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**UNITED STATES DISTRICT COURT**
**DISTRICT OF WYOMING**

| | |
|---|---|
| JOHN C. FRANK,<br>GRASSFIRE, LLC,<br><br>Plaintiffs,<br><br>vs.<br><br>ED BUCHANAN, Wyoming Secretary of State,<br>LEIGH ANNE MANLOVE, Laramie County District Attorney,<br>DEBRA LEE, Laramie County Clerk,<br>in their official capacities,<br><br>Defendants. | Case No. 2:20-cv-00138-NDF |

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**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

Defendants Edward A. Buchanan, Wyoming Secretary of State, and Leigh Anne Manlove, Laramie County District Attorney, submit this memorandum of law in support of their motion to dismiss all claims against Defendants in Plaintiffs' complaint pursuant to Fed. R. Civ. P. 12(b)(6).

## I. Background

Plaintiffs John C. Frank and Grassfire, LLC filed their complaint for declaratory and injunctive relief against Edward A. Buchanan, Wyoming Secretary of State; Leigh Anne

Manlove, Laramie County District Attorney; and Debra Lee, Laramie County Clerk under 28 U.S.C. § 1983 asserting that Wyo. Stat. Ann. § 22-26-113 violates their First Amendment rights.

In the history of democratic societies, reasonable regulations governing the ballot and polling place are a relatively recent invention. Before the 1890s, most states did not have laws regulating the ballot or the polling place. *Burson v. Freeman*, 504 U.S. 191, 200-05 (1992) (surveying sources on American electoral history). Any member of the public could see and influence a voter attempting to cast their ballot. Predictably, harassment, bribery, and even violence were common features of American polling places. *Id.* at 200-02.

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To protect voters from harassment and protect elections from corruption and fraud, over 90 percent of states, representing 92 percent of voters, adopted the secret ballot between 1888 and 1896. *Id.* at 202, 204; *see also id.* at 215 n.1 (opinion of Scalia, J.) (listing citations to statutes adopting the secret ballot and banning electioneering at or around polling places before 1900). The main innovation of the secret ballot was simply standardizing the ballot itself. Previously, voters had to write their own ballots or pick up a ballot from their chosen political party. *Id.* at 200 (plurality opinion). But the standardized ballot "was not the only measure adopted to preserve" a voter's privacy. *Id.* at 202. Along with giving voters a standardized ballot, governments adopting this practice also provided the voter a private location, secure from any influence or interference, to fill it out and cast it. *Id.* The two reforms have always been linked in the United States. Banning attempts to

influence a voter while attempting to vote is as necessary as a standard ballot to ensure that voters freely exercise their franchise. *Id.* at 207-08.

To this day, all fifty states prohibit electioneering at or around polling places.[1] States' electioneering bans vary in scope, with Vermont prohibiting electioneering only within the polling place itself and adjoining sidewalks and driveways, some prohibiting electioneering 300 feet away, and Louisiana prohibiting electioneering up to 600 feet away.[2]

Wyoming's electioneering ban makes it a misdemeanor for any person to campaign in any way within 100 feet of the entrance of absentee polling places and 300 feet of the entrance of polling places on primary and general election days. Wyo. Stat. Ann. § 22-26-113. The ban defines electioneering to include soliciting signatures for petitions. *Id.* The ban allows bumper stickers to be present within the ban's radius, limited to one sticker per candidate and limited in size to four inches by sixteen inches, as long as the vehicle is parked only so long as the driver is voting. *Id.*

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Frank alleges that on the date of the primary election and the date of the general election, he wishes to stand within 300 feet of the public entrance of his nearest polling place, distribute campaign literature and pamphlets sponsored by candidates, and attach

[1] See Appendix 1 to this Memorandum.

[2] The Louisiana Supreme Court declared its 600-foot buffer zone unconstitutionally overbroad under the First Amendment to the United States Constitution, but the Fifth Circuit held that it was constitutional. *State v. Schirmer*, 646 So.2d 890 (La. 1994) (overturning law); *Schirmer v. Edwards*, 2 F.3d 117 (5th Cir. 1993) (upholding law). Louisiana has maintained the 600-foot distance, though as a practical matter, the state supreme court's opinion ensures that it will not be enforced. La. Rev. Stat. § 18:1462.

two bumper stickers for the same candidate on his vehicle parked in the same location. (Verified Complaint at ¶ 13). Frank also alleges that if he drove past the entrance to the Laramie County Governmental Complex, an absentee polling place, with two bumper stickers on his vehicle, he will have committed a misdemeanor. (*Id.* at ¶ 25).

