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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record via the Court's electronic filing system on this 30th day of July, 2014.

/s/ Robert J. Tucker

Robert J. Tucker (0082205)

on August 11, 2014. Rather, they have stipulated to submission of Plaintiffs' motion for a preliminary injunction on the papers, any additional evidence submitted to the Court by the August 7, 2014 deadline, and potentially an oral argument. As such, any concern that the General Assembly moved to intervene with an insufficient time before the hearing is negated by the agreement to forgo any hearing with live testimony. Moreover, as indicated in its motion to intervene, the General Assembly has fully complied, and will continue to comply with the case schedule set by the Court on July 2, 2014. Indeed, the General Assembly timely filed its opposition to Plaintiffs' motion for a preliminary injunction on July 23, 2014 – the same deadline the defendants were to submit any opposition briefs. And the General Assembly does not intend on submitting any additional evidence by the August 7, 2014 deadline. Thus, the General Assembly has not and will not pose any risk to the expedited schedule for the resolution of Plaintiffs' motion for a preliminary injunction.

Second, there is no prejudice to Plaintiffs in allowing the General Assembly to intervene given that the parties have agreed to forgo any witnesses at the hearing. In its Order, the Court was concerned about the additional evidence the General Assembly sought to submit in support of SB 238. But the General Assembly relied upon the same three expert reports as submitted by the Secretary of State in his brief, albeit often for different reasons and arguments. Two of those experts have already been deposed, and the third is already scheduled for August 5th. Additionally, one of Plaintiffs' experts has already been deposed, and the other is scheduled for August 1st. Those depositions already went forward, and will go forward, regardless of the General Assembly's intervention.¹ Thus, the General Assembly's intervention will not result in the taking of any additional depositions. The only other evidence submitted by the General

¹ The Secretary of State, Attorney General, and General Assembly sought to postpone any depositions until after a ruling on the Plaintiffs' motion for a preliminary injunction given the agreement to forgo any witnesses at the hearing, but Plaintiffs wished to pursue those depositions at this time.

Assembly with its opposition brief that was **not** also submitted by the Secretary of State were two declarations that merely authenticated records from the legislative history of certain bills proposing reforms to Ohio's early voting laws. Thus, there is no additional discovery Plaintiffs need from the General Assembly, and, true to its word, the General Assembly will not seek any additional discovery from Plaintiffs for purposes of their motion for a preliminary injunction. Moreover, the General Assembly does not intend on submitting any additional evidence in support of its opposition.

Third, in denying the motion to intervene, the Court held that "the General Assembly has not persuaded this Court that the Attorney General, the State's chief legal representative, cannot adequately represent its interests." But the Attorney General's opposition to Plaintiffs' motion for a preliminary injunction merely endorsed and incorporated the arguments and evidence submitted by the Secretary of State and the General Assembly with their respective oppositions. The Secretary's opposition, however, did not directly address arguments or evidence on the constitutionality of SB 238. And since the Attorney General only incorporated the arguments and evidence submitted by the General Assembly on the constitutionality of SB 238, those arguments and supporting evidence would not otherwise have been presented. Thus, the General Assembly's interests in defending the constitutionality of the legislation it enacted will not be adequately represented. Additionally, Plaintiffs seek to have this Court retain jurisdiction to prohibit any changes to Ohio's early voting laws for an unstated period of time (essentially arguing for a preclearance procedure resembling a claim under Section 5 of the Voting Rights Act, which Ohio is not subject to), which would in effect enjoin and prohibit the General Assembly's constitutionally granted power to enact legislation relating to the conduct of elections in Ohio. (*See* Compl. at Request for Relief ¶ 4). Being executive department officials

in Ohio, neither the Secretary of State nor the Attorney General will be able to adequately represent the General Assembly's constitutionally separate and distinct power to enact laws in the State of Ohio.

For the reasons clarified in this motion, the General Assembly asserts that the factors relied upon by the Court in denying its motion to intervene no longer support that denial. Therefore, the General Assembly respectfully requests the Court reconsider its July 30, 2014 Opinion and Order Denying its Motion to Intervene and Striking its Memorandum in Opposition to Plaintiffs' Motion for a Preliminary Injunction, and allow the General Assembly to intervene in this matter. In the alternative, the General Assembly requests that the Court clarify that the arguments and evidence submitted in the General Assembly's opposition brief have been incorporated into the record in this case by the Attorney General. Otherwise, the General Assembly's and Attorney General's interests in defending the constitutionality of SB 238 have not been adequately represented, and the State of Ohio will be greatly prejudiced by such a ruling.

Respectfully submitted,

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