Multiple Documents

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2	Brief in Support
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4	Exhibit 2 (Proposed Answer)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NORTHEAST OHIO COALITION FOR THE HOMELESS, *et al.*,	
Plaintiffs,	Civil Action No. 1:23-cv-26
v.	Judge Donald C. Nugent
FRANK LAROSE, in his official capacity as Ohio Secretary of State,	Magistrate Judge Jonathan D. Greenberg
Defendant.	

MOTION TO INTERVENE OF SANDRA FEIX, MICHELE LAMBO, AND THE OHIO REPUBLICAN PARTY

Sandra Feix, Michele Lambo, and the Ohio Republican Party move for leave to intervene as party defendants pursuant to Federal Rule of Civil Procedure 24. Intervention is warranted for the reasons set forth in the accompanying memorandum in support. Intervenors attach as **Exhibit 1** the Motion to Dismiss they would file if permitted to intervene in this matter and as **Exhibit 2** the Answer and Affirmative Defenses they would alternatively file if permitted to intervene.[1]

Counsel for the Proposed Intervenors contacted counsel for Plaintiffs and counsel for Defendant prior to filing this motion. Plaintiffs did not provide a position on this motion prior to filing. The Secretary of State has no objection to the intervention.

[1] Proposed Intervenors prefer to file their Motion to Dismiss rather than an Answer to Plaintiffs' Amended Complaint, but Rule 24 does not specify whether a motion to dismiss satisfies the requirement to provide "a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). Therefore, in an abundance of caution, Proposed Intervenors also attach a proposed Answer.

Dated: March 21, 2023

Respectfully submitted,

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Attorneys for Proposed Intervenors

**Pro hac vice* application forthcoming

CERTIFICATE OF SERVICE

I certify that on March 21, 2023, a copy of the foregoing Motion to Intervene was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ James R. Saywell

James R. Saywell
Attorney for Proposed Intervenor-Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
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FRANK LAROSE, in his official capacity as Ohio Secretary of State,	Magistrate Judge Jonathan D. Greenberg
Defendant.	

[PROPOSED] ORDER

AND NOW, this ___ day of _____, 2023, upon consideration of the Motion to Intervene of Sandra Feix, Michele Lambo, and the Ohio Republican Party, it is hereby ORDERED, ADJUDGED, and DECREED that the Motion is GRANTED. The clerk is direct to file on the docket Intervenors' Motion to Dismiss.

Honorable Donald C. Nugent
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NORTHEAST OHIO COALITION FOR THE HOMELESS, *et al.*, Plaintiffs, v. FRANK LAROSE, in his official capacity as Ohio Secretary of State, Defendant.	Civil Action No. 1:23-cv-26 District Judge: Judge Donald C. Nugent Magistrate Judge: Jonathan D. Greenberg

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE BY SANDRA FEIX, MICHELE LAMBO, AND THE OHIO REPUBLICAN PARTY

Sandra Feix, Michele Lambo (together, the "Election Workers"), and the Ohio Republican Party (collectively, the "Proposed Intervenors") respectfully move to intervene to defend the challenged provisions of House Bill 458 and House Bill 45 (collectively House Bill 458). The Proposed Intervenors support Ohio's reasonable, neutral, and effective changes to its election laws contained in House Bill 458, which ensure not only that it remains "easy to vote in Ohio," *Ohio Dem. Party v. Husted*, 834 F.3d 620, 628 (6th Cir. 2016), but also that Ohio's elections are secure and trusted by voters across the political spectrum. The Proposed Intervenors therefore seek to intervene to defend their substantial interest in the outcome of this litigation.

This Court should grant the Proposed Intervenors' motion to intervene, whether as a matter of right or discretion. Courts—including this Court—routinely grant intervention to political parties and voters in similar cases. *See, e.g.*, *A. Philip Randolph Inst. v. LaRose*, No. 1:20-cv-1908, 2020 WL 5524842 (N.D. Ohio Sept. 15, 2020); *League of Women Voters of Ohio v. LaRose*, No. 2:20-cv-3843, Dkt. No. 35 (S.D. Ohio Sept. 4, 2020); *Priorities USA v. Nessel*, No. 19-cv-13341, 2020 WL 2615504 (E.D. Mich. May 22, 2020); *Miller v. Blackwell*, 348 F. Supp. 2d 916,

919 n.3 (S.D. Ohio 2004). Here, the Ohio Republican Party seeks to protect its interest in preventing changes to the "competitive environment" of elections. *See Shays v. FEC*, 414 F.3d 76, 85 (D.C. Cir. 2005). As many courts have recognized, the Ohio Republican Party has a substantial and particularized interest in defending actions like this, to preserve the electoral environment and to ensure that Ohio carries out free, fair, and trusted elections. The Election Workers, too, have a substantial and particularized interest in upholding and abiding by election rules—such as those enacted in House Bill 458—that facilitate free and fair elections, and in knowing the rules by which they will judge elections while serving as precinct election officials. *See, e.g.*, Ohio Rev. Code §§ 3501.22, 3501.26. Further, as voters themselves, the Election Workers share an interest in free, fair, and trusted elections in Ohio. They also seek to protect their votes against dilution from the counting of invalid ballots in contravention of House Bill 458's requirements, and they seek certainty regarding their rights and obligations if they choose to exercise their statutory right to vote by methods affected by House Bill 458. *See id.* § 3509.01.

The Proposed Intervenors accordingly have a right to intervene because this motion is timely and they have a substantial interest in the validity of House Bill 458 that they can protect only by participating in this case. *See* Fed. R. Civ. P. 24(a)(2). Alternatively, the Court should exercise its discretion to allow the Proposed Intervenors to intervene because their defenses address questions before the Court. *See* Fed. R. Civ. P. 24(b). As required by Rule 24(c), the Proposed Intervenors have attached a proposed Motion to Dismiss Plaintiffs' Amended Complaint and, alternatively, a proposed Answer to Plaintiffs' Amended Complaint.

BACKGROUND

The Proposed Intervenors. The Ohio Republican Party is a "major political party" as defined by Ohio Revised Code § 3501.01(F)(1). Its general purpose is to promote and assist

Republican candidates who seek election or appointment to partisan federal, state, or local offices in Ohio. It works to accomplish this purpose by, among other things, devoting substantial resources toward educating, mobilizing, assisting, and turning out voters in Ohio. The Ohio Republican Party has made significant contributions and expenditures to support Republican candidates in Ohio for many election cycles and is doing so again for future elections. It has a substantial interest in ensuring that Ohio runs free, fair, and trusted elections under Ohio law.

Each of the Election Workers has served as a precinct election official in past Ohio elections and intends to do so again in future elections. In addition to their service on Election Day, each of the Election Workers regularly votes in both primary and general elections and intends to vote for candidates in all races on their respective ballots in future elections, including but not limited to the races for U.S. Senate, U.S. House of Representatives, Ohio Senate, and Ohio House of Representatives. Both as voters and as election workers, the Election Workers have a particularized interest in knowing the exact requirements for mailing, dropping off, or curing ballots and for judging those ballots so that they may accurately carry out their obligations as election workers and voters. They will, after all, need to enforce those requirements as election workers and follow those requirements as voters. Additionally, they each have an interest in certainty regarding the use of photo ID for in-person voting.

Procedural Background. This case is in its infancy. Plaintiffs sued the Ohio Secretary of State to challenge House Bill 458 on January 6, 2023, and filed an amended complaint on January 27, 2023. The Ohio Secretary of State answered on March 7, 2023. The Proposed Intervenors seek to intervene at this early stage to protect their interests and to avoid any prejudice or delay to the parties and the Court's resolution of this case.

ARGUMENT

Whether as of right or as a matter of discretion, this Court should grant the Proposed Intervenors' motion under Rule 24.

A. The Proposed Intervenors Have a Right to Intervene Under Rule 24(a).

The "court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede [their] ability to protect [their] interest[s], unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Federal courts have long applied Rule 24 "in favor of potential intervenors," *Purnell v. City of Akron*, 925 F.2d 941, 950 (6th Cir. 1991), because a person should not "be deprived of his or her legal rights in a proceeding to which such person is neither a party nor summoned to appear," *Jansen v. City of Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990). This principle carries even more force in election-law cases, "and for good reason—the right to vote 'is regarded as a fundamental political right, because [it is] preservative of all rights.'" *Serv. Emps. Int'l Union Local 1 v. Husted*, 515 F. App'x 539, 543 (6th Cir. 2013) (per curiam) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

A proposed intervenor satisfies Rule 24(a) if: (1) the motion to intervene is timely; (2) the proposed intervenor has a substantial legal interest in the case; (3) the proposed intervenor's ability to protect its interest will be impaired without intervention; and (4) the existing parties may not adequately represent the proposed intervenor's interest. *Grutter v. Bollinger*, 188 F.3d 394, 397–98 (6th Cir. 1999); *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997). The Proposed Intervenors meet each requirement.

1. This motion is timely.

The Sixth Circuit considers several factors when evaluating the timeliness of a motion to intervene, including: (1) the point to which the case has progressed; (2) the purpose for

intervention; (3) when the intervenors knew or should have known of their interest in the case; (4) prejudice to the parties; and (5) any unusual circumstances that support (or cut against) intervention. *See Jansen*, 904 F.2d at 340. No factor is dispositive; rather, a court evaluates timeliness "in the context of all relevant circumstances." *Id.*

The Proposed Intervenors' motion to intervene is undoubtedly timely. This case has just begun. Plaintiffs filed their amended complaint less than two months ago. The Ohio Secretary of State submitted his answer only 14 days ago, and discovery has not begun in earnest. *See Blount-Hill v. Ohio*, 244 F.R.D. 399, 402 (S.D. Ohio 2005) (granting motion to intervene filed "nearly five months after Plaintiffs' Complaint was filed" where "[l]ittle discovery has been conducted"); *see also Nessel*, 2020 WL 2615504, at *2–3 (granting intervention where "little to no discovery has taken place"). In short, "nothing has happened in this case" yet, "so no party is prejudiced by the timing." *In re 2016 Primary Election*, 2016 WL 1392498, at *2 (S.D. Ohio Apr. 8, 2016). And by moving to intervene at this "initial stage," the Proposed Intervenors will not delay the proceedings. *See Miller*, 103 F.3d at 1245; *Priorities USA v. Benson*, 448 F. Supp. 3d 755, 762–63 (E.D. Mich. Mar. 24, 2020).