Grassfire alleges that it "would like to offer its services" to help candidates, initiatives, and referenda meet petition requirements. (*Id.* at ¶¶ 14-17). Grassfire "believes that . . . polling places and public buildings are integral venues in which to engage citizens who are willing and able to sign petitions." (*Id.* at ¶ 15).

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Frank and Grassfire claim that they also bring their suit on behalf of third parties not before this Court. (*Id.* at ¶ 37). They do not name those potential third parties. Frank and Grassfire also allege that Wyo. Stat. Ann. § 22-26-113 violates the First Amendment both facially and as applied, but they do not claim that the law has been applied to them in any way. (*Id.* at 10-11, ¶¶ 1-2). In fact, Frank and Grassfire do not allege that any person has ever been found guilty of a misdemeanor under the electioneering ban.

Frank and Grassfire ask this Court to declare that the entire law is unconstitutional "on its face and as applied" and preliminarily and permanently enjoin the state from enforcing the law.

## II. Legal Standard for Motions to Dismiss

Rule 12(b)(6) authorizes a court to dismiss an action for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In deciding a Rule 12(b)(6) motion, this Court should "accept as true all well-pleaded factual allegations . . . and view th[o]se allegations in the light most favorable to the plaintiff." *Cassanova v. Ulibarri*, 595 F.3d

1120, 1124-25 (10th Cir. 2010) (citation omitted). Even while accepting factual allegations as true, however, a court is not bound to accept a "legal conclusion couched as a factual allegation." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Additionally, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to meet the pleading requirement. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

"To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, [which] accepted as true, . . . 'state[s] a claim to relief that is plausible on its face.'" *Llacua v. Western Range Ass'n*, 930 F.3d 1161, 1178 (10th Cir. 2019) (quoting *Iqbal*, 556 U.S. at 678). "A claim is facially plausible when the plaintiff has pled factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citation omitted). "The question is whether, if the allegations are true, it is plausible and not merely possible that the plaintiff may obtain relief." *Id.* In this case, Frank and Grassfire's complaint fails to state a plausible claim for relief.

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## III. Argument

### A. Frank fails to state a claim upon which relief may be granted.

#### 1. Wyo. Stat. Ann. § 22-26-113 may constitutionally be applied to Frank.

The Supreme Court articulated how reviewing courts should assess the constitutionality of electioneering buffer zones in *Burson*. *Burson* upheld a Tennessee law that prohibited electioneering within 100 feet from an entrance to a polling place. *Id.* at 193-94, 211. The law specifically prohibited "the display of campaign posters, signs, or

other campaign materials, distribution of campaign materials, and the solicitation of votes for or against any person or political party or position on a question." *Id.* at 193-94. The plaintiff in that case, like Frank, argued that the law "limited her ability to communicate with voters" and sought a permanent injunction. *Id.* at 194.

The Court held that laws that prohibit electioneering around polling places are subject to strict scrutiny because they restrict speech in traditional public forums and because they restrict speech based on its content. *Id.* at 198. In general, to satisfy strict scrutiny, the government must show that the law is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that interest. *Id.*

The Supreme Court expressly held that states have a compelling interest in protecting voters from confusion and undue influence and in preserving the integrity of their elections. *Id.* at 199. And after reviewing the history of the secret ballot, the Court also held that banning electioneering around polling places is necessary to serve that interest. *Id.* at 200-08. Therefore, unless a state concedes that it has an impermissible ulterior motive in restricting electioneering around polling places, all electioneering bans satisfy the first two elements of strict scrutiny.

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The only question left "is *how large* a restricted zone is permissible or sufficiently tailored." *Id.* at 208 (emphasis in original). In general, determining whether a law is narrowly tailored is a fact-intensive analysis. But at the time of *Burson*, states had been prohibiting electioneering around polling places for over 100 years—and today, for 130 years—making it nearly impossible for any government to come forward with detailed proof that its restriction was perfectly and precisely tailored:

> The majority of these laws were adopted originally in the 1890s, long before States engaged in extensive legislative hearings on election regulations. The prevalence of these laws, both here and abroad, then encouraged their reenactment without much comment. The fact that these laws have been in effect for a long period of time also makes it difficult for the States to put on witnesses who can testify as to what would happen without them.

