IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT

Nos. 24-1594

ANDY KIM, et al.,
Plaintiffs-Appellees,

v.

CHRISTINE GIORDANO HANLON, et al.,
Defendants-Appellants.

Appeal from the United States District Court
for the District of New Jersey
No. 3:24-cv-01098
Honorable Zahid N. Quraishi

BRIEF OF AMICI CURIAE IN SUPPORT OF DEFENDANTS-APPELLANTS CAMDEN COUNTY DEMOCRATIC COMMITTEE

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INTEREST OF AMICI CURIAE[1]

The amici curiae include the Morris County Republican Committee; Laura Ali, in her capacity as Chair of the Morris County Republican Committee; the New Jersey Republican Chairs Association; and Jose Arango, in his capacity as Chair of the New Jersey Republican Chairs Association (collectively "amici curiae"). The amici curiae are comprised of Republican political leaders and committees in New Jersey and are directly affected by the issues presented in the underlying litigation and any appellate proceedings regarding the scope of the district court's March 29, 2024, Preliminary Injunction. Although the district court confirmed by Letter Order on March 30, 2024, that the order does not apply to the June 4, 2024, Republican Primary, the amici curiae maintain a direct interest in this litigation to the extent that the Letter Order is appealed directly, or if the district court or Third Circuit issue rulings that affect future Republican primaries. No individual or entity which is currently a party to this case can adequately represent the interests of Republican primary candidates, committees, or leaders.

[1] Pursuant to Fed. R. App. P. 29(a), no party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money to fund the preparation or submission of this brief; and no other person except amici curiae, their members, or their counsel contributed money intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

With political polarization at one of its highest levels in American history, the district court has achieved the incredible feat of bringing together Democrats and Republicans. But unfortunately, it's for all the wrong reasons. Here, the district court has issued a decision so erroneous that the amici curiae—compromised of Republican political leaders in New Jersey—now join in support of their Democratic colleagues to vacate the district court's preliminary injunction.

Now, with just two weeks before ballots go into the mail to those voting through the vote-by-mail process, an early voting period which begins on May 29, with thousands of voting machines to be programmed, thousands of county poll workers to be trained, and millions of voters to be educated before the primary, the district court contravened United States Supreme Court's *Purcell* doctrine to enjoin a constitutional and timeless cornerstone of New Jersey elections upheld by the New Jersey Supreme Court precedent in *Quarembra*: ballot bracketing. By enjoining New Jersey's bracketing statutes, the district court has now cast New Jersey election administration into chaos and improperly dragged the court system into the political question arena. Across the State of New Jersey, Republican and Democrat leaders alike agree that the district court's order is manifestly improper, and the preliminary injunction must be vacated.

ARGUMENT

I. New Jersey's bracketing statutes are constitutional, and thus the district court's preliminary injunction should be vacated.

The district court abused its discretion in granting a preliminary injunction. In reviewing a preliminary injunction, the Third Circuit employs "a tripartite standard of review," including "review [of] the District Court's findings of fact for clear error," "[l]egal conclusions are assessed de novo," and "[t]he ultimate decision to grant or deny the injunction is reviewed for abuse of discretion." *K.A. v. Pocono Mt. Sch. Dist.*, 710 F.3d 99, 105 (3d Cir. 2013) (citing *Sypniewski v. Warren Hills Reg'l Bd. of Educ.*, 307 F.3d 243, 252 (3d Cir. 2002) (internal citations omitted)). A preliminary injunction is appropriate when a party demonstrates: "(1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief." *Kos Pharms., Inc. v. Andrx Corp*., 369 F.3d 700, 708 (3d Cir. 2004). Here, the district court erred in its findings and conclusions, and ultimately abused its discretion in granting a preliminary injunction.