2. The Proposed Intervenors have a substantial legal interest.

The Proposed Intervenors also have a substantial legal interest in this case. The Sixth Circuit subscribes to a "rather expansive notion of the interest sufficient to invoke intervention of right." *Grutter*, 188 F.3d at 398 (citation omitted). An intervenor's interest in the case need not, for example, satisfy the requirements for standing. *See Miller*, 103 F.3d at 1245. And courts should resolve "close cases" "in favor of recognizing an interest under Rule 24(a)." *Id.* at 1247.

As in previous election cases, there can be "no dispute that the Ohio Republican Party ha[s] an interest in the subject matter of this case, given the fact that changes in voting procedures could affect candidates running as Republicans and voters who are members of the Ohio Republican

Party." *Ohio Democratic Party v. Blackwell*, No. 2:04-cv-1055, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005). As evidenced in the lengthy footnote below, courts across the country and in Ohio in particular have recognized that political party committees have a substantial interest in intervening in cases implicating elections laws and procedures.[1] Simply put, Plaintiffs' lawsuit

[1] *See, e.g.*, *La Union Del Pueblo Entero v. Abbott*, 29 F.4th 299 (5th Cir. 2022) (granting intervention of right to county party committees, Republican National Committee, National Republican Senatorial Committee, and National Republican Congressional Committee); *United States v. Georgia*, No. 1:21-cv-2575 (N.D. Ga. July 12, 2021) (granting intervention to the RNC, NRSC, and Georgia Republican Party); *Concerned Black Clergy of Metro. Atlanta, Inc. v. Raffensperger*, No. 1:21-cv-1728 (N.D. Ga. June 21, 2021) (granting intervention to the RNC, NRSC, NRCC, and Georgia Republican Party); *Coalition for Good Governance v. Raffensperger*, No. 1:21-cv-02070 (N.D. Ga. June 21, 2021) (same); *New Georgia Project v. Raffensperger*, No. 1:21-cv-1229, 2021 WL 2450647 (N.D. Ga. June 4, 2021) (same); *Ga. State Conf. of the NAACP v. Raffensperger*, No. 1:21-cv-1259 (N.D. Ga. June 4, 2021) (same); *Sixth Dist. of the African Methodist Episcopal Church v. Kemp*, No. 1:21-cv-1284 (N.D. Ga. June 4, 2021) (same); *Asian Ams. Advancing Justice-Atlanta v. Raffensperger*, No. 1:21-cv-1333 (N.D. Ga. June 4, 2021) (same); *VoteAmerica v. Raffensperger*, No. 1:21-cv-1390 (N.D. Ga. June 4, 2021) (same); *Wood v. Raffensperger*, No. 1:20-cv-5155 (N.D. Ga. Dec. 22, 2020) (granting intervention to the DSCC and Democratic Party of Georgia); *Alliance for Retired Americans v. Dunlap*, No. CV-20-95 (Me. Super. Ct. Aug. 21, 2020) (granting intervention to the RNC, NRSC, and Republican Party of Maine); *Mi Familia Vota v. Hobbs*, Doc. 25, No. 2:20-cv-1903 (D. Ariz. June 26, 2020) (granting intervention to the RNC and NRSC); *Ariz. Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-1143-DLR (D. Ariz. June 26, 2020) (granting intervention to the RNC and Arizona Republican Party); *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459 (W.D. Wis. June 23, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Edwards v. Vos*, Doc. 27, No. 20-cv-340 (W.D. Wis. June 23, 2020) (same); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 ECT/TNL (D. Minn. June 23, 2020) (granting intervention to the RNC and Republican Party of Minnesota); *Issa v. Newsom*, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (granting intervention to the DCCC and Democratic Party of California); *Nielsen v. DeSantis*, Doc. 101, No. 4:20-cv-236-RH (N.D. Fla. May 28, 2020) (granting intervention to the RNC, NRCC, and Republican Party of Florida); *Priorities USA v. Nessel*, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (granting intervention to the RNC and Republican Party of Michigan); *Thomas v. Andino*, 335 F.R.D. 364, 367 (D.S.C. 2020) (granting intervention to the South Carolina Republican Party); *Corona v. Cegavske*, Order Granting Mot. to Intervene, No. CV 20-OC-644-1B (Nev. Jud. Dist. Ct. Apr. 30, 2020) (granting intervention to the RNC and Nevada Republican Party); *League of Women Voters of Va. v. Va. State Bd. of Elections*, Doc. 57, No. 6:20-cv-24 (W.D. Va. Apr. 29, 2020) (granting intervention to the Republican Party of Virginia); *Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention to four Democratic Party entities); *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Gear v. Knudson*, Doc. 58, No. 3:20-cv-278 (W.D. Wis. Mar. 31, 2020) (same); *Lewis v. Knudson*,

could "chang[e] the results of elections"—they ask the Court to enjoin Ohio law governing voting procedures—thus directly affecting the Ohio Republican Party, its candidates, and its members. *Benson*, 448 F. Supp. 3d at 764. And the Ohio Republican Party has a substantial interest in preventing changes to the "competitive environment" of elections. *See Shays*, 414 F.3d at 85. Because the Ohio Republican Party's candidates seek election "in contests governed by the challenged rules," it has an interest in "demand[ing] adherence" to those requirements. *Id.* at 88.

The Election Workers also possess significant and particularized interests in the subject matter of this litigation. Each has served as a precinct election official in previous elections and intends to do so again in future elections. Precinct election officials "perform all of the duties provided by law for receiving the ballots and supplies . . . and overseeing the casting of ballots during the time the polls are open," as well as other duties required by Ohio election law. Ohio Rev. Code § 3501.22. House Bill 458 "changes the legal landscape for what it takes to carry out [those] dut[ies]." *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022). Thus, the Election Workers—as election judges who have a "role . . . in the enforcement" of the challenged provisions, *see Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013)—have a substantial and particularized interest in upholding and abiding by election rules that facilitate free and fair elections, and in knowing the rules by which they will judge elections when they serve as precinct election officials in future elections. *Cf. Berger v. N.C. St. Conf. of the NAACP*, 142 S. Ct. 2191, 2203 (2022) ("[A] full consideration of the State's practical interests may require the involvement of different voices with different perspectives.").

Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020) (same); *see also Democratic Exec. Cmte. of Fla. v. Detzner*, No. 4:18-cv-520-MW-MJF (N.D. Fla. Nov. 9, 2018) (granting intervention to the NRSC).

What is more, the Election Workers, as *voters*, have a separate interest in preventing their votes from being "debase[d] or dilute[ed]" by the counting of invalid ballots. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964); *see Bush v. Gore*, 531 U.S. 98, 105 (2000); *see also, e.g.*, *Miller*, 348 F. Supp. 2d at 919 n.3 (granting intervention as of right to individual voters as third-party defendants, including so they could defend the law to "prevent possible dilution of their own votes"). The Election Workers also have a significant interest in maintaining certainty regarding their rights and obligations if they choose to exercise their statutory right to vote by absentee or mail-in ballot. *See* Ohio Rev. Code § 3509.01. Further, the Election Workers have an interest in certainty regarding early voting days, the use of photo ID for in-person voting, and the location of drop boxes for their ballots. For these reasons, courts have regularly granted intervention to voters in election litigation. *See, e.g.*, *Miller*, 348 F. Supp. 2d at 919 n.3; *Paher v. Cegavske*, 2020 WL 2042365, at *3 (D. Nev. Apr. 28, 2020); *see also, e.g.*, *Reynolds*, 377 U.S. at 541–42; *Democratic Nat'l Comm. v. Republican Nat'l Comm*, 543 U.S. 1304, 1304 (2004) (Souter, J., in chambers); *N.C. State Conference of the NAACP v. McCrory*, 831 F.3d 204, 219 (4th Cir. 2016); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 232 (4th Cir. 2014).

The Election Workers and the Ohio Republican Party therefore each satisfy Rule 24(a)'s interest requirement.

3. The Proposed Intervenors' ability to protect their interests will be harmed if they cannot intervene.

The Proposed Intervenors' ability to protect these interests may well hinge on intervention, which satisfies the third prong of the intervention analysis. "[A] would-be intervenor must show only that impairment of its substantial legal interest is *possible* if intervention is denied." *Miller*, 103 F.3d at 1247 (emphasis added). "This burden is minimal." *Id.*

The Proposed Intervenors clear this low hurdle. Without intervention, they have no way to "defend their concrete interests" in, among other things, ensuring fair and orderly elections conducted in accordance with established rules. *Shays*, 414 F.3d at 86. Plaintiffs' suit could "fundamentally alter the environment" for future elections by changing Ohio's voting rules. *Id.* For example, Plaintiffs seek an injunction preventing Secretary LaRose from enforcing a provision of House Bill 458 governing the number of ballot drop boxes a county may provide. Ohio Rev. Code § 3509.05(C) (effective April 7, 2023). An injunction prohibiting this provision could force the Ohio Republican Party to face a "broader range of competitive tactics than" the State "would otherwise allow," *Shays*, 414 F.3d at 86, and it could directly prejudice certain candidates in future elections. An injunction could likewise prevent the Election Workers from administering Ohio's duly enacted rules for free, fair, and trusted elections and could dilute the Election Workers' votes by requiring Ohio to count invalid ballots and by permitting an increased risk of voter fraud and other irregularities. It is thus at least "possible" that the Proposed Intervenors' interests would be impaired "if intervention is denied." *Miller*, 103 F.3d at 1247.

4. The existing parties do not adequately represent the Proposed Intervenors' interests.

None of the existing parties adequately represent the Proposed Intervenors' interests. As with the previous requirement, the burden to show inadequate representation "should be treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). The mere "potential for inadequate representation" is enough. *Grutter*, 188 F.3d at 400; *Trbovich*, 404 U.S. at 538 n.10. And, consistent with the overall approach to Rule 24, "all reasonable doubts should be resolved" in favor of intervention. 7C Mary Kay Kane, *Federal Practice and Procedure* § 1909 (3d ed. 2020).