*Id.* The Court further noted that it has never "held a State 'to the burden of demonstrating empirically the objective effects on political stability that [are] produced'" by a voting regulation. *Id.* at 208-09 (quoting *Munro v. Socialist Workers Party*, 479 U.S. 189, 195 (1986)). Requiring a state to prove that the distance it selects for its electioneering ban is perfectly tailored to meet its needs would, in effect, require a state's elections to "sustain some level of damage before the legislature could take corrective action." *Id.* at 209 (quoting *Munro*, 479 U.S. at 195-96).

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Instead of requiring states to prove that their electioneering bans are narrowly tailored to serve their compelling interest in protecting voters and their elections, the Court held that a state need only show that its restriction is "reasonable and does not *significantly impinge* on constitutionally protected rights." *Id.* (emphasis in original). It noted that "[a]t some measurable distance," a regulation could become constitutionally impermissible, but rejected any "litmus-paper test." *Id.* at 210-11 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

Under *Burson*, even under the demanding strict scrutiny standard, the State here is not required to put forward evidence justifying why precisely the Legislature chose to enact a 300-foot boundary on primary and general election days. The State need only show that the regulation is reasonable and does not significantly impinge on Frank's First

Amendment rights. Here, the regulation is reasonable, and Frank has ample opportunity to engage in the conduct he wants to engage in—conduct that the Supreme Court has squarely held states can constitutionally proscribe around polling places—without running afoul of the law.

First, the restrictions are reasonable. Frank and Grassfire attached maps of the 100-foot zone and 300-foot zone around several polling places around the state to their Complaint. It is telling that in many of these polling places, the 300-foot zone does not even cover the parking area voters would use to access the polling place. For example, the 100-foot buffer zone around the entrances to the Laramie County Governmental Complex during the absentee voting period primarily affects the streets surrounding the Complex and hardly reaches across 20th Street or Carey Avenue. (Complaint Ex. 2 at 2). The 300-foot zone around the Laramie County Community College's Center for Conferences and Institutes building on primary and general election days does not cover the building's entire parking lot. (Complaint Ex. 1 at 2). The 300-foot zone around the 4J Elementary School in Gillette does not cover the entire driveway to the building. (Complaint Ex. 5 at 2). Based on Frank and Grassfire's maps, all the identified areas contain major streets or nearby parking lots where people may electioneer if they choose.

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With respect to the 100-foot zone in effect during the absentee voting period, the Supreme Court squarely held in *Burson* that 100-foot electioneering bans are reasonable and constitutional, and Frank makes no argument that *Burson* was wrongly decided. *Burson*, 504 U.S. at 210. Even if he did, *Burson* remains binding on this Court. During the

absentee polling period, voters who choose to use absentee polling locations are voting just like voters on election day, and they deserve protection.

Second, the restriction does not significantly impinge on Frank's First Amendment rights. Frank alleges that he would like to display and hand out political campaign literature advocating for candidates and causes, as well as put two bumper stickers on his vehicle advocating for the same candidate. (Complaint at ¶ 13). Nothing prevents Frank from displaying political campaign literature on public roads outside of the 300-foot zone that, nonetheless, nearly every voter will see as they proceed to the polling place. Further, as explained above, the 300-foot zone around the entrances to LCCC's CCI building does not cover the entire parking lot adjacent to the building. (Complaint Ex. 1 at 2). Assuming that LCCC's policies permit him to do so, Frank could easily set up on the far side of the parking lot to discuss issues with voters who choose to engage with him, while voters who choose not to engage with him could enter the building. That arrangement protects Frank's right to speak as well as citizens' right to vote without fear of intimidation or harassment, and it does not significantly impinge on his right to speak.

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While there is no alternative under the electioneering ban that would allow him to display two bumper stickers for Liz Cheney within 300 feet of the entrance of the CCI building, restricting him to one bumper sticker for the duration of time it takes for him to vote is also not a significant impingement. The Legislature amended Wyo. Stat. Ann. § 22-26-113 in 2018 specifically to *allow* bumper stickers on vehicles. 2018 Wyo. Sess. Laws ch. 118, § 1. Without that exception, bumper stickers would plainly be a "campaign sign," and a voter could run afoul of the law by parking their vehicle outside the polling place.

