UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

PHILLIP LAWSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 3:24-cv-00538**
	)	**Judge William L. Campbell. Jr.**
TRE HARGETT, et al.,	)	**Magistrate Judge Alistair Newbern**
	)	
Defendants.	)	

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

Mere weeks before the start of early voting, Plaintiffs ask this Court to enjoin a law that has been on the books *for over 50 years*. Nothing supports that extraordinary relief. "[L]ast-minute injunctions changing election procedures are strongly disfavored." *SEIU Local 1 v. Husted*, 698 F.3d 341, 345 (6th Cir. 2012) (citing *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam)). And, regardless, Plaintiffs have not established the four prerequisites for preliminary relief. They press undeveloped merits arguments and rely on specious standing theories. In fact, earlier this year, this Court dismissed the same claims by Plaintiffs Victor Ashe, Phil Lawson, and the Tennessee League of Women Voters (the "League") challenging the same provisions. *See Ashe v. Hargett*, No. 3:23-cv-01256, 2024 WL 923771 (M.D. Tenn. 2024). Not only that, the equities and public interest cut against discretionary equitable relief in these circumstances, particularly given that Plaintiffs delayed in seeking emergency relief. Plaintiffs' Motion for Preliminary Injunction should be denied.

BACKGROUND

The "administration of the electoral process is a matter that the Constitution largely entrusts to the States." *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973). "The Constitution grants to the States a broad power to prescribe the 'Times, Places and Manner of holding Elections for Senators and Representatives,' Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices." *Clingman v. Beaver*, 544 U.S. 581, 586 (2005) (quoting *Tashijian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986)). This "broad power" to regulate the electoral process extends to the regulation of party primaries. Indeed, "States have a major role to play in structuring and monitoring the election process, including primaries." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 572 (2000).

In 1972, Victor Ashe (a plaintiff here) sponsored the legislation at issue to protect the integrity of Tennessee's primary elections. It is "AN ACT to restate, supplement, consolidate, clarify, and revise the election laws of this State and other matters related to them in order to establish a uniform law of elections protecting ***the freedom and purity of elections*** . . . ." *See* 1972 Tenn. Pub. Acts, ch. 740 (emphasis added).[1] As revised, the statute reads:

> (b) A registered voter is entitled to vote in a primary election for offices for which the voter is qualified to vote at the polling place where the voter is registered if:
>
> (1) The voter is a bona fide member of and affiliated with the political party in whose primary the voter seeks to vote; or
>
> (2) At the time the voter seeks to vote, the voter declares allegiance to the political party in whose primary the voter seeks to vote and states that the voter intends to affiliate with that party.
>
> (c)(1) On primary election days, a sign that is a minimum of eight and one-half inches by eleven inches (8.5"x11") with a yellow background and bold, black text containing the following language must be posted in each polling place:
>
> It's the Law! Please Read...
> It is a violation of Tennessee Code Annotated, Section 2-7-115(b), and punishable as a crime under Tennessee Code Annotated, Section 2-19-102 or Section 2-19-107, if a person votes in a political party's primary without being a bona fide member of or affiliated with that political party, or to declare allegiance to that party without the intent to affiliate with that party.
>
> (2) The officer of elections at each polling place shall ensure that the sign prescribed by subdivision (c)(1) is posted in a prominent, highly visible location within the polling place.

Tenn. Code Ann. § 2-7-115(b)-(c).

These provisions exist to deter cross-over voting—a practice "wherein a voter who supports a particular political party casts a ballot in the primary election of a different political party." (Compl., ECF No. 1, ¶ 2.) Cross-over voting becomes "party-raiding" when people

[1] A couple years later, the General Assembly—again, with legislation sponsored by Plaintiff Victor Ashe—amended the law to delete one sentence. 1974 Tenn. Pub. Acts, ch. 801.

intentionally cross-over vote in primary elections to negatively affect a candidate for that party even though the voter never intends to affiliate with that party. (Goins Decl., ¶ 8.) The idea is that voters for one party "cross over" to vote in another party's primary to support a perceived weaker candidate so their own party's candidate will win the general election.