The only other defendant, the Ohio Secretary of State, might not adequately represent the Proposed Intervenors' interests. Courts across the country have "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003). That is true here. Secretary LaRose's generalized interest in enforcing the law is distinct from the Proposed Intervenors' private interests. *See Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1255–56 (10th Cir. 2001). He has no interest in, for example, electing particular candidates across a wide variety of elections. *Cf. Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996) (per curiam). He also must consider a "broad spectrum of views, many of which may conflict" with the Proposed Intervenors' specific and targeted interests. *Clinton*, 255 F.3d at 1256. These may include the "expense of defending" the current laws, *Clark v. Putnam County*, 168 F.3d 458, 461–62 (11th Cir. 1999); the "social and political divisiveness of the election issue," *Meek v. Metropolitan Dade County*, 985 F.2d 1471, 1478 (11th Cir. 1993), *abrogated on other grounds by Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324 (11th Cir. 2007) (per curiam); and the interests of opposing parties, *In re Sierra Club*, 945 F.2d 776, 779–80 (4th Cir. 1991). These broader interests may affect the way he goes about defending the case—for example, unlike the Proposed Intervenors, by not filing a motion to dismiss to test the legal sufficiency of the complaint. *See La Union del Pueblo Entero*, 29 F.4th at 308. The Proposed Intervenors will instead focus on their private interests, which may well diverge from the Secretary's public interests. *See Cleveland Cnty. Ass'n for Gov't by the People v. Cleveland Cnty. Bd. of Comm'rs*, 142 F.3d 468, 474 (D.C. Cir. 1998) (per curiam). This potential for inadequate representation is plenty to justify intervention under Rule 24(a).

With all of the requirements of Rule 24(a) mandatory intervention met, this Court should grant the Proposed Intervenors' motion.

B. Alternatively, the Court Should Grant the Proposed Intervenors Permissive Intervention.

Even if the Court disagrees that intervention of right is warranted, it should permit the Proposed Intervenors to intervene as a matter of discretion under Rule 24(b), in which case this motion may be granted without addressing the Rule 24(a) factors. *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 577 (6th Cir. 2018).

Rule 24(b) authorizes courts to "permit anyone to intervene who, [o]n timely motion . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Permissive intervention is within the Court's discretion. *League of Women Voters*, 902 F.3d at 577. "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

Permissive intervention is amply justified here.

First, as explained above, this motion is timely. The Sixth Circuit uses the same timeliness factors for Rule 24(a) and Rule 24(b), *see Blount-Hill v. Zelman*, 636 F.3d 278, 284, 287–88 (6th Cir. 2011), and there should be no dispute that this motion is timely under those factors.

Second, the Proposed Intervenors will raise defenses that share many common questions with the parties' claims and defenses. Plaintiffs allege that House Bill 458 is unconstitutional. Like the Secretary, Proposed Intervenors disagree and contend that House Bill 458 is valid and enforceable. Plaintiffs' requested relief could also undermine the Proposed Intervenors' interests. The questions of law and fact that the Proposed Intervenors will raise overlap with the issues already before the Court, and the Proposed Intervenors will add a unique perspective on those issues and to this case. *See Berger*, 142 S. Ct. at 2203; *League of Women Voters*, 902 F.3d at 577; *see also, e.g.*, *Yang v. Kellner*, No. 20 Civ. 3325, 2020 WL 2115412, at *2 (S.D.N.Y. May 3,

2020); *City of Greensboro v. Guilford Cnty. Bd. of Elections*, 2015 WL 12752936, at *1 (M.D.N.C. Oct. 30, 2015).

Third, the Proposed Intervenors' intervention will not delay this case or prejudice the original parties. This case has only just begun and intervention should impose no delays. (It should even *expedite* resolution of this case, given that the Proposed Intervenors' motion to dismiss should lead the Court to dismiss the complaint before discovery, summary judgment, and trial.) The Proposed Intervenors will follow any schedule the Court sets. Allowing intervention would prevent piecemeal litigation and the need for collateral challenges to a settlement or appeals from an order that may prejudice them.

CONCLUSION

For these reasons, the Proposed Intervenors respectfully ask the Court to grant their motion to intervene as defendants in this case.

Dated: March 21, 2023

Respectfully submitted,

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Attorneys for Proposed Intervenors

**Pro hac vice* application forthcoming

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/s/ James R. Saywell

James R. Saywell
Attorney for Proposed Intervenors

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NORTHEAST OHIO COALITION FOR THE HOMELESS, *et al.*, Plaintiffs, v. FRANK LAROSE, in his official capacity as Ohio Secretary of State, Defendant.	Civil Action No. 1:23-cv-26 Judge Donald C. Nugent Magistrate Judge Jonathan D. Greenberg

INTERVENORS' [PROPOSED] MOTION TO DISMISS

Sandra Feix, Michele Lambo, and the Ohio Republican Party ("Intervenors") support and seek to uphold free and fair elections on behalf of all Ohioans. Intervenors therefore respectfully move the Court to uphold the Ohio General Assembly's duly enacted laws governing Ohio's elections and to dismiss Plaintiffs' Amended Complaint. Intervenors submit the accompanying memorandum in support demonstrating that Plaintiffs' Amended Complaint "fail[s] to state a claim upon which relief can be granted," Fed. R. Civ. P. 12(b)(6), because House Bill 458 and House Bill 45 do not violate the First or Fourteenth Amendments.

WHEREFORE, Intervenors respectfully request that the Court GRANT this motion and DISMISS Plaintiffs' Amended Complaint.

Dated: March 21, 2023

Respectfully submitted,

/s/ James R. Saywell

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NORTHEAST OHIO COALITION FOR THE HOMELESS, *et al.*, Plaintiffs, v. FRANK LAROSE, in his official capacity as Ohio Secretary of State, Defendant.	Civil Action No. 1:23-cv-26 Judge Donald C. Nugent Magistrate Judge Jonathan D. Greenberg

[PROPOSED] ORDER

AND NOW, this ___ day of _____, 2023, upon consideration of Intervenors' Motion to Dismiss, it is hereby ORDERED, ADJUDGED, and DECREED that the Motion is GRANTED. Plaintiffs' Amended Complaint is hereby DISMISSED.

_____
Honorable Donald. C. Nugent
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NORTHEAST OHIO COALITION FOR THE HOMELESS, *et al.*, Plaintiffs, v. FRANK LAROSE, in his official capacity as Ohio Secretary of State, Defendant.	Civil Action No. 1:23-cv-26 Judge Donald C. Nugent Magistrate Judge Jonathan D. Greenberg

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INTRODUCTION AND SUMMARY OF ARGUMENT

Intervenors Sandra Feix, Michele Lambo, and the Ohio Republican Party support and seek to uphold free, fair, and trusted elections on behalf of all Ohioans. Intervenors therefore respectfully move this Court to uphold the Ohio General Assembly's duly enacted laws promoting election fairness and integrity in Ohio by dismissing Plaintiffs' Amended Complaint.

An assortment of organizations filed the Amended Complaint alleging that House Bill 458 (modified in part by House Bill 45 but collectively referred to as House Bill 458) represents an "all-sides attack" on the "fundamental right" to vote. Amended Complaint (Am. Compl.), Dkt. No. 13, ¶¶ 2, 5. That is simply incorrect. In reality, House Bill 458 makes only minor changes to Ohio's election code to ensure both that it remains very "easy to vote in Ohio," *Ohio Dem. Party v. Husted*, 834 F.3d 620, 628 (6th Cir. 2016), and that Ohio's elections remain secure and trusted by voters across the political spectrum. The Amended Complaint thus "fail[s] to state a claim upon which relief can be granted" and should be dismissed. *See* Fed. R. Civ. P. 12(b)(6).

Controlling Supreme Court and Sixth Circuit precedent make clear that House Bill 458 is constitutional under any level of scrutiny and on any plausible record. House Bill 458 imposes at most minimal, reasonable, and neutral burdens on voters, meaning it receives rational-basis review under the *Anderson-Burdick* framework. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). The law is amply justified under that deferential standard of review: Ohio has indisputably important interests in election integrity, preventing voter fraud, ensuring public confidence in elections, and promptly certifying election results. Yet, even if some less deferential standard of review were applicable, those interests still would outweigh any of House Bill 458's conceivable burdens. Indeed, if House Bill 458's modest changes to Ohio's election code cannot survive the *Anderson-Burdick* framework, no changes could.

This Court should grant Intervenors' motion and dismiss the Amended Complaint.

STATEMENT OF ISSUE

Whether House Bill 458's neutral, commonsense, modest changes to Ohio's generous voting laws are constitutional.

BACKGROUND

"[I]t's easy to vote in Ohio. Very easy, actually." *Ohio Dem. Party*, 834 F.3d at 628. The Constitution does not require Ohio to provide any method of voting other than in-person voting on election day. But Ohio goes above and beyond the constitutional minimum: it also offers in-person early voting during a several-week period leading up to election day and no-excuse absentee voting by mail for up to 46 days for military and overseas voters and up to 29 days for domestic voters. *See* Office of the Ohio Secretary of State, Directive 2023-03 at 8 (Feb. 7, 2023); Ohio Rev. Code § 3509.01(B); Ohio Const. Art. 5, § 1. All of this makes Ohio a national leader in election accessibility.

Voting in Ohio remains "very easy" after House Bill 458. House Bill 458 preserves *all* of these methods of voting and Ohio's generous accommodation of each method. Start with in-person voting. Ohio law previously permitted voters to use a variety of forms of acceptable identification when voting in person, including non-photo IDs. House Bill 458 now requires voters to present a photo ID but expands the list of acceptable photo IDs. *See* Directive 2023-03 at 1–3. House Bill 458 also guarantees that any voter may obtain a photo ID for free. *See id.* at 1. Moreover, even though Ohio has no constitutional obligation to permit ballot curing, it does so: a voter lacking a photo ID on election day can still cast a provisional ballot, obtain or retrieve a photo ID, and cure her ballot by presenting a photo ID up to four days after election day. *Id.* at 4–5. And House Bill 458 provides an exemption from the photo ID requirement for any voter with a religious objection. *See id.* at 5.

House Bill 458 also maintains a long calendar for early in-person voting. The law redistributes the early in-person voting hours that previously were available on the day before election day to other days within the early voting period. After House Bill 458, for the upcoming May 2023 election, early voting is now available for four weeks, including on two weekend days and five days with voting available after 5 p.m. *Id.* at 8. Ohio's early voting period has the same total number of voting hours before and after House Bill 458. *Compare id.* at 8, *with Election Official Manual* 201, Ohio Secretary of State (Feb. 2, 2022).

No-excuse absentee voting also remains available to all Ohio voters after House Bill 458. All Ohio voters may vote absentee for any reason or no reason at all. Moreover, Ohio voters who prefer not to obtain or use the free photo ID now required to vote in person do not need one to vote absentee; they can vote absentee simply by providing the last four digits of their social security number instead. *See* Directive 2023-03 at 4. Further, House Bill 458 even expands the available methods for returning absentee ballots to election officials. Ohio law made no provision for drop boxes before House Bill 458, but now ensures that absentee ballots can be returned via a drop box that is available 24/7, even though the State has no constitutional obligation to provide this option. *Id.* at 7. Absentee ballots alternatively can be returned to the county board of elections in person, Ohio Rev. Code § 3509.05(C)(1) (effective April 7, 2023), or by mail, Directive 2023-03 at 6.