Though no voter had ever been cited or arrested for doing so, the Legislature chose to explicitly carve out an exception and allow for more speech, understanding that a bumper sticker cannot be removed as easily as a hat, button, or shirt. The Legislature limited the number of bumper stickers allowed on any vehicle to one bumper sticker per candidate. Wyo. Stat. Ann. § 22-26-113(a)(i).

Frank could put a bumper sticker for every single one of his preferred candidates on his vehicle, park it directly outside the polling place, and go in to vote if he so chose, then park his vehicle 300 feet away and put as many stickers and signs on it as he would like and leave it there as long as he likes. Instead, Frank alleges that he wants to attach two bumper stickers for the same candidate and wait outside the building in the buffer zone. (Complaint at ¶ 13). This would take prime parking for other voters, and if several people did the same, then it has the potential of discouraging voters, who may not be able to find convenient parking for voting. Preventing him from repeating multiple similar campaign messages and requiring the parking lot to be open to voters is not a significant impingement.

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Courts in other circuits have struck down buffer zones larger than 100 feet, but their reasoning is unpersuasive and this Court should reject them. Only one court has struck down a 300-foot buffer zone. *Russell v. Lundergan-Grimes*, 784 F.3d 1037 (6th Cir. 2015). But the circumstances of that case differ from the case at bar.

First, in *Russell*, the plaintiff, a Kentucky businessman, owned private property within the buffer zone and wished to display campaign signs on that property. *Russell*, 784 F.3d at 1043-44. The buffer zone did not exempt signs displayed on private property. *Id.*

A previous version of Kentucky's buffer zone law did exempt signs displayed within private property. *Anderson v. Spear*, 356 F.3d 651, 662 (6th Cir. 2004). In ruling on the constitutionality of the previous statute, the Sixth Circuit, in dicta, remarked that the First Amendment required this feature of the law, though the plaintiff did not own private property subject to the buffer zone and neither party contested this provision of the law. *Id.* at 662.

In striking down Kentucky's statute in *Russell*, the Sixth Circuit cited its decision in *Anderson*, finding *Burson* did not apply to restrictions that covered private property and the First Amendment required exemptions for speech occurring on private property. *Russell*, 784 F.3d at 1051-53. But *Burson* provides no basis for the Sixth Circuit's holding. In *Burson*, the Supreme Court had to balance citizens' right to free speech—even speech in traditional public fora—with the state's interest in running elections with integrity. *Burson,* 504 U.S. at 208-09. That interest applies with equal force whether the citizen is speaking in a traditional public forum or on private property. Even if this Court wished to accept the Sixth Circuit's ruling in *Russell*, this case is different because Frank does not claim he wishes to speak on his private property, and no property owner is before this Court to claim First Amendment protection for their speech.

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Second, in both *Russell* and *Anderson*, the Sixth Circuit sought to require Kentucky to explain why its legislature had chosen to create a zone larger than the zone the Supreme Court upheld in *Burson*. This is at odds with *Burson*, which merely requires states to show that the distance they prohibit electioneering is "reasonable" and "does not significantly impinge" on First Amendment rights. *Burson*, 504 U.S. at 209. The Supreme Court arrived

at this conclusion because it recognized that states cannot prove exactly how far their no-electioneering zones must be to address their compelling interests. *Id.* at 208.

But in *Anderson*, the Sixth Circuit remarked that the State provided "glaringly thin . . . evidence as to why the legislature . . . ultimately arrived at a distance of 500 feet," the size of Kentucky's prior no-electioneering ban. *Anderson*, 356 F.3d at 658. This despite Kentucky enacting its 500-foot no-electioneering buffer zone several years *before* the Supreme Court's decision in *Burson*. *Id.* at 657 (noting that the genesis of Kentucky's law was in 1987). Kentucky's legislature clearly had no way of knowing that the Supreme Court would uphold a 100-foot buffer zone in 1992 and no idea that it should have explained why it would diverge from a decision that had not yet been reached.

