous context that the Elections Clause's specific reference to 'the Legislature' is not so broad as to encompass the general 'legislative power of this

State.'" *Id.*[4] "California's classification of voter-approved initiatives as an exercise of legislative power," Justice Stevens explained, "would not render such initiatives the act of the California Legislature within the meaning of the Elections Clause." *Id.*

Although Justice Stevens did not decide the issue because it was not fully raised by the parties, the Supreme Court has addressed the matter in a slightly different context. In *Hawke v. Smith*, 253 U.S. 221 (1920), the Supreme Court rejected Ohio's claim that the ratification of a proposed federal Constitutional amendment by the Ohio Legislature was subject to the popular referendum process applied to all other laws. Article V of the United States Constitution provides that amendments proposed by the Congress can either be ratified by state conventions or legislatures: "The method of ratification is left to the choice of Congress." *Id.* at 226. Regardless, the Court observed in *Hawke*, "[b]oth methods of ratification, by Legislatures or conventions, call for action by deliberative assemblages representative of the people, which it was assumed would voice the will of the people." *Id.* at 226-27. The Court specifically rejected the claim that "the federal

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[4] Justice Stevens cited to *Baldwin v. Trowbridge*, 2 Bartlett Contested Election Cases, H.R. Misc. Doc. No. 152, 41st Cong., 2d Sess., 46, 47 (1866), which reported that the Elections Clause, "power is conferred upon the legislature. But what is meant by 'the legislature?' Does it mean the legislative power of the State, which would include a convention authorized to prescribe fundamental law; or does it mean the legislature *eo nomine*, as known in the political history of the country? The [C]ommiitee [of Elections for the U.S. House of Representatives] have adopted the latter construction."

Constitution requires ratification by the legislative action of the states through the medium provided at the time of the proposed approval of an amendment." *Id.* at 229. "This argument is fallacious in this-ratification by a state of a constitutional amendment is not an act of legislation within the proper sense of the word. It is but the expression of the assent of the state to a proposed amendment." *Id.* Thus, ratification must be by a State's legislature and the legislature alone. It cannot be by referendum and cannot be delegated to an agency.

Whether this logic applies to Article II as well as Article V was answered by the *Hawke* Court's use of the Seventeenth Amendment to support its conclusion. As explained in *Hawke*, *see* 253 U.S. at 228, the Seventeenth Amendment - which provides for the popular election of Senators - was necessary for the very reason that Article I, section 3 required that a State's Senators be "chosen by the Legislature thereof...." *U.S. Const.*, art. I, § 3, cl. 1. Because the Constitution delegated to the states' legislatures the power of selecting Senators, the legislatures could not delegate this power to the people. A Constitutional Amendment was necessary to achieve this result. And just as the state's legislature cannot delegate its power to regulate federal elections directly to the people, it cannot delegate this power to an executive agency like the Secretary of the Commonwealth. To do so in this situation deprives the Constitution Party of its First and Fourteenth Amendment rights. The decision of the district court must be reversed.

II. PENNSYLVANIA'S LEGISLATURE HAS NOT CLEARLY DELEGATED THE AUTHORITY TO REGULATE FEDERAL ELECTIONS TO SECRETARY CORTES.

Assuming that a delegation of rulemaking power in this context could somehow survive Article II of the United States Constitution, it is reasonable to demand clarity in the delegation. Yet in the present case, there is absolutely no evidence that Pennsylvania's Legislature asked Secretary Cortes to fill any void in Pennsylvania's election laws. In fact, the most resent reports from the Secretary regarding election reform continue to rely on the consent order entered into by an executive branch member. The 2008 Pennsylvania instructions for filing Nomination Papers cite August 1, 2008 as the deadline for filing, (*App.* vol. II 22-23), and the Pennsylvania Election Reform Task Force conducted research that cites the 1984 consent order as the sole basis for the August 1 deadline. (*Id.* at 52, n. 10). These reports make no attempt to claim legislative delegation as justification for the August 1, 2008 deadline. They clearly cite the court-affirmed consent order as the only justification for the Secretary of the Commonwealth choosing August 1 as the deadline for filing Nomination Papers. This Court must not countenance such a clear violation of the United States Constitution.

CONCLUSION

For the foregoing reasons the Court should reverse the order of the District Court and enjoin the Secretary of the Commonwealth of Pennsylvania from

usurping the legislature's prerogative to regulate the deadline for Nomination Papers for the federal election ballot.

Respectfully submitted this 30th day of June, 2009

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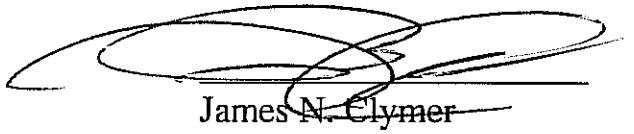
CERTIFICATE OF BAR MEMBERSHIP

I certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.



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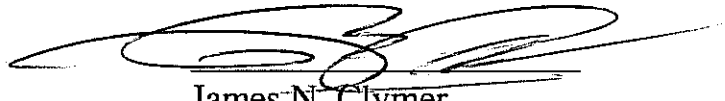
CERTIFICATE OF COMPLIANCE WITH FRAP 32(a)(5, 7)

I hereby certify that the brief of Plaintiffs-Appellants complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,217 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), and it complies with the typeface requirements of Fed. R. App. P. 32(a)(5), because it has been prepared in a proportionately spaced typeface using Microsoft Word 2003 in 14 point Times New Roman font.



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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 31.1(c)

I certify that the text of the paper copies of this brief and the text of the PDF version of this brief filed electronically with the Court today are identical.

I further certify that this brief complies with L.A.R. 31.1(c) in that prior to it being electronically mailed to the Court today, it was scanned by the following virus detection software and found to be free from computer viruses:

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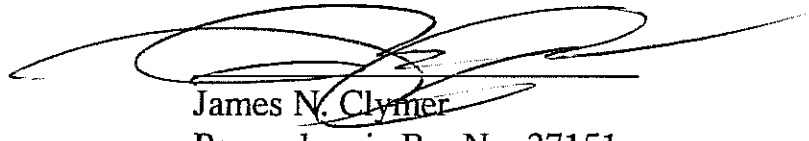

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the above document upon the following person's electronic case filing:

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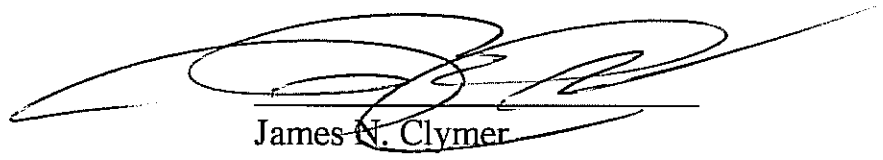

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