House Bill 458 also preserves lengthy periods for voters to request, receive, and return absentee ballots. As was the case before House Bill 458, voters can still begin requesting absentee ballots up to more than ten months before election day. House Bill 458 modestly changes the deadlines for voters to request and for election officials to receive absentee ballots. Prior to House Bill 458, Ohio law permitted voters to request absentee ballots up to three days before election day and election officials to receive them up to ten days after election day; House Bill 458 modifies

those deadlines to one week before election day and four days after election day, respectively. *See id.* at 5–6.

Ohio has been and, after House Bill 458 remains, a national leader in election accessibility while appropriately protecting the integrity of the ballot compared to other states' practices. For example, more than a dozen states require a specific reason to vote by absentee ballot, but Ohio offers no-excuse absentee voting. *See* Summary, *Table 2: Excuses to Vote Absentee*, Nat'l Conf. of State Legislatures (updated July 12, 2022), https://www.ncsl.org/elections-and-campaigns/table-2-excuses-to-vote-absentee. Most states do not accept any absentee ballots received after election day, but Ohio continues to accept them for four days after the election. *See* Summary, *Table 11: Receipt and Postmark Deadlines for Absentee/Mail Ballots*, Nat'l Conf. of State Legislatures (updated July 12, 2022), https://www.ncsl.org/elections-and-campaigns/table-11-receipt-and-postmark-deadlines-for-absentee-mail-ballots. The plurality of states, including Ohio, require voters to request absentee ballots by mail a week or more before an election. *See* Summary, *Table 5: Applying for an Absentee Ballot, Including Third-Party Registration Drives*, Nat'l Conf. of State Legislatures (updated July 12, 2022), https://www.ncsl.org/elections-and-campaigns/table-5-applying-for-an-absentee-ballot. Over a dozen states offer early voting only 15 or fewer days before an election, but Ohio offers early voting starting 29 days before an election. *See* Brief, *Early In-Person Voting*, Nat'l Conf. of State Legislatures (updated Aug. 30, 2022), https://www.ncsl.org/elections-and-campaigns/early-in-person-voting. And most states require identification to vote, with around 20 states, including Ohio, requiring photo identification. *See* Report, *Voter ID Laws*, Nat'l Conf. of State Legislatures (updated March 9, 2023), https://www.ncsl.org/elections-and-campaigns/voter-id.

While voting in Ohio remains "[v]ery easy" after House Bill 458's modest changes to Ohio voting procedures, those changes promote election integrity, smooth and prompt election

administration, and public confidence in election results. Specifically, House Bill 458 enables Ohio to certify election results earlier by advancing the mail-in ballot deadline and shortening the period during which voters can cure their provisional ballots, by a few days each. It promotes election integrity and public confidence in election results through tweaks to Ohio's preexisting voter-identification requirement and through its requirement that counties increase the security of unattended ballot drop boxes. And it streamlines the myriad tasks local election officials must complete in preparation for election-day voting—such as ensuring that each precinct has a long list of statutorily required supplies—by redistributing the early voting hours on the day before election day throughout the week before the election. *See* Ohio Rev. Code § 3501.30; Press Release, *LaRose Implementing New Election Reforms That Will Boost Confidence in Our Elections and Increase Their Accessibility*, Ohio Secretary of State (Feb. 7, 2023), https://www.ohiosos.gov/media-center/press-releases/2023/2023-02-08/.

Far from radically reshaping the voting process, then, House Bill 458 only modestly tweaks Ohio's generous voting laws to ensure smooth, prompt administration of elections, election security, and public confidence in election results—while keeping it "[v]ery easy" to vote. *Ohio Dem. Party*, 834 F.3d at 628. Ohio's interests animating House Bill 458 are interests of the highest order, and they more than justify House Bill 458's modest changes to Ohio's convenient, accessible voting process.

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) requires dismissal of a complaint that "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the complaint. *See, e.g.*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Accordingly, federal courts "disregard bare legal conclusions" in the complaint, *Dakota Girls, LLC v. Philadelphia Indem. Ins. Co.*, 17 F.4th 645,

648 (6th Cir. 2021), and must grant motions to dismiss under Rule 12(b)(6) where the complaint fails to "raise a right to relief above the speculative level," including because it asserts a legally deficient theory of liability, *Twombly*, 550 U.S. at 555.

ARGUMENT

"States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). "[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Anderson*, 460 U.S. at 788 (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

The General Assembly has enacted such regulations in House Bill 458. There is nothing unconstitutional about them. This Court should accordingly dismiss for failure to state a claim. Fed. R. Civ. P. 12(b)(6).

I. THE AMENDED COMPLAINT FAILS TO STATE A CLAIM BECAUSE THE CHALLENGED PROVISIONS ARE CONSTITUTIONAL.

Because any burdens imposed by House Bill 458 (if there really are any burdens at all) are at most minimal, deferential rational-basis review applies. And the law easily passes that review, because the challenged provisions serve Ohio's important interests in smooth election administration; uniform, efficient election rules; election integrity; and public confidence in the election process. Indeed, the close fit between the challenged provisions and the important state interests they serve means that the law would pass any level of scrutiny. In fact, if Ohio's benign changes to its election laws could not survive the *Anderson-Burdick* framework as interpreted by the Sixth Circuit, none could. And that would signal a serious problem with the framework, not with Ohio's law.

A. The Challenged Provisions Easily Survive the *Anderson-Burdick* Framework.

The Sixth Circuit applies the *Anderson-Burdick* framework to decide undue-burden claims like this one. *See, e.g.*, *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 618, 631 (6th Cir. 2016). Under this framework, courts first determine the burden on the right to vote imposed by a challenged law. *Mays v. LaRose*, 951 F.3d 775, 784 (6th Cir. 2020). Then, based on the extent of the burden, courts determine the level of scrutiny the law receives and whether the law survives that scrutiny. *Id.*

The Sixth Circuit applies three different forms of scrutiny depending on the law's level of burden. At one pole, if the law is a "reasonable nondiscriminatory restriction[]," rational-basis review applies, and the law passes muster if it advances the State's "important regulatory interests." *Id.* (internal quotation marks omitted). At the other pole, if the law imposes "severe restrictions" on the right to vote, "such as poll taxes," strict scrutiny applies. *Id.* When the burden is "moderate" and between these poles, as when the State "facially discriminates between two classes of electors," courts in the Sixth Circuit "depart[] from the traditional tiers of scrutiny" and apply *Anderson-Burdick*'s "flexible" standard. *Id.* at 784, 786. That flexible standard requires courts to weigh the law's burdens on the right to vote against "the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.* at 784 (internal quotation marks omitted).

To determine a law's burden, the Sixth Circuit considers "the burden that the provisions place on all Ohio voters," because "[z]eroing in on the abnormal burdens experienced by a small group of voters is problematic at best, and prohibited at worst." *NEOCH*, 837 F.3d at 631; *see also Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 199–200 (2008) (lead opinion of Stevens, J.); *id.* at 207 (Scalia, J., concurring in the judgment).

1. The burdens are at most minimal, meaning rational-basis review applies.

This is a quintessential "minimal burden" case to which rational-basis review applies. The challenged provisions of House Bill 458 impose at most a negligible and nondiscriminatory burden on prospective voters when considered "as one component of Ohio's progressive voting system," as they must be, especially given "the many options that remain open to Ohio voters." *Ohio Dem. Party*, 834 F.3d at 628. In fact, this case is controlled by the proposition that the mere "withdrawal or contraction of just one of many conveniences that have generously facilitated voting participation in Ohio" is no more than a minimal burden. *Id.*

To see why, consider the challenged provisions one by one, and then in combination.

Changes to preexisting ID requirements for in-person voting. Plaintiffs first challenge House Bill 458's minor changes to ID requirements for in-person voting. *See* Am. Compl. ¶ 139. Prior to House Bill 458, voters could use some documents without photos, such as a copy of a utility bill, bank statement, or paycheck, but curiously could not use passports. Ohio Rev. Code § 3505.18(A)(1) (2022). House Bill 458 removes the non-photo ID options but now allows voters to display a variety of forms of photo ID, including an Ohio driver's license or state ID with the voter's name and current or former address; an interim state ID form; a variety of military IDs; and a U.S. passport. Ohio Rev. Code § 3501.01(AA)(1) (effective April 7, 2023). The law also removes the ten-dollar fee that Ohio previously charged for state IDs—meaning voters now can obtain photo IDs for free thanks to House Bill 458. *See* Ohio Rev. Code §§ 4507.233(A), 4507.50(A)(1)(a) (effective April 7, 2023).

It is inconceivable that this imposes anything more than a "minimal" burden on voters. In fact, the Supreme Court has already held as much in the course of upholding Indiana's photo ID law. *See Crawford*, 553 U.S. at 197–200, 204 (lead opinion of Stevens, J.); *id.* at 209 (Scalia, J.,

concurring in the judgment). "A photo identification requirement imposes some burdens on voters that other methods of identification do not share," but those burdens "are neither so serious nor so frequent as to raise any question about the constitutionality of" a photo ID requirement. *Id.* at 197 (opinion of Stevens, J.); *see id.* at 209 (opinion of Scalia, J.). Even for voters who do not yet possess an acceptable form of photo ID, "the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." *Id.* at 198 (opinion of Stevens, J.). And even if it were relevant that a photo ID requirement could place "a somewhat heavier burden . . . on a limited number of persons," including "elderly persons" and "homeless persons," that burden is "mitigated" by the fact that those voters can still cast a no-excuse absentee ballot without photo ID, using only the last four digits of their Social Security numbers. *Id.* at 199; *see* Ohio Rev. Code § 3509.03(B)(5)(b) (effective April 7, 2023). Thus, "even [if] the burden may not be justified as to a few voters, that conclusion is by no means sufficient to establish [a] right to . . . relief" via a facial challenge to a photo ID requirement, as here. *Crawford*, 553 U.S. at 199–200 (opinion of Stevens, J.).

It follows from *Crawford* and simple, basic logic that Ohio's photo ID requirement imposes no more than a minimal burden and is accordingly constitutional. Indeed, House Bill 458 *expands* the category of permissible forms of photo ID and ensures that every Ohio voter can now obtain a photo ID for free. It is far from clear that the net effect of these changes adds any burden on voters at all. Regardless, though, Plaintiffs cannot show anything more than a minimal burden from House Bill 458's photo ID requirement. *See also, e.g.*, *Lee v. Va. State Bd. of Elections*, 843 F.3d 592 (4th Cir. 2016) (upholding Virginia photo ID requirement); *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014) (upholding Wisconsin photo ID requirement); *Common Cause/Ga. v. Billups*, 554 F.3d 1340 (11th Cir. 2009) (upholding Georgia photo ID requirement).