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In *Russell*, the Sixth Circuit remarked that the spaces outside the 100-foot radius upheld in *Burson* are "traditionally public fora." *Russell*, 784 F.3d at 1052. But public forum analysis is not relevant to electioneering bans. As the Supreme Court explained in *Burson*, when a law regulates speech based on its content, strict scrutiny must be applied regardless whether the law regulates speech in a public forum or not. *Burson*, 504 U.S. at 196-97. The Sixth Circuit went on to hold that Kentucky's new 300-foot buffer zone did not pass muster under *Burson* because "Kentucky presented no persuasive argument why *Burson*'s safe harbor is insufficient." *Russell*, 784 F.3d at 1053. This reasoning turns *Burson* on its head. *Burson* expressly did not limit its holding to its facts. *Burson*, 504 U.S. at 210-11. All that Kentucky had to prove was that its restriction was reasonable and did not significantly impinge on First Amendment rights. The Sixth Circuit articulated this test but did not faithfully apply it. Accordingly, this Court should not follow its reasoning.

Finally, even if this Court finds the Sixth Circuit's line of cases persuasive, Wyoming simply is not Kentucky. In *Anderson*, that court held that larger buffer zones threatened to stifle more speech in "urban voting places" and in "crowded urban context[s]." *Anderson*, 356 F.3d at 662 (quotations omitted). This reasoning is intuitive: A 100-foot buffer zone in a crowded urban context covers more people than a 100-foot buffer zone in a rural context, and larger buffer zones are more reasonable in more rural areas. Wyoming has no crowded urban contexts. There is no city in Wyoming that compares to the size and density of Louisville or Lexington. Frank's own exhibits to his complaint demonstrate that the buffer zones around the state's polling places rarely encompass any private property at all, and even then only cover a handful of houses or stores. (Complaint Ex. 1 at 2; Ex. 2 at 2; Ex. 5 at 3-18). Therefore, even if Kentucky's 300-foot restriction was unreasonable or significantly impinged on First Amendment rights, it does not necessarily follow that Wyoming's does.

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Frank alleges that he wants to engage in precisely the conduct that the Supreme Court declared states could proscribe in *Burson*. Because Wyo. Stat. Ann. § 22-26-113 is a reasonable restriction that does not significantly impinge on Frank's right to speak, the law withstands strict scrutiny and may constitutionally be applied to Frank.

**2. Wyo. Stat. Ann. § 22-26-113 is not unconstitutionally overbroad.**

A law that a state may constitutionally apply to an individual may still be invalid if it is unconstitutionally overbroad. *United States v. Stevens*, 559 U.S. 460, 473 (2010). In general, to facially attack a statute, a plaintiff bears the burden of establishing that there is no set of facts under which the statute would be valid. *Id.* at 472. But in the First

Amendment context, a law may be invalidated as unconstitutionally overbroad if "a substantial number of its applications are unconstitutional, judged in relation to its plainly legitimate sweep." *Id.* (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n.6). Under *Burson*, it is doubtful that any of the law's applications are unconstitutional, and therefore the law cannot be unconstitutionally overbroad.

**B. Grassfire fails to state a claim upon which relief may be granted.**

Petitioning and signature solicitation raise the same concerns as other forms of electioneering that are specific to candidates on the ballot, and the Court should extend the reasoning of *Burson* to apply to the prohibition against soliciting signatures. The Courts of Appeals for the Fifth, Sixth, and Eleventh Circuits have extended the reasoning of *Burson* to apply to electioneering bans that cover petitioning and signature collection. *Citizens for Police Accountability Political Comm. v. Browning*, 572 F.3d 1213 (11th Cir. 2009); *United Food & Commercial Workers Local 1099 v. City of Sidney*, 364 F.3d 738 (6th Cir. 2004); *Schirmer v. Edwards*, 2 F.3d 117 (5th Cir. 1993).