The district court erred in its analysis of the first prong of the preliminary injunction test because Plaintiffs failed to demonstrate that they are reasonably likely to prevail on the merits. The New Jersey Supreme Court has long held that New

Jersey's bracketing statutes are constitutional. *See Quaremba v. Allan*, 67 N.J. 1, 10 (1975) (finding that there was no merit in the plaintiffs' constitutional challenges to New Jersey bracketing statutes, N.J.S.A. 19:49-2 and N.J.S.A. 19:23-24); *see also Schundler v. Donovan,* 377 N.J. Super. 339, 341 (App. Div. 2005). In light of this New Jersey precedent, the district court erred by ignoring this precedent and reaching its own rogue conclusion. *Wayne Moving & Storage of N.J., Inc. v. Sch. Dist. of Phila.*, 625 F.3d 148, 154 (3d Cir. 2010) ("[w]hen the state's highest court has not addressed the precise question presented, [we] must predict how the state's highest court would resolve the issue.") (citations omitted). Moreover, New Jersey's bracketing statutes affect all candidates equally and do not impair any candidate's ability to gain access to the ballot.

In addition, New Jersey's ballot access statute impacting this year's Senate election, N.J.S.A. 19:23-26.1, provides all Senate candidates with the same opportunity as any other candidate to be situated in the first ballot position, even if the Senate candidate is unbracketed with any other candidate. As such, the ballot placement statute as to U.S. Senate candidates is completely unrelated to whether the candidate has or has not bracketed. The treatment of any remaining non-Senate, non-bracketed candidates is then left to the discretion of the County Clerks, who are vested with the discretion to determine how to design a ballot.

Moreover, federal courts have upheld various statutes related to the orders or groupings in which candidates appear on ballots. *See e.g. Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236 (11th Cir. 2020) (finding a lack of standing and non-justiciable political question). The *Jacobson* court also cited the variety of ways in which states choose to order their ballots. *Id.* at 1259. The Eleventh Circuit noted that all of the prior decisions addressing ballot order pre-dated the Supreme Court's opinion in *Rucho* and universally rejected the application of the *Anderson-Burdick* test to ballot order questions. *Id.* at 1266. Following the *Jacobson* decision, the Fourth Circuit held that even under *Anderson-Burdick*, the plaintiffs' challenge to West Virginia's ballot order statute failed. *Nelson v. Warner*, 12 F.4th 376 (4th Cir. 2021). While there was a subsequent Ninth Circuit opinion reversing and remanding a dismissal, *see Mecinas v. Hobbs*, 30 F.4th 890, 899 (9th Cir. 2022), that case was dismissed by plaintiffs voluntarily less than 60 days after the Ninth Circuit order. *Mecinas v. Hobbs*, 2022 U.S. Dist. LEXIS 98610 (D. Ariz., June 2, 2022). The ultimate resolution of the *Mecinas* matter was never determined by the federal courts. As such, the district court ignored the extensive precedent holding that the New Jersey bracketing statutes are constitutional, and thus, the district court erred in its conclusion on the first prong of the preliminary injunction test.

Second, the district court erred in its findings for the second prong of the preliminary injunction test because Plaintiffs will not suffer irreparable harm absent

a preliminary injunction. All political committees and candidates have the constitutional right to freely associate with other candidates, as protected by the First and Fourteenth Amendments. The New Jersey bracketing statutes simply *permit* political candidates and parties to express their associations through a "county line" ballot design. The New Jersey bracketing statutes provide all candidates with an opportunity to bracket if they chose.

The exact position on the ballot, and the opportunity to get the first position, varies depending on the specific factual circumstances in a given year based upon the specific candidates running. However, in this year's elections, all U.S. Senate candidates had an equal opportunity to obtain the first ballot position, all candidates for any office had the opportunity to bracket if they so choose. If a non-U.S. Senate candidate was unbracketed, their specific position on the ballot and the process for choosing it would be left to the discretion of the constitutionally-elected County Clerk, who would be required to factor in a variety of circumstances: how many candidates were vying for that position, the number of candidates for other positions appearing on the ballot, the physical restraints of the ballot, and the best way to present information to the voters. This does not harm any candidate or party. And in fact, the district court's preliminary injunction, which prohibits constitutionally protected association through bracketing, is the only force that causes harm to political candidates in this upcoming election. It strips candidates and parties of their

First and Fourteenth Amendment rights to association, and creates confusion for voters who for the first time in over 75 years will be presented with a ballots in a form many of them have never seen, and which will remove the ability for the voters to easily identify the candidates who are associated with each other. As such, the district court erred in its findings and conclusion for the second prong of the preliminary injunction test.