Redistributing Monday voting hours to other days in the early-voting period. Plaintiffs also challenge House Bill 458's redistribution of early-voting hours during the four-week early-voting period. *See* Am. Compl. ¶ 144. Specifically, House Bill 458 redistributes early voting hours from the Monday before election day throughout the early-voting period—including after normal work hours throughout the week and weekend before election day. *See* Directive 2023-03 at 8. This schedule leaves Ohio in the mainstream of regimes for early voting, again something that is not even required by the Constitution. Not all states even allow no-excuse early voting. *See Early In-Person Voting*, Nat'l Conf. of State Legislatures, *supra*. Other states stop early voting on the Sunday before the election (such as Delaware), four days before the election (such as Massachusetts), or even a week before the election (such as Louisiana). Del. Code Ann. tit. 15, § 5401; Mass. Gen. Laws ch. 54, § 25B(b)(2); La. Stat. § 18:1309(A)(1)(a)(i). The Sixth Circuit has held that another change to Ohio's early-voting schedule, eliminating the so-called "Golden Week" when voters could register and vote on the same day, was merely "a withdrawal or contraction of" the "conveniences" that Ohio afforded to voters, and could "hardly be deemed to impose a true 'burden'" at all. *Ohio Dem. Party*, 834 F.3d at 628. No doubt, if entirely eliminating a full *week* of early voting could "hardly" count as a burden, merely reallocating only *six hours* of early-voting time so election officials can make final preparations for election day cannot either.

Reduction of cure period. House Bill 458 shortens by three days the period for curing a defect in an absentee ballot, or for curing a provisional ballot cast in person by showing proper identification at the voter's local board of elections. Ohio Rev. Code §§ 3505.181(B)(7)–(8) (effective April 7, 2023), 3509.06(D)(3)(b) (effective April 7, 2023). But because the Constitution does not require any cure period, any reduction in the cure period cannot constitute a burden on the right to vote. *See, e.g.*, *Ohio Dem. Party*, 834 F.3d at 628. Moreover, the Sixth Circuit has

already concluded that a three-day reduction of Ohio's cure period imposes "a trivial burden" on voters. *NEOCH*, 837 F.3d at 635. This change is no different.

Plaintiffs disagree with the Sixth Circuit's conclusion that any burden from reducing the (unrequired) cure period is "trivial," alleging instead that the reduction is "particularly pernicious" because absentee voters theoretically might not receive notice that their ballots are defective until after the cure period has expired. Am. Compl. ¶ 102. Of course, as Plaintiffs implicitly concede, no such risk of untimely notice exists for voters who cast a provisional ballot in person: after all, any such voters are on notice of the need to cure a failure to present an acceptable photo ID from the moment they receive a provisional ballot. *See id.*

Moreover, Ohio law permits absentee ballots to be sent to overseas and military voters 46 days before election day and to domestic voters 29 days before election day. Ohio Rev. Code §§ 3509.01(B) (effective April 7, 2023), 3503.19 (effective April 7, 2023). When combined with Ohio's generous period of up to more than ten months for voters to request an absentee ballot, *see id.* § 3509.03(D) (effective April 7, 2023), Ohio voters have more than enough time to request, receive, complete, and return their absentee ballots before expiration of the cure period. Individuals who choose to take advantage of Ohio's generous absentee regime and vote absentee need not wait until the last minute to return their absentee ballots; they can do so well in advance of election day and thereby eliminate any risk of receiving untimely notice of any defect.

Plaintiffs' concern about absentee voters receiving untimely notice of a defect is further misplaced for at least three more reasons. *First*, the cure period represents "one of many conveniences" offered to Ohio voters, so shortening it "can hardly be deemed to impose a true 'burden'" on the right to vote. *Ohio Dem. Party*, 834 F.3d at 628. Indeed, the *Anderson-Burdick* framework is not a "one-way ratchet" that freezes in place prior voting laws and prohibits states "from later modifying their election procedures in response to changing circumstances." *Id.* at

623, 635. *Second*, and similarly, Ohio need not offer *any* cure period; indeed, some states (including Connecticut and Alaska) do not. And other states (including Virginia and Florida) have shorter cure periods than Ohio. *See id.* at 629 (considering comparisons to other states' voting laws); Va. Code § 24.2-709.1(C) (absentee ballots; noon on the third day after the election); Fla. Stat. § 101.048(1) (provisional ballots; second day after the election). *Third*, and at any rate, House Bill 458 actually *reduces* the risk of untimely notice compared to pre-House Bill 458 law in at least two ways. In the first place, House Bill 458 lengthens by one day the amount of time between the absentee ballot application deadline and the cure deadline. Prior to House Bill 458, those deadlines were three days before election day and seven days after election day, respectively, a total period of 11 days. Under House Bill 458, those deadlines are now seven days before election day and four days after election day, respectively, for a total period of 12 days. *See* Directive 2023-03 at 5–6. Thus, under House Bill 458, voters now have one more day between those deadlines to receive notice and to cure any ballot defects. *See id.*

House Bill 458 further reduces the risk of untimely notice because it eliminates the mismatch between the absentee ballot deadline and the end of the cure period. Before House Bill 458, Ohio accepted absentee ballots until ten days after the election, but the cure period ended seven days after the election, so an absentee ballot might not even *arrive* before the end of the cure period. Ohio Rev. Code §§ 3509.05(B)(1) (2022), 3509.06(D)(3)(b) (2022). House Bill 458 eliminates this possibility and, thus, reduces any risk of untimely notice to individuals who return their absentee ballots late in the election calendar. The Sixth Circuit did not hesitate to uphold Ohio's previous adjustment to the (unrequired) cure period, *NEOCH*, 837 F.3d at 635, and this Court should not hesitate to uphold this adjustment either.

Advancing mail-ballot deadlines. "[T]here is no constitutional right to an absentee ballot," and states have no obligation to permit voters to vote absentee or by mail. *Mays*, 951 F.3d at 792;

see also McDonald v. Bd. of Election Comm'rs, 394 U.S. 802, 807–09 (1969). Moreover, "[t]here is no dispute that Ohio is generous when it comes to absentee voting—especially when compared to other states." *Mays*, 951 F.3d at 779–80. House Bill 458 advances the deadlines for requesting an absentee ballot and for when the absentee ballot must be received—two small tweaks to a type of voting that is not even constitutionally required. *Id.* at 792; *see Ohio Dem. Party*, 834 F.3d at 628. Neither imposes anything more than a minimal burden.

Start with the deadline for requesting an absentee ballot. Ohio voters generally can begin requesting ballots as early as "the first day of January of the year of the elections for which the absent voter's ballots are requested or not earlier than ninety days before the day of the election at which the ballots are to be voted, whichever is earlier." Ohio Rev. Code § 3509.03(D) (effective April 7, 2023); *see also Mays*, 951 F.3d at 792 ("Ohio law provides electors over ten months to request an absentee ballot."). House Bill 458 changed the end date of the period for requesting absentee ballots from three days before election day to a week before election day. Ohio Rev. Code § 3509.03(D) (effective April 7, 2023). Ohio's period of up to more than ten months to request an absentee ballot is extremely generous. Moreover, even on its own, the new deadline places Ohio comfortably in the plurality of states—around 23 in all—that require voters to request absentee ballots by mail a week or more before an election. *See Table 5: Applying for an Absentee Ballot*, Nat'l Conf. of State Legislatures, *supra*. If it is not a burden to request an absentee ballot three days before election day—and it is undisputedly not—then neither is it a burden to request one a week before election day, which still provides up to ten months total to do so.

As for returning an absentee ballot, House Bill 458 advanced the deadline for boards of elections to receive ballots from ten days after election day to four days after election day. Ohio Rev. Code § 3509.05(D)(2)(a) (effective April 7, 2023). With this change, Ohio continues to be *more generous* than 30 states, which do not accept *any* absentee ballots received after election day.

See Table 11: Receipt and Postmark Deadlines, Nat'l Conf. of State Legislatures, *supra*. It is unlikely, to say the least, that the majority of states have unconstitutional mail-in ballot deadlines. Indeed, it is not at all clear that any such deadlines could possibly violate the Constitution, not least because states are not required to provide absentee voting in the first place. *Mays*, 951 F.3d at 792.

Both of these changes to a method of voting more generous than the Constitution requires are less burdensome than obtaining a state identification card—a burden that the Supreme Court held was slight and constitutional. *Crawford*, 553 U.S. at 197–200, 204 (opinion of Stevens, J.), 209 (opinion of Scalia, J.). These changes therefore are constitutional.

Improving ballot drop-box security for mail ballots. House Bill 458 expressly *adds* an additional way for voters to securely return their absentee ballots, at any time of the day or night. Specifically, House Bill 458 provides that each county may maintain one drop box for collection of absentee ballots. Ohio Rev. Code § 3509.05(C)(2)–(3). Ballot drop boxes must now be available 24/7 during the absentee-voting period, and they must be continually monitored by video. Plaintiffs' challenge to this provision thus makes little sense. Making it *easier* to vote cannot impose a burden on voters.

Regardless, though, the Sixth Circuit previously considered an Ohio rule barring counties from maintaining more than one drop box. It concluded that the rule was "reasonable and non-discriminatory and thus subject to rational basis review." *A. Philip Randolph Inst. v. LaRose*, 831 F. App'x 188, 191–92 (6th Cir. 2020). The same is true here too.

Cumulative effect. Plaintiffs cannot save their Amended Complaint by ambiguously alleging that House Bill 458 is burdensome because of its cumulative effects. As demonstrated above, nearly all of House Bill 458's tweaks are to regimes that Ohio generously offers high above the constitutional floor. Therefore, while they address voting, they are entirely distinct from the

content and contours of the "right to vote" that is protected by the Constitution. And what is more, both before and after House Bill 458, Ohio affords voters a variety of accessible, convenient ways to vote. *See supra* at 3–6. Ohioans can vote absentee by mail or via drop box, with no excuse required to obtain an absentee ballot and no photo ID required to submit such a ballot. Or they can vote early in person, at any point over several weeks, including five days with hours after 5 p.m. and two weekend days, with a variety of acceptable forms of photo ID. Or they can vote on election day, with the same variety of photo ID options. Voting remains "[v]ery easy" in Ohio, *Ohio Dem. Party*, 834 F.3d at 628, and the cumulative "burden" imposed by House Bill 458, if any, is thus negligible.