The General Assembly sought to curb this practice to "protect[] the freedom and purity of elections," 1972 Pub. Acts, ch. 740, § 1, and enable each party (and its members) "to select a standard bearer who best represents the party's ideologies and preferences" without strategic manipulation by the opposing party, *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989). And Tennessee is no outlier—similar restrictions on cross-over voting exist throughout the country. *See, e.g.*, N.J. Stat. Ann. § 19:23-45; Nev. Rev. Stat. Ann. § 293.287; Fla. Stat. Ann. § 101.021; 25 Pa. Stat. Ann. § 299; *see also Clingman*, 544 U.S. at 586 n.1 (compiling statutes).

In 2023, more than fifty years after the law's enactment, Plaintiffs Victor Ashe, Phil Lawson, and the League sued to challenge the constitutionality of § 2-7-115(b) and (c), raising the same First and Fourteenth Amendment claims pressed here. On March 4, 2024, the Court rejected that challenge and dismissed the action for lack of standing. *See Ashe*, 2024 WL 923771, at *14. Plaintiffs declined to appeal.

Instead, they filed this suit on May 1, 2024, adding new plaintiffs and defendants. The Complaint claims that because § 2-7-115(b) and (c) do not define the terms "bona fide," "affiliated," or "allegiance," the provisions are void for vagueness under the Fourteenth Amendment. (Compl., ECF No. 1, ¶ 4-5.) Plaintiffs also claim that § 2-7-115(b) and (c) violate their rights under the First Amendment. (*Id.* at ¶ 6.) Plaintiffs sued the Tennessee Secretary of State, Tre Hargett; the Tennessee Coordinator of Elections, Mark Goins; and the District Attorneys General for 24 Tennessee Judicial Districts. (*Id.* at ¶¶ 28-53.)

Plaintiffs admit that "Section 115(b) has been on the books since the 1970s without any known prosecutions" but point to the "recent enactment of Section 115(c)" to explain an alleged concern for prosecution. (Pls.' Mem. in Support of Mot. for Prelim. Inj., D.E. No. 44, PageID# 239.) Yet the signage required by § 2-7-115(c) has not had a significant, if any, effect on voter turnout. (Goins Decl., ¶¶ 5, 6, 11, 12.) And while the Division of Elections received some calls and emails about the signage, the number was not significantly greater than in past elections. (*Id.* at ¶ 10.) Finally, despite their alleged concern, Plaintiffs Gould, Ashe, Lawson, and Hart all voted in the March 2024 primary. (*Id.* at ¶ 13.)

Plaintiffs moved for a preliminary injunction on May 23, 2024—just weeks before the start of early voting on July 12, 2024. (Pls.' Mot. for Prelim. Inj., D.E. No. 43, PageID# 199, n.2).

ARGUMENT

This Court should deny Plaintiffs' motion for a preliminary injunction. First, Plaintiffs' eleventh-hour attempt to alter the State's election rules runs afoul of the "*Purcell* principle." Second, their request for preliminary relief against the enforcement of a half-century-old law is barred by laches. Third, even setting aside *Purcell* and laches, Plaintiffs cannot carry their burden under the traditional four-factor test for preliminary injunctive relief. Finally, if this Court disagrees and grants injunctive relief, longstanding jurisdictional and equitable principles dictate that the injunction apply only to the parties, not to the State as a whole.

I. The Court Should Not Grant Emergency Relief Weeks Before Early Voting Begins.

A. The "*Purcell* Principle" forecloses preliminary relief.

The Supreme Court "has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (citing *Purcell*, 549 U.S. at 1; *Frank v. Walker*, 574 U.S.

929 (2014); *Veasey* v. *Perry*, 135 S. Ct. 9 (2014)). This "*Purcell* principle" seeks to limit "judicially created confusion" in elections, *Republican Nat'l Comm.*, 589 U.S. at 425, and to protect the State's "compelling interest in the integrity of its election process," *Purcell*, 549 U.S. at 4. Courts faced with a request to enjoin state election rules are thus "required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases." *Id.* Changes to election laws right before an election, for example, increase the likelihood of voter confusion, in turn undermining the confidence in election processes that is "essential to the functioning of our participatory democracy." *Id.*; *see Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) (staying preliminary injunction of Michigan law prohibiting voters from exposing marked ballots to others, where plaintiff filed suit 125 years after law was enacted and sought preliminary injunction 32 days before election).