Third, the district court erred in its findings for the third prong of the preliminary injunction test because the granting of the preliminary injunction results in even greater harm to the nonmoving parties in this case. By granting a preliminary injunction, the district court has stripped political candidates and parties of their First and Fourteenth Amendments rights to association. As the district court quoted in its preliminary injunction order, "[i]t is well-established that '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Hohe v. Casey*, 868 F.2d 69, 72 (3d Cir. 1989) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). On the other hand, the New Jersey bracketing statutes provide all candidates with equal access to the ballot, provide equal opportunity to appear in the first ballot position for U.S. Senate candidates regardless of bracketing, and provide a non-discriminatory way under to determine the positions of remaining non-bracketed candidates to the county clerks. Juxtaposed to the tangible constitutional harm caused by the preliminary injunction, Plaintiffs do

not face any constitutional harm absent a preliminary injunction. As such, the district court erred in its findings and conclusion for the third prong of the preliminary injunction test.

And finally, the district court erred in its findings for the fourth prong of the preliminary injunction test because the public interest strongly disfavors a preliminary injunction. Bracketing statutes and bracketing ballot designs have been utilized—and upheld by the New Jersey Supreme Court—for decades. They have helped inform voters about different candidates and associations, as well as allowed candidates to freely associate with one another on primary ballots. The bracketing statutes were enacted by the New Jersey Legislature in response to the will of the people. It would be manifestly improper for the judiciary to remove a timeless and constitutionally valid practice from New Jersey ballots just weeks before the primary elections. If the public truly shares Plaintiffs' dismay for ballot bracketing, then the public could express that will through their elected officials and seek change. But that has not happened, and Plaintiffs should not be permitted to exploit the court system to now nullify this practice right before an election. As such, the district court erred in its findings and conclusion for the fourth prong of the preliminary injunction test.

In sum, the district court erred in its findings and conclusions for each factor of the preliminary injunction test. In light of the district court's abuse of discretion, this Court should vacate the preliminary injunction.

II. The *Purcell* doctrine bars the district court from granting a preliminary injunction just weeks before an election.

Even if the Court does not find the preceding arguments persuasive, the *Purcell* doctrine prohibits the implementation of court orders prior to an impending election. In *Purcell*, the Supreme Court admonished that "[c]ourt orders affecting elections, especially conflicting orders, can [] result in voter confusion and consequent incentive to remain away from the polls. As an election draws nearer, that risk will increase." *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). This doctrine "not only prevents voter confusion but also prevents election administrator confusion," *Democratic Nat'l Comm v. Wisconsin State Legis.*, 141 S. Ct. 28, 31 (2020) (Roberts, C.J., concurring), as state and local officials "need substantial time to plan for elections" and handle "significant logistical challenges." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). For this reason, the Supreme Court "has repeatedly stated that federal courts ordinarily should not enjoin a state's election laws in the period close to an election, and [] has often stayed lower federal court injunctions that contravene that principle." *Id.*

Indeed, in *Purcell*, the Supreme Court vacated an injunction suspending voter identification rules in Arizona because the court was faced with an application for

injunction "just weeks before an election." *Purcell v. Gonzalez*, 549 U.S. at 4. With "just weeks" before the election, the Supreme Court determined that "[g]iven the imminence of the election and the inadequate time to resolve the factual disputes," the injunction must be vacated. *Id.* at 6. Similarly, in *Democratic National Committee v. Wisconsin State Legislature*, the Supreme Court denied an application to vacate a stay of the district court's preliminary injunction. 141 S. Ct. 28, 28. In a concurrence, Justice Roberts referred to attempted court intervention—just six weeks before the election—as "improper." *Id.* Here, the Court is faced with the same fact pattern as that in *Purcell* and *Democratic National Committee*. Plaintiffs sought an injunction "just weeks" before the election—and just days before ballot printing. Thus, the *Purcell* doctrine controls the outcome of this case and mandates reversal of the district court's order.