2. Ohio's interests in regulating its elections far outweigh the trivial burdens.

When a law imposes a minimal burden, the *Anderson-Burdick* framework dictates that it receives deferential rational-basis review. *Mays*, 951 F.3d at 784. Any of a state's "important regulatory interests" justifies the minimal burdens on voters. *Id.* House Bill 458 passes with flying colors because it directly advances several of Ohio's important interests.

The photo ID requirement and the drop-box rules serve Ohio's interests in maintaining secure elections, promoting public confidence in election integrity, and deterring and detecting fraud. *See Crawford*, 553 U.S. at 196–97 (opinion of Stevens, J.). "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). And "preserving the integrity" of elections is "indisputably . . . a compelling interest." *Eu v. San Francisco Cnty. Dem. Cent. Comm.*, 489 U.S. 214, 231 (1989). It is beside the point whether the state has actually experienced election fraud from a particular source; a state need not let the horse out of the barn before closing the door. States are instead permitted to regulate prophylactically to prevent voter fraud. *Brnovich v. Dem. Nat'l Comm.*, 141

S. Ct. 2321, 2347–48 (2021); *Timmons*, 520 U.S. at 364. For those reasons, the Supreme Court has already approved of photo ID laws under the *Anderson-Burdick* framework. *Crawford*, 553 U.S. at 204 (opinion of Stevens, J.); *id.* at 209 (opinion of Scalia, J.); *see also Frank*, 768 F.3d 744; *Lee*, 843 F.3d 592; *Common Cause/Georgia*, 554 F.3d 1340.

Moreover, the drop-box rules promote the important state interests of "uniformity, which in turn promotes the fair administration of elections," "efficiency . . . in administering elections," and "the accuracy of the election." *A. Philip Randolph Inst.*, 831 F. App'x at 192. Accordingly, a materially identical version of the drop-box rules "easily pass[ed] constitutional muster" in the Sixth Circuit just a few years ago. *Id.*

The remaining challenged provisions—the mail-in ballot deadlines, cure period, and early-voting schedule change—all support the state's strong interests in smooth, prompt election administration and promoting public confidence in elections. *See Crawford*, 553 U.S. at 196–97 (opinion of Stevens, J.); *id.* at 209 (opinion of Scalia, J.); *Timmons*, 520 U.S. at 364–65; *Common Cause Ind. v. Lawson*, 977 F.3d 663, 665 (7th Cir. 2020); *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020); *Ariz. Dem. Party v. Hobbs*, 976 F.3d 1081, 1085 (9th Cir. 2020); *Mays*, 951 F.3d at 787. State election officials must accomplish a welter of tasks in the run-up to election day. Specifically, they must, among other things, "examine, verify, and count completed absentee ballots as electors return them; notify voters who voted incorrectly that they need to correct their ballot; . . . locate, hire, and train poll workers for Election Day; field and respond to questions from poll workers and voters; compile a list of eligible electors who have not voted early; . . . and deliver physical voting equipment, ballots, and supplies to polling locations." *Mays*, 951 F.3d at 787. Wrapping up early voting allows local election officials to better prepare for election-day voting. *See LaRose Implementing New Election Reforms*, Ohio Secretary of State, *supra*; *Obama for America v. Husted*, 697 F.3d 423, 432 (6th Cir. 2012). Completing the task of sending

out absentee ballots earlier means that local election officials can transition earlier to other time-sensitive tasks. And completing the cure period and receipt of absentee ballots earlier allows them to transition to other election-certification tasks earlier, enabling certainty and finality in election results and promoting public confidence in the process. *See Common Cause Ind.*, 977 F.3d at 665; *New Ga. Project*, 976 F.3d at 1282; *Ariz. Dem. Party*, 976 F.3d at 1085; *Mays*, 951 F.3d at 787. Those interests, and their hand-in-glove fit with the challenged provisions of House Bill 458, would suffice for any level of scrutiny. Plaintiffs' Amended Complaint thus fails to state a claim because House Bill 458 is constitutional.

B. No Arguments Plaintiffs May Make To The Contrary Could Change This Conclusion.

Plaintiffs likely will attempt to avoid this conclusion by insisting on a higher level of judicial scrutiny of House Bill 458's commonsense and constitutional changes to Ohio's election laws. But their arguments will be unavailing.

For example, the Amended Complaint asserts that the burdens imposed by the challenged provisions are *severe*, Am. Compl. ¶¶ 74, 138, implicitly equating House Bill 458's minor and modest changes to "poll taxes" and the like. *See Mays*, 951 F.3d at 784. But that is not just hyperbolic; it is insulting. House Bill 458 is light years away from imposing severe burdens. No one is "totally denied a chance to vote" because of House Bill 458, meaning "strict scrutiny is inappropriate." *Id.* at 787. After House Bill 458, every eligible Ohio citizen can vote. They can vote early without excuse with a free photo ID. They can vote by mail without an ID and without excuse. They can do all of this for nearly a month before election day. And if they fail to do any of that, they can vote in person with a photo ID. If they err, they have up to four days after the election is over to cure their error. Rational basis is the only conceivable standard of review for this case.

Nor could it be any other way. If House Bill 458's tweaks to an already generous voting system imposed severe burdens, then *every* voting law imposes severe burdens. That, of course, is not the law, as the Supreme Court has made clear. *See, e.g.*, *Burdick*, 504 U.S. at 433; *Crawford*, 553 U.S. at 197 (opinion of Stevens, J.); *id.* at 209 (opinion of Scalia, J.). And it would be inconsistent with the Constitution, which vests the states—not the federal government and especially not the federal courts—with primary responsibility to regulate the "Times, Places and Manner" of even federal elections. U.S. Const. Art. I, § 4, cl. 1. This Court should not "tie the hands of States seeking to assure that elections are operated equitably and efficiently" by imposing a severe-burden test on House Bill 458. *Burdick*, 504 U.S. at 433.

Plaintiffs may argue in the alternative that the challenged provisions are at least moderately burdensome. But as explained above, they are not—under controlling precedent (*see, e.g.*, *Crawford*, 553 U.S. at 197–200 (opinion of Stevens, J.); *NEOCH*, 837 F.3d at 635), and common sense. If imposing some incidental and neutral burdens on constitutionally required *election-day voting* is not enough "to raise any question about the constitutionality of" a law, *Crawford*, 553 U.S. at 197 (opinion of Stevens, J.), then neither can it raise any question when a law incidentally and neutrally imposes some burdens on *voting conveniences* that are not even constitutionally required. *Ohio Dem. Party*, 834 F.3d at 628. And, what is more, even assuming a moderate burden, House Bill 458's tweaks would still survive *Anderson-Burdick*'s flexible review for the reasons already given.

If this Court were to conclude otherwise, that would only go to show that there is something wrong with the Sixth Circuit's framework for analyzing *Anderson-Burdick* claims, not with Ohio's law. *See, e.g.*, *Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 561–62 (6th Cir. 2021) (Readler, J., concurring) (collecting cases). As the Sixth Circuit and its judges have acknowledged, a three-tiered approach to *Anderson-Burdick* is out of step with Supreme Court and other Circuits'

precedent. *See id.*; *Mays*, 951 F.3d at 783–84 n.4. The Supreme Court prescribes only two tiers of review: strict scrutiny for severely burdensome restrictions, and deferential review for all other kinds of voting laws (including this one). *Mays*, 951 F.3d at 783–84 n.4; *see Burdick*, 504 U.S. at 434; *Timmons*, 520 U.S. at 358. The Sixth Circuit has erroneously added a third kind of scrutiny for a third category of regulations, and its precedents to that effect should be overruled—if the right case ever arose. This, however, need not be that case—both because House Bill 458 imposes minimal burdens at most and because the law easily survives even the more rigorous interpretation of the *Anderson-Burdick* framework. *See, e.g.*, *Memphis APRI*, 2 F.4th at 561 (Readler, J., concurring).

CONCLUSION

The upshot is that this lawsuit represents yet another instance in which a group of organizations seeks to entangle the federal courts in the minutiae of local election administration and to "disregard the Constitution's clear mandate" that "the states (and not the courts) establish election protocols." *Ohio Dem. Party*, 834 F.3d at 629. This Court should dismiss the Amended Complaint.

Dated: March 21, 2023

Respectfully submitted,

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LOCAL RULE 7.1(F) CERTIFICATION

Intervenors certify that this case has not yet been assigned to a track and that the memorandum adheres to the page limitation specifications of Local Rule 7.1(f) of the U.S. District Court for the Northern District of Ohio.

/s/ James R. Saywell
Attorney for Intervenor-Defendants

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NORTHEAST OHIO COALITION FOR THE HOMELESS, *et al.*, Plaintiffs, v. FRANK LAROSE, in his official capacity as Ohio Secretary of State, Defendant.	Civil Action No. 1:23-cv-26 Judge Donald C. Nugent Magistrate Judge Jonathan D. Greenberg

INTERVENORS' [PROPOSED] ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Intervenors Sandra Feix, Michele Lambo, and the Ohio Republican Party, by and through counsel, file this Answer and Affirmative Defenses to Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief. Intervenors support and seek to uphold free, fair, and trusted elections on behalf of all Ohioans and commonsense, constitutional rules to govern those elections. Intervenors therefore deny that Plaintiffs are entitled to any relief on their challenge to House Bill 458 as amended by House Bill 45. (Like Plaintiffs, Intervenors refer to both bills together as House Bill 458.) Any allegation in the Amended Complaint not explicitly responded to in this Answer is hereby denied.

NATURE OF THE CASE

1. Intervenors admit that Plaintiffs purport to challenge House Bill 458. Plaintiffs' descriptions of House Bill 458 and House Bill 45 set forth legal conclusions that do not require a response. To the extent a response is required, House Bill 458 and House Bill 45 speak for

themselves, and Intervenors deny any allegations inconsistent with House Bill 458 or House Bill 45. Intervenors otherwise deny the allegations in Paragraph 1 and footnote 1.

2. Intervenors specifically deny that House Bill 458 makes it "significantly harder" to vote and that the challenged provisions of House Bill 458 are "a solution in search of a problem." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 2 and so deny them.

3. Intervenors specifically deny that House Bill 458 "limit[s] access to the ballot." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 3 and so deny them.

4. Intervenors specifically deny that House Bill 458 "will severely restrict Ohioans' access to the polls." Plaintiffs' characterizations of House Bill 458 in the bullet points in Paragraph 4 set forth legal conclusions that do not require a response. To the extent a response is required, House Bill 458 speaks for itself, and Intervenors deny any allegation in Paragraph 4 inconsistent with House Bill 458's provisions. Intervenors deny the remaining allegations in Paragraph 4.