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In *Browning*, a political action committee and state NAACP affiliate sought to solicit signatures to support an amendment to a city's charter. *Browning*, 572 F.3d at 1215. Florida law prohibited all signature solicitation, regardless whether it was for political purposes or not, within 100 feet of polling places. *Id.* The PAC and NAACP affiliate argued that they sought only to solicit voters after they exited the polling place about an issue that would not be on the ballot, and that it was therefore not necessary for the state to restrict their efforts to protect voters from confusion or harassment. *Id.* at 1216. The Eleventh

Circuit agreed that *Burson* did not directly apply, but held that it would extend *Burson*'s reasoning to cover those circumstances. *Id.*

The PAC and NAACP affiliate argued that Florida could not present evidence that solicitors targeting voters after they exit polling places would confuse or intimidate other voters before they enter the polling place. *Id.* at 1219. The Eleventh Circuit disagreed, holding that it "simply [could not] accept that exit solicitation is so different from the other political conduct highlighted in *Burson* to compel a different result." *Id.* at 1219-20. The court explained that "commotion tied to exit solicitation is as capable of intimidating and confusing the electorate and impeding the voting process . . . as other kinds of political canvassing or political action." *Id.* at 1219. That Court further explained that even if the plaintiffs could ensure that only voters who have already voted are solicited, the restriction was necessary to ensure "the integrity and dignity of the voting process." *Id.* at 1220. Much like in *Burson*, the state could not present evidence that solicitation necessarily led to confusion or intimidation, but it still had a right to "take precautions to protect and to facilitate voting." *Id.* The Eleventh Circuit then held that the statute was appropriately narrowly tailored under *Burson*. *Id.* at 1221.

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Here, the State's interest in preventing solicitation and signature gathering outside polling places is the same interest it has in preventing electioneering: to prevent voter harassment and intimidation. And restricting signature gathering is necessary to achieve that interest. Further, unlike the plaintiffs in *Browning*, Grassfire does not allege that it intends to limit its solicitation solely to those who have already voted, increasing the risk of voter harassment and intimidation. (Complaint at ¶¶ 14-17). The Court should, like the

Eleventh Circuit, apply *Burson* to laws that regulate petition-gathering outside polling places and uphold Wyo. Stat. Ann. § 22-26-113 as applied to Grassfire.

Other courts have also taken this approach. In *City of Sidney*, a union local and twelve of its members sought to solicit signatures for a referendum outside polling places on election day. *City of Sidney*, 364 F.3d at 741. Ohio law designated a 100-foot "campaign-free zone" outside polling places on that day. *Id.* The Sixth Circuit held that the state could constitutionally prohibit soliciting signatures within the undefined zone permitted by *Burson*. *Id.* at 747-78 (citing *Burson*, 504 U.S. at 191, 196-97 &n.2, 199, 210-11). Thus the Sixth Circuit was convinced that petitioning, similar to other forms of electioneering, could give rise to voter confusion or intimidation.

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The Fifth Circuit has also applied *Burson* to these circumstances. In *Schirmer*, a group of voters who sought to recall Louisiana's governor needed to gather signatures to place the recall petition on the ballot. 2 F.3d at 118. Louisiana's no-electioneering zone extends to 600 feet away from the entrance of a polling place. *Id.* The Fifth Circuit held that *Burson* dictated the result. *Id.* at 120-21. It explained that Louisiana's interest in preventing signature-gathering was the same as its interest in preventing other forms of electioneering: preventing "intimidation, harassment, confusion, obstruction, and undue influence of voters." *Id.* at 119.

In these cases, state governments had to balance citizens' rights to associate, speak, and petition their government with other citizens' right to vote without fear of intimidation or harassment. That balancing act informed the Supreme Court's reasoning in *Burson*, and it is the same balance that Wyoming has sought to strike in prohibiting petitioning and

signature gathering near polling places. Extending the reasoning of *Burson* to this case, Grassfire's claims fail for the same reasons as Frank's.

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## CONCLUSION

The Court should dismiss Frank and Grassfire's Complaint for failure to state a claim for which relief can be granted.

**DATED** this 17th day of August, 2020.

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served this 17th day of August 2020, by the following means:

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# APPENDIX 1

## LIST OF STATE LAWS BANNING ELECTIONEERING AROUND POLLING PLACES

*States which prohibit electioneering between 0 and 99 feet from the entrance of a polling place:*