Moreover, the district court's order casts New Jersey primary elections into chaos by disrupting the process of printing ballots and depriving voters of expected information on their ballots. Bracketing has been a standard practice in New Jersey for decades, and voters understand and expect to see bracketing on their ballots. To remove this timeless form of expression and information from the ballots abruptly and without any significant advanced warning to voters will generate extensive voter confusion. Furthermore, requiring county clerks to design and print new ballots—without any specific directions or instructions (as the district court's order lacks) —

will create confusion in election administration. There is simply not enough time to properly implement such a significant change with the primary elections just two months away.

And finally, the burden is on Plaintiffs to show that their desired preliminary injunction would not result in widespread confusion. *See Grace, Inc. v. City of Miami*, 2023 U.S. App. LEXIS 20292, at *7 (11th Cir. Aug. 4, 2023) ("Because of the [State]'s 'extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws,' the plaintiffs must make the showing that the remedial plan is feasible without significant costs, confusion, or hardship."); *see also id.* ("[T]he absence of chaos is hardly acceptable under *Purcell*."). Plaintiffs fail to meet this burden.

In sum, the district court's order violates the *Purcell* doctrine and casts New Jersey primary elections into chaos for both election administrators and voters.

III. The district court lacks jurisdiction to grant a preliminary injunction because this case presents a nonjusticiable political question.

Because the district court lacked subject-matter jurisdiction, this Court must vacate the district court's injunction.

In *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), the Supreme Court held that, because political-gerrymandering challenges reduce to an inquiry regarding the amount of partisan "fairness" required by the U.S. Constitution, such claims raise purely political questions that cannot be resolved by the courts. In reaching this

conclusion, the Court determined that questions of partisan fairness (1) are committed to the legislative branch (both State and Federal) and (2) involve standards that are unmanageable by the courts. In *Rucho*, the Supreme Court emphasized that federal courts are neither "equipped" nor "authorized" to reach "their own political judgment about how much representation particular political parties deserve" or to "apportion political power as a matter of fairness." *Rucho*, 139 S. Ct. at 2499. Nevertheless, Plaintiffs ask this Court to do precisely that: use the court's own political judgment to alter well-established New Jersey balloting processes. *Rucho* squarely forecloses Plaintiffs' claims for relief.

In *Rucho*, the Supreme Court evaluated the constitutionality of congressional districts that were drawn in a deliberately, "highly partisan" manner. *Rucho*, 139 S. Ct. at 2491. In the first of two consolidated cases before the Supreme Court (*Common Cause v. Rucho*, 318 F. Supp. 3d 777 (M.D.N.C. 2018)), the North Carolina "Republican legislators . . . instructed their mapmaker to" devise an advantage for the Republican Party. *Rucho*, 139 S. Ct. at 2491. In the second consolidated case (*Benisek v. Lamone*, 348 F. Supp. 3d 493 (D. Md. 2018)), Maryland's Democrat Governor "testified that his aim was to ' . . . change the overall composition of Maryland's congressional delegation to'" advantage Democrats over Republicans. *Rucho*, 139 S. Ct. at 2493. In both consolidated cases, the lower courts determined that the "predominant intent" of the redistricting efforts was to

"discriminate against voters" of the minority party and to "entrench" majority party candidates. *Common Cause v. Rucho*, 318 F. Supp. 3d at 883-84; *accord Benisek*, 348 F. Supp. 3d at 498.

In *Rucho*, the Supreme Court first inquired whether "partisan gerrymandering" gave rise to "claims of *legal* right, resolvable according to *legal* principles, or political questions that must find their resolution elsewhere." *Rucho*, 139 S. Ct. at 2487 (emphases in original) (citing *Gill v. Whitford*, 138 S. Ct. 1916 (2018)). The Supreme Court unequivocally concluded that such claims give rise to non-justiciable political questions. *Rucho*, 139 S. Ct. at 2507. First, the Supreme Court reasoned that the resolution of partisan gerrymandering claims is "'entrusted to one of the political branches,'" *id*. at 2494 (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 277 (2004) (plurality opinion)), by virtue of the Elections Clause, *see* U.S. CONST. Art. I, § 4, cl. 1. And second, the Supreme Court determined that such claims lack "'judicially discoverable and manageable standards for'" resolution. *Rucho*, 139 S. Ct. at 2496 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