5. Intervenors deny the allegations in Paragraph 5.

6. Intervenors specifically deny that there is "no justification" for House Bill 458. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 6 and so deny them.

7. Intervenors deny the allegations in Paragraph 7.

JURISDICTION AND VENUE

8. Intervenors admit that Plaintiffs purport to bring this suit under 42 U.S.C. §1983. The rest of Paragraph 8 sets forth legal conclusions that do not require a response. To the extent a response is required, Intervenors deny the allegations in Paragraph 8.

9. Paragraph 9 sets forth legal conclusions that do not require a response. To the extent a response is required, Intervenors deny the allegations in Paragraph 9.

10. Paragraph 10 sets forth legal conclusions that do not require a response. To the extent a response is required, Intervenors deny the allegations in Paragraph 10.

11. Paragraph 11 sets forth legal conclusions that do not require a response. To the extent a response is required, Intervenors deny the allegations in Paragraph 11.

PARTIES

12. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 12 and so deny them.

13. Intervenors specifically deny that House Bill 458's photo ID requirement is "onerous." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 13 and so deny them.

14. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 14 and so deny them.

15. Intervenors specifically deny that House Bill 458's photo ID requirement is "onerous." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 15 and so deny them.

16. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 16 and so deny them.

17. Intervenors specifically deny the allegation that House Bill 458's photo ID requirement is "onerous." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 17 and so deny them.

18. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 18 and so deny them.

19. Intervenors specifically deny that House Bill 458 will impede "the ability of active service members and veterans to vote." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 19 and so deny them.

20. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 and so deny them.

21. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21 and so deny them.

22. Intervenors admit that Frank LaRose is the Secretary of State of Ohio. The remaining allegations in Paragraph 22 set forth legal conclusions that do not require a response. To the extent a response is required, Ohio law addressing the Secretary of State's duties and authority speaks for itself. Intervenors deny any allegation in Paragraph 22 inconsistent with Ohio law. Intervenors deny any remaining allegations in Paragraph 22.

STATEMENT OF FACTS AND LAW

23. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 23 and so deny them.

24. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 24 and so deny them.

25. Intervenors admit that Secretary LaRose issued a directive on the use of drop boxes in 2020. That directive speaks for itself. Intervenors deny any allegation in Paragraph 25

inconsistent with that directive. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 25 and so deny them.

26. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 26 and so deny them.

27. Intervenors admit that Secretary LaRose issued guidance on the use of drop boxes in 2022. That guidance speaks for itself. Intervenors deny any allegation in Paragraph 27 inconsistent with that guidance. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 27 and so deny them.

28. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 28 and so deny them.

29. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29 and so deny them.

30. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 30 and so deny them.

31. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 31 and so deny them.

32. Plaintiffs' description of Ohio election law is a legal conclusion that does not require a response. To the extent a response is required, the law speaks for itself. Intervenors deny any allegation in Paragraph 32 inconsistent with that law. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 32 and so deny them.

33. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 33 and so deny them.

34. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 34 and so deny them.

35. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 35 and so deny them.

36. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 36 and so deny them.

37. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 37 and so deny them.

38. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 38 and so deny them.

39. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 39 and so deny them.

40. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 40 and so deny them.

41. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 41 and so deny them.

42. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 42 and so deny them.

43. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 43 and so deny them.

44. The legislative history of House Bill 294 speaks for itself and Plaintiffs' description of it does not require a response. To the extent a response is required, Intervenors deny the

allegations. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 44 and so deny them.

45. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 45 and so deny them.

46. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 46 and so deny them.

47. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 47 and so deny them.

48. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 48 and so deny them.

49. Intervenors specifically deny that House Bill 458 imposes "suppressive policies" or will "severely burden Ohio voters." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 49 and so deny them.

50. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 50 and so deny them.

51. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 51 and so deny them.

52. Paragraph 52 sets forth legal conclusions that do not require a response. To the extent a response is required, Intervenors deny the allegations in Paragraph 52.

53. Plaintiffs' description of House Bill 458 is a legal conclusion that does not require a response. To the extent a response is required, House Bill 458 speaks for itself, and Intervenors deny any allegation in Paragraph 53 inconsistent with House Bill 458's provisions. Intervenors

are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 53 and so deny them.

54. Plaintiffs' description of House Bill 458 is a legal conclusion that does not require a response. To the extent a response is required, House Bill 458 speaks for itself, and Intervenors deny any allegation in Paragraph 54 inconsistent with House Bill 458's provisions.

55. Plaintiffs' description of House Bill 458 is a legal conclusion that does not require a response. To the extent a response is required, House Bill 458 speaks for itself, and Intervenors deny any allegation in Paragraph 55 inconsistent with House Bill 458's provisions.

56. Plaintiffs' description of House Bill 458 is a legal conclusion that does not require a response. To the extent a response is required, House Bill 458 speaks for itself, and Intervenors deny any allegation in Paragraph 56 inconsistent with House Bill 458's provisions.

57. Plaintiffs' description of House Bill 458 is a legal conclusion that does not require a response. To the extent a response is required, House Bill 458 speaks for itself, and Intervenors deny any allegation in Paragraph 57 inconsistent with House Bill 458's provisions.

58. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegation in Paragraph 58 and so deny it.

59. Intervenors admit that the Ohio House of Representatives passed House Bill 458. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 59 and so deny them.

60. Intervenors admit that Governor Mike DeWine signed House Bill 458 into law on January 6, 2023.

61. Plaintiffs' description of the Ohio Constitution and House Bill 458 sets forth legal conclusions that do not require a response. To the extent a response is required, the Ohio

Constitution and House Bill 458 speak for themselves, and Intervenors deny any allegation in Paragraph 61 inconsistent with the Ohio Constitution or House Bill 458. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 61 and so deny them.

62. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 62 and so deny them.

63. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 63 and so deny them.

64. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 64 and so deny them.

65. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 65 and so deny them.

66. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 66 and so deny them.

67. Intervenors specifically deny that House Bill 458 is a "suppressive voting law." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 67 and so deny them.

68. Intervenors specifically deny that House Bill 458 caused "voter suppression." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 68 and so deny them.

69. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 69 and so deny them.

70. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 70 and so deny them.

71. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 71 and so deny them.

72. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 72 and so deny them.

73. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 73 and so deny them.

74. Intervenors deny the allegations in Paragraph 74.

75. Intervenors specifically deny that "House Bill 458 imposes one of the most stringent photo-identification requirements in the country." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 75 and so deny them.

76. Plaintiffs' description of the Ohio Revised Code is a legal conclusion that does not require a response. To the extent a response is required, the Ohio Revised Code speaks for itself, and Intervenors deny any allegation in Paragraph 76 inconsistent with its provisions.

77. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 77 and so deny them.

78. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 78 and so deny them.

79. Intervenors specifically deny that House Bill 458 "severely limits the ways in which voters may prove their identity at the polls." Plaintiffs' description of House Bill 458 and the Ohio Revised Code sets forth legal conclusions that do not require a response. To the extent a response

is required, House Bill 458 and the Ohio Revised Code speak for themselves, and Intervenors deny any allegation in Paragraph 79 inconsistent with their provisions. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 79 and so deny them.

80. Plaintiffs' description of the photo ID requirements of House Bill 458 and the Ohio Revised Code sets forth legal conclusions that do not require a response. To the extent a response is required, House Bill 458 and the Ohio Revised Code speak for themselves, and Intervenors deny any allegation in Paragraph 80 inconsistent with their provisions. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 80 and so deny them.

81. Plaintiffs' description of the photo ID requirements of House Bill 458 and the Ohio Revised Code sets forth legal conclusions that do not require a response. To the extent a response is required, House Bill 458 and the Ohio Revised Code speak for themselves, and Intervenors deny any allegation in Paragraph 81 inconsistent with their provisions. Furthermore, Intervenors specifically deny that House Bill 458 has made the cure process "harder by significantly advancing the deadline for voters to provide" identification. Intervenors deny the remaining allegations in Paragraph 81.

82. Intervenors specifically deny that Ohio law is "severely restricting the acceptable forms of identification at the polls and prohibiting the counting of provisional ballots." Intervenors further deny that "Ohio now imposes on its voters one of the strictest photo-identification requirements in the country." Intervenors deny the remaining allegations in Paragraph 82.

83. Intervenors specifically deny that House Bill 458's photo ID requirement will "have a dramatically negative impact on Ohioans." Intervenors are without knowledge or information

sufficient to form a belief about the truth of the remaining allegations in Paragraph 83 and so deny them.

84. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 84 and so deny them.

85. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 85 and so deny them.

86. Plaintiffs' description of House Bill 458 sets forth legal conclusions that do not require a response. To the extent a response is required, House Bill 458 speaks for itself. Intervenors deny any allegation inconsistent with House Bill 458. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 86 and so deny them.

87. Plaintiffs' description of House Bill 458's provisions sets forth legal conclusions that do not require a response. To the extent a response is required, House Bill 458 speaks for itself. Intervenors deny any allegation in Paragraph 87 inconsistent with House Bill 458. Intervenors specifically deny that House Bill 458 "ensures that younger voters are particularly unlikely to be able to vote at the polls in Ohio." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 87 and so deny them.

88. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 88 and so deny them.

89. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 89 and so deny them.

90. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 90 and so deny them.

91. Intervenors specifically deny that House Bill 458's photo ID requirements impose "unjustifiable burdens." Plaintiffs' descriptions of House Bill 458 and the Ohio Revised Code set forth legal conclusions that do not require a response. To the extent a response is required, House Bill 458 and the Ohio Revised Code speak for themselves, and Intervenors deny any allegation in Paragraph 91 inconsistent with their provisions. Intervenors deny the remaining allegations in Paragraph 91.

92. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 92 and so deny them.

93. Plaintiffs' description of the Ohio Revised Code is a legal conclusion that does not require a response. To the extent a response is required, the Ohio Revised Code speaks for itself, and Intervenors deny any allegation in Paragraph 93 inconsistent with the Ohio Revised Code's provisions. Intervenors otherwise deny the remaining allegations in Paragraph 93.

94. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 94 and so deny them.

95. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 95 and so deny them.

96. Intervenors specifically deny that House Bill 458's photo ID requirements are "dramatic limitations on the forms of identification allowed for in-person voting." Plaintiffs' remaining allegations regarding House Bill 458 set forth legal conclusions that do not require a response. To the extent a response is required, the provisions of House Bill 458 speak for themselves, and Intervenors deny any allegation in Paragraph 96 inconsistent with their provisions.

Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 96 and so deny them.