The Supreme Court and Sixth Circuit are well attuned to the risks of creating eve-of-election chaos and confusion. Time and again, these courts have declined to interfere in the leadup to elections. *See, e.g.*, *Husted v. Ohio State Conf. of the NAACP*, 573 U.S. 988 (2014) (staying a preliminary injunction issued two months before the election); *North Carolina v. League of Women Voters of N.C.*, 574 U.S. 927 (2014) (staying a preliminary injunction that was issued a month before the election); *Williams v. Rhodes*, 393 U.S. 23, 34 (1968) (refusing to order new ballots at a "late date" even though the ballots unconstitutionally excluded certain candidates); *Ne. Ohio Coal. for the Homeless v. Blackwell*, 467 F.3d 999, 1012 (6th Cir. 2006) (vacating in part a temporary restraining order that "needlessly creates disorder in electoral processes"); *Kishore v. Whitmer*, 972 F.3d 745, 751 (6th Cir. 2020) (collecting cases).

This Court should follow suit. The *Purcell* principle squarely applies here and demands that Plaintiffs' request for an injunction be denied. Plaintiffs filed suit on May 1, 2024—*52 years*

after § 2-7-115(b) was enacted, and 10 months after § 2-7-115(c) was enacted. More to the point, Plaintiffs sought preliminary injunctive relief on May 23, 2024—a mere 10 weeks before the August 1, 2024 primary election, and only seven weeks before early voting opens on July 12, 2024. *See* Key Dates for the 2024 Election Cycle, Tennessee Secretary of State (2024).[2] And other pre-election deadlines are even sooner: county elections commissions must send ballots to military personnel and Tennesseans overseas no later than June 17, 2024, which is only 7 days away. *See* 52 U.S.C. § 20302(8); Tenn. Code Ann. § 2-6-503(a).

Enjoining enforcement of § 2-7-115's protection against cross-over voting in the face of these fast-approaching deadlines would not only sow voter confusion, it would "fundamentally alter[] the nature of the [primary] election." *Republican Nat'l Comm.*, 589 U.S. at 425. If the Court should enter the requested relief, any registered voter would suddenly be eligible to vote in any party's primary.

The bottom line: *Purcell* dooms Plaintiffs' late-stage request for injunctive relief.

B. Laches Bars Plaintiffs' Request for Preliminary Injunctive Relief.

Laches is "an equitable doctrine which may be applied to deny relief to a party whose unconscionable delay in enforcing his rights has prejudiced the party against whom the claim is asserted." *Memphis A. Phillip Randolph Inst. v. Hargett*, 473 F.Supp.3d 789, 792 (M.D. Tenn. 2020). The doctrine applies when the defendant shows (1) a lack of diligence by the plaintiff, and (2) prejudice to the defendant. *United States v. City of Loveland*, 621 F.3d 465, 473 (6th Cir. 2010); *see Memphis*, 473 F.Supp.3d at 793. And "in election-related matters, extreme diligence and promptness are required. When a party fails to exercise diligence in seeking extraordinary

[2] https://sos-prod.tnsosgovfiles.com/s3fs-public/document/2024%20Key%20Dates.pdf (last visited June 2, 2024).

relief in an election-related matter, laches may bar the claim." *McClafferty v. Portage County Board of Elections*, 661 F.Supp.2d 826, 839 (N. D. Ohio 1990) (cleaned up).

Laches applies here. The first element—lack of diligence—is easily satisfied. Section 2-7-115(b) has been in effect for more than half a century, and the age of the law is relevant to the laches inquiry. *Crookston*, 841 F.2d at 398-99; *Memphis*, 473 F.Supp.3d at 796. Further, Plaintiffs are not new to the voting process. Plaintiff Ashe was involved in voting at least as early as 1972, when he sponsored the legislation challenged here; Plaintiffs Lawson and Palmer have likewise voted for many years (Compl., ECF No. 1, ¶ 15, 19); Plaintiff Hart has voted since at least 2000;[3] and Plaintiff League has existed for more than 40 years, *League of Women Voters Tennessee v. Collins*, 708 F.2d 725 (Table) (6th Cir. 1983). Plaintiffs' failure to challenge Subsection (b) of the statute until now shows a lack of diligence.

Plaintiffs have also not been diligent in challenging Subsection (c) of the statute. True, that provision was not passed until May 2023. But that provision does not even