Although the *Rucho* Court acknowledged that in two narrow contexts—one-person-one-vote claims and racial-gerrymandering claims—there existed a "role for the courts," the Supreme Court reached this determination because the former claims are "relatively easy to administer as a matter of math," *id.* at 2501, and the latter claims trigger the "strictest scrutiny," *id.* at 2502. For claims of *partisan*

gerrymandering, however, "[t]he Framers were aware of electoral districting problems," but they chose to "address" the issue through the Elections Clause. *Rucho*, 139 S. Ct. at 2496. Importantly, "[a]t no point was there a suggestion that the federal courts had a role to play" in resolving *partisan* gerrymandering issues. *Id.*

The principles in *Rucho*—that "[f]ederal judges have no license to reallocate political power between" competing political forces in the absence of either a "plausible grant of authority in the Constitution" or "legal standards to limit and direct their decisions," *Rucho*, 139 S. Ct. at 2507—apply to Plaintiffs' claims challenging the New Jersey bracketing statutes. Accordingly, the Court should follow *Rucho*, conclude that Plaintiffs' claims are nonjusticiable political questions, and vacate the district court's preliminary injunction.

A. Ballot legislation and ballot design decisions are entrusted to the state legislature.

At its core, Plaintiffs' argument is that the New Jersey bracketing statutes provide an unfair advantage to candidates endorsed by county leaders. Plaintiffs' argument suffers two insurmountable defects. The first defect is that the Elections Clause entrusts questions of electoral partisan fairness to the legislative branch (both State and Federal). The second defect is that the Supreme Court has long recognized, and uniformly reiterated, that the Article III branch is not to determine questions of partisan advantage.

Political acrimony predates the founding of America. In Federalist 59, Alexander Hamilton addressed the issue and concluded that "a discretionary power over elections ought to exist somewhere." THE FEDERALIST No. 59, p. 362 (C. Rossiter ed. 1961). Hamilton posited that "there were *only* three ways in which this power could have been reasonably modified and disposed"—it could be "lodged wholly in the national *legislature*, . . . wholly in the State *legislatures*, or primarily in the latter, and ultimately in the former." *Id*. (emphases added). As Hamilton, and later the Supreme Court recognized, "[a]t no point was there a suggestion that the federal courts had a role to play;" "[n]or was there any indication that the Framers had ever heard of courts doing such a thing." *Rucho*, 139 S. Ct. at 2496. The Elections Clause thus makes no reference to Article III involvement in election administration: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators." U.S. CONST. Art. I, § 4, cl. 1.

Although Article III courts have carved out a limited role in adjudicating certain election-law issues (*e.g.*, one-person one-vote claims, *see Wesberry v. Sanders*, 376 U. S. 1 (1964), *racial* gerrymandering claims, *see Shaw v. Reno*, 509 U. S. 630 (1993), and *voter*-access claims, *see infra* (discussing *Anderson-Burdick* analysis)), the Supreme Court has refrained from allowing the Article III branch to

pass "judgment about how much representation particular *political parties deserve*—based on the votes of their supporters . . . ." *Rucho*, 139 S. Ct. at 2499 (emphasis added to "political parties"; emphasis in original on "deserve"). Specifically, "federal courts are not equipped to apportion political power as a matter of fairness, nor is there any basis for concluding that they were authorized to do so." *Id*. This steadfast refrain is critical, and establishes a demarcation between judicially reviewable one-person, one-vote claims and the non-justiciable arguments over partisan fairness raised by Plaintiffs' claims.

By virtue of the Equal Protection Clause and "our country's long and persistent history of racial discrimination in voting," the Court has long "reserved the strictest scrutiny for discrimination on the basis of race." *Id.* at 2502. But while "it is illegal for a jurisdiction . . . to engage in racial discrimination in districting," a jurisdiction may indeed "engage in constitutional political gerrymandering." *Id*. at 2497. If politicians may *deliberately* create an advantage for their own political party without a federal court exercising any oversight, it necessarily follows that the Court should stay its hand when the controversy involves a non-partisan, facially neutral bracketing statute that has no adverse effect on any person's access to the ballot.