97. Plaintiffs' description of House Bill 458, the Ohio Revised Code, and previous litigation sets forth legal conclusions that do not require a response. To the extent a response is required, the provisions and case law referenced in Paragraph 97 speak for themselves, and Intervenors deny any allegation in Paragraph 97 inconsistent with those provisions and case law. Intervenors otherwise deny the allegations in Paragraph 97.

98. Plaintiffs' description of the Ohio Revised Code and House Bill 458 sets forth legal conclusions which do not require a response. To the extent a response is required, Intervenors deny any allegation inconsistent with those provisions. Intervenors otherwise deny the allegations in Paragraph 98.

99. Plaintiffs' description of the Ohio Revised Code and House Bill 458 sets forth legal conclusions that do not require a response. To the extent a response is required, those provisions speak for themselves, and Intervenors deny any allegation in Paragraph 99 inconsistent with those provisions. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 99 and so deny them.

100. Plaintiffs' description of the Ohio Revised Code and House Bill 458 sets forth legal conclusions that do not require a response. To the extent a response is required, those provisions speak for themselves, and Intervenors deny any allegation in Paragraph 100 inconsistent with those provisions. Intervenors otherwise deny the remaining allegations in Paragraph 100.

101. Plaintiffs' description of House Bill 458 sets forth legal conclusions that do not require a response. To the extent a response is required, that provision speaks for itself.

Intervenors deny any allegation in Paragraph 101 inconsistent with its provision. Intervenors otherwise deny any remaining allegations in Paragraph 101.

102. Intervenors specifically deny that House Bill 458's cure period creates "a particularly pernicious trap" for voters. Furthermore, Plaintiffs' descriptions of House Bill 458 and the Ohio Revised Code are legal conclusions that do not require a response. To the extent a response is required, those provisions speak for themselves, and Intervenors deny any allegation in Paragraph 102 inconsistent with those provisions. Intervenors otherwise deny any remaining allegations in Paragraph 102.

103. Plaintiffs' allegation that House Bill 458 "will impose particularly severe burdens on Ohio's young, elderly, and Black voters" is a legal conclusion that does not require a response. To the extent a response is required, Intervenors deny that allegation. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 103 and so deny them.

104. Intervenors specifically deny that "[n]o legitimate state interest justifies" House Bill 458, that House Bill 458 causes "disparate" and "severe" burdens on Ohio voters, and that House Bill 458 serves "only to derogate Ohio citizens' right to vote." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 104 and so deny them.

105. Intervenors specifically deny that House Bill 458 has "made it harder to vote by mail." Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 105 and so deny them.

106. Plaintiffs' description of House Bill 458's requirements for mail-in ballots sets forth legal conclusions that do not require a response. To the extent a response is required, those

provisions speak for themselves, and Intervenors deny any allegation in Paragraph 106 inconsistent with those provisions. Intervenors otherwise deny any remaining allegations in Paragraph 106.

107. Plaintiffs' description of House Bill 458's requirements for mail-in ballots sets forth legal conclusions that do not require a response. To the extent a response is required, those provisions speak for themselves, and Intervenors deny any allegation in Paragraph 107 inconsistent with those provisions. Intervenors otherwise deny any remaining allegations in Paragraph 107.

108. Plaintiffs' description of House Bill 458's requirements for mail-in ballots are legal conclusions that do not require a response. To the extent a response is required, those provisions speak for themselves, and Intervenors deny any allegation in Paragraph 108 inconsistent with those provisions. Furthermore, Intervenors specifically deny that House Bill 458 "laid" a "trap" for voters. Intervenors otherwise deny any remaining allegations in Paragraph 108.

109. Paragraph 109 sets forth legal conclusions that do not require a response. To the extent a response is required, Intervenors deny the allegations.

110. Plaintiffs' description of the Ohio Revised Code sets forth legal conclusions that do not require a response. To the extent a response is required, those provisions speak for themselves, and Intervenors deny any allegation in Paragraph 110 inconsistent with those provisions. Intervenors otherwise deny the allegations in Paragraph 110.

111. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 111 and so deny them.

112. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 112 and so deny them.

113. Plaintiffs' description of the Ohio Revised Code is a legal conclusion that does not require a response. To the extent a response is required, that provision speaks for itself, and

Intervenors deny any allegation in Paragraph 113 inconsistent with that provision. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 113 and so deny them.

114. Plaintiffs' description of House Bill 458 sets forth legal conclusions that do not require a response. To the extent a response is required, those provisions speak for themselves, and Intervenors deny any allegation inconsistent with those provisions. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 114 and so deny them.

115. Paragraph 115 sets forth legal conclusions that do not require a response. To the extent a response is required, Intervenors deny the allegations. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 115 and so deny them.

116. Paragraph 116 sets forth a legal conclusion that does not require a response. To the extent a response is required, Intervenors deny the allegation. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 116 and so deny them.

117. Plaintiffs' description of the Ohio Revised Code and Ohio case law sets forth legal conclusions that do not require a response. To the extent a response is required, the Ohio Revised Code and the cited case speak for themselves, and Intervenors deny any allegation inconsistent with Ohio's election code and the case law. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 117 and so deny them.

118. Plaintiffs' description of the Ohio Revised Code, including in Paragraph 118 note 6, sets forth legal conclusions that do not require a response. To the extent a response is required, that provision speaks for itself, and Intervenors deny any allegation inconsistent with that provision. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 118 and so deny them.

119. Paragraph 119 sets forth legal conclusions that do not require a response. To the extent a response is required, Intervenors deny the allegations.

120. Paragraph 120 sets forth legal conclusions that do not require a response. To the extent a response is required, Intervenors deny the allegations. Additionally, Plaintiffs' case law citations in footnote 7 set forth legal conclusions that do not require a response. To the extent a response is required, those cases speak for themselves, and Intervenors deny any allegation inconsistent with the cases. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 120 and so deny them.

121. Plaintiffs' description of the Ohio Revised Code sets forth legal conclusions that do not require a response. To the extent a response is required, Intervenors deny the allegations. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 121 and so deny them.

122. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 122 and so deny them.

123. Plaintiffs' allegation that House Bill 458 will "disproportionately burden voters who live in Ohio's most populated and diverse counties" is a legal conclusion that does not require a response. To the extent a response is required, Intervenors deny the allegation. Intervenors are

without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 123 and so deny them.

124. Plaintiffs' allegation that House Bill 458 "will impose a particularly severe burden on young, elderly, and Black Ohioans" is a legal conclusion that does not require a response. To the extent a response is required, Intervenors deny the allegation. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 124 and so deny them.

125. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 125 and so deny them.

126. Paragraph 126 sets forth legal conclusions that do not require a response. To the extent a response is required, Intervenors deny the allegations. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 126 and so deny them.

127. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 127 and so deny them.

128. Plaintiffs' allegation that House Bill 458 "unjustifiably eliminates early voting" is a legal conclusion that does not require a response. To the extent a response is required, Intervenors deny the allegation. Paragraph 128 discusses the Ohio Revised Code, which is a legal conclusion that does not require a response. To the extent a response is required, the Ohio Revised Code speaks for itself, and Intervenors deny any allegation inconsistent with the Ohio Revised Code. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 128 and so deny them.

129. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 129 and so deny them.

130. Plaintiffs' description of case law in Paragraph 130 sets forth legal conclusions that do not require a response. To the extent a response is required, the case law speaks for itself, and Intervenors deny any allegation inconsistent with that case law. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 130 and so deny them.

131. Intervenors are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 131 and so deny them.

132. Paragraph 132 cites a case that speaks for itself and to which no response is required, and Intervenors deny any allegation inconsistent with that case. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 132 and so deny them.

133. Plaintiffs' citation to case law is a legal conclusion that does not require a response. To the extent a response is required, the case speaks for itself, and Intervenors deny any allegation inconsistent with that case. Intervenors are without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 133 and so deny them.

CLAIM FOR RELIEF

134. Intervenors reassert and incorporate by reference their answers in the preceding paragraphs.

135. Paragraph 135 states a legal conclusion that does not require a response. To the extent a response is required, the case law cited in Paragraph 135 speaks for itself, and Intervenors deny any allegation inconsistent with that case law.

136. Paragraph 136 states legal conclusions that do not require a response. To the extent a response is required, the case law cited in Paragraph 136 speaks for itself, and Intervenors deny any allegation inconsistent with that case law.

137. Paragraph 137 states legal conclusions that do not require a response. To the extent a response is required, the case law cited in Paragraph 137 speaks for itself, and Intervenors deny any allegation inconsistent with that case law.

138. Intervenors deny the allegations in Paragraph 138.

139. Intervenors deny the allegations in Paragraph 139.

140. Intervenors deny the allegations in Paragraph 140.

141. Intervenors deny the allegations in Paragraph 141.

142. Intervenors deny the allegations in Paragraph 142.

143. Intervenors deny the allegations in Paragraph 143.

144. Intervenors deny the allegations in Paragraph 144.

145. Intervenors deny the allegations in Paragraph 145.

PLAINTIFFS' PRAYER FOR RELIEF

a. Intervenors deny the allegations in Paragraph (a) and deny that Plaintiffs are entitled to the relief requested.

b. Intervenors deny the allegations in Paragraph (b) and deny that Plaintiffs are entitled to the relief requested.

c. Intervenors deny the allegations in Paragraph (c) and deny that Plaintiffs are entitled to the relief requested.

d. Intervenors deny the allegations in Paragraph (d) and deny that Plaintiffs are entitled to the relief requested.

AFFIRMATIVE AND OTHER DEFENSES

Without assuming the burden of proof, and while reserving the right to assert all applicable affirmative defenses supported in law and fact, Intervenors assert the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

The Court lacks subject-matter jurisdiction over Plaintiffs' claims.

SECOND AFFIRMATIVE DEFENSE

The Amended Complaint fails to allege sufficient facts upon which a claim for relief may be granted.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs lack standing to assert their claims in the Amended Complaint.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the equitable doctrine of laches, estoppel, unclean hands, and/or waiver.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' requested relief would have the Court—not the Ohio General Assembly—create the law governing the conduct of elections in Ohio. The power to regulate elections is exclusively a legislative function. U.S. CONST. art. II, § 1, cl. 2. Plaintiffs' requested relief would run contrary to the separation of powers and usurp the General Assembly's authority.

CONCLUSION

Intervenors respectfully request that the Court (1) dismiss Plaintiffs' claims with prejudice and enter judgment for Defendants; (2) deny Plaintiffs' prayer for relief; and (3) grant such other relief as the Court may deem proper.

Dated: March 21, 2023

Respectfully submitted,

/s/ James R. Saywell

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**Pro hac vice* application forthcoming