**Alabama:** Ala. Code § 17-9-50 (30 feet)

**Arizona:** Ariz. Rev. Stat. § 16-1018 (75 feet)

**Connecticut:** Conn. Gen. Stat. § 9-236 (75 feet)

**Delaware:** Del. Code Ann. tit. 15, § 4942 (50 feet)

**Indiana:** Ind. Code §§ 3-14-3-16, 3-5-2-10 (50 feet)

**Missouri:** Mo. Rev. Stat. § 115.637 (25 feet)

**New Hampshire:** N.H. Rev. Stat. Ann. § 659:43 (no less than 10 feet; up to a reasonable distance)

**North Carolina:** N.C. Gen. Stat. § 163-166.4 (50 feet)

**Pennsylvania:** 25 Pa. Cons. Stat. § 3060 (10 feet)

**Rhode Island:** 17 R.I. Gen. Laws § 17-19-49 (50 feet)

**Vermont:** Vt. Stat. Ann. tit. 17, § 2508 (prohibits electioneering on walkways and driveways leading to the polling place)

**Virginia:** Va. Code Ann. § 24.2-604 (40 feet)

**Washington:** Wash. Rev. Code § 29A.84.510 (prohibits electioneering that obstructs access to a polling place)

*States which prohibit electioneering between 100 and 199 feet from the entrance of a polling place:*

**Arkansas:** Ark. Code Ann. § 7-1-103 (100 feet)

**California:** Cal. Elec. Code §§ 319.5, 18370 (100 feet)

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**Colorado:** Colo. Rev. Stat. § 1-13-714 (100 feet)

**Florida:** Fla. Stat. § 102.031 (150 feet)

**Georgia:** Ga. Code Ann. § 21-2-414 (prohibits electioneering within 150 feet of a polling place and within 25 feet of a voter standing in line to vote)

**Idaho:** Idaho Code § 18-2318 (100 feet)

**Illinois:** 10 Ill. Comp. Stat. Ann. 5/17-29 (100 feet)

**Kentucky:** Ky. Rev. Stat. Ann. § 117.235 (100 feet)

**Maryland**: Md. Code Ann. Elec. Law § 16-206 (100 feet)

**Massachusetts**: 950 Mass Code. Regs. 53.08(18), 54.05 (150 feet)

**Michigan:** Mich. Comp. Laws § 168.744 (100 feet)

**Minnesota:** Minn. Stat. § 211B.11, 204C.06 (100 feet)

**Mississippi:** Miss. Code Ann. §§ 23-15-245, 23-15-895 (150 feet)

**Montana:** Mont. Code Ann. § 13-35-211 (100 feet)

**Nevada:** Nev. Stat. § 293.740 (100 feet)

**New Jersey:** N.J. Stat. Ann. § 19:34-6, 19:34-15 (100 feet)

**New Mexico:** N.M. Stat. Ann. § 1-20-16 (100 feet)

**New York:** N.Y. Elec. Law § 8-104 (100 feet)

**North Dakota:** N.D. Cent. Code § 16.1-10-06 (100 feet)

**Ohio:** Ohio Rev. Code Ann. § 3501.35 (prohibits electioneering within 150 feet of a polling place and within 10 feet of a voter standing in line to vote)

**Oregon:** Or. Rev. Stat. § 260.695 (100 feet)

**South Dakota:** S.D. Codified Laws § 12-18-3 (100 feet)

**Tennessee:** Tenn. Code Ann. § 2-7-111 (100 feet)

**Texas:** Tex. Elec. Code Ann. § 61.003 (100 feet)

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**Utah:** Utah Code. Ann. § 20A-3a-501 (150 feet)

**West Virginia:** W. Va. Code §§ 3-1-37, 3-9-9 (100 feet)

**Wisconsin:** Wis. Stat. § 12.03 (100 feet)

*States which prohibit electioneering 200 feet from the entrance of a polling place or more:*

**Alaska:** Alaska Stat. §§ 15.15.170, 15.56.016 (200 feet)

**Hawaii:** Haw. Rev. Stat. §§ 11-132, 19-6 (200 feet)

**Iowa:** Iowa Code § 39A.4 (300 feet)

**Kansas:** Kan. Stat. Ann. § 25-2430 (250 feet)

**Louisiana:** La. Stat. Ann. § 18.1462 (600 feet)

**Maine:** Me. Stat. tit. 21-A, § 682 (250 feet)

**Nebraska:** Neb. Rev. Stat. § 32-1524 (200 feet)

**Oklahoma:** Okla. Stat. tit. 26, § 7-108 (300 feet)

**South Carolina:** S.C. Code Ann. § 7-25-180 (200 feet)

**Wyoming:** Wyo. Stat. Ann. § 22-26-113 (300 feet)

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