B. There is no judicially manageable standard to resolve Plaintiffs' challenge to the New Jersey bracketing statutes.

While the Elections Clause, as construed by *Rucho*, provides a doctrinal basis for this Court to dismiss Plaintiffs' claims as nonjusticiable, there is, conversely, no judicially manageable standard for this Court to resolve Plaintiffs' claims in any other way. Partisan jockeying will occur; it does so in each election cycle without running afoul of the U.S. Constitution.[2] "[T]he question," then, "is one of degree: How to 'provid[e] a standard for deciding how much partisan dominance is too much.'" *Rucho* 139 S. Ct. at 2498 (quoting *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 420 (2006) (opinion of Kennedy, J.)). The Supreme Court has stated that any standard must be "especially clear," *id.*; "[w]ith uncertain limits, intervening courts—even when proceeding with best intentions—would risk assuming political, not legal, responsibility for a process that often produces ill will and distrust." Id. at 2498-99 (quoting *Vieth v. Jubelirer*, 541 U. S. at 307 (Kennedy, J., concurring in the judgment)).

[2] *See, Rucho*, 139 S. Ct. at 2499 ("Our cases, however, clearly foreclose any claim that the Constitution requires proportional representation or that legislatures in reapportioning must draw district lines to come as near as possible to allocating seats to the contending parties in proportion to what their anticipated statewide vote will be."); *Mobile v. Bolden*, 446 U.S. 55, 75-76 (1980) (plurality opinion) ("The Equal Protection Clause of the Fourteenth Amendment does not require proportional representation as an imperative of political organization.").

This presents an insurmountable obstacle for Plaintiffs' claims. In Plaintiffs' view, New Jersey bracketing statutes have created an unfair advantage for the candidates endorsed by county political parties. However, "[f]ederal courts are" neither "equipped" nor "authorized" to apportion political power as a matter of fairness." *Rucho*, 139 S. Ct. at 2499. Because "[d]eciding among . . . different visions of fairness . . . poses basic questions that are political, not legal," *id.* at 2500, "[a]ny judicial decision on what is 'fair' in this context would be an 'unmoored determination' of the sort characteristic of a political question beyond the competence of the federal courts," *id*. (quoting *Zivotofsky v. Clinton*, 566 U. S. 189, 196 (2012)). Because there are myriad ways to conceptualize a "fair" ballot order, courts first define "what fairness looks like in this context." *Rucho*, 139 S. Ct. at 2500. With respect to Plaintiffs' claims, that is an impossible task. For example, does fairness require that non-endorsed candidates be in the first position of a ballot (which would then adversely and unfairly affect endorsed candidates)? Does fairness require the court to strip candidates of their First and Fourteenth Amendment rights to association with other candidates on the ballot (which the district court has effectively done through its injunction)? Or does fairness require that labels, slogans, and all associations be removed from the ballots?

Courts are unqualified to decide this threshold fairness inquiry, which, by its nature, is "political, not legal." *Id*. Specifically, "[t]here are no legal standards

discernible in the Constitution for" defining partisan fairness, *id*., and at no point have Plaintiffs suggested any whatsoever, let alone any with the requisite level of precision, clarity, manageability, and political neutrality for legitimate judicial resolution. *Id*. Instead, Plaintiffs ask a federal court to do something that is, at its core, "not law." The federal courts cannot acquiesce to that request. *Id.* at 2508.

For these reasons, *Rucho* control the outcome of this case.

CONCLUSION

For the aforementioned reasons, as well as those articulated by the Defendants-Appellants, the Court should vacate the district court's preliminary injunction.

Dated: April 6, 2024

Respectfully Submitted,

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cc: All counsel (via ECF)

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 35(b)(2)(A) because it contains 4,385 words, and 380 lines of text, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Sixth Circuit Rule 32(b)(1), as counted using the word-count function on Microsoft Word 2016 software.

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word 2016, in Times New Roman Standard style, 14 point font.

Dated: April 6, 2024

/s/ Peter J. King
Peter J. King, Esq.

/s/ Matthew C. Moench
Matthew C. Moench, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2024, I electronically filed the original of the foregoing brief with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

/s/ Peter J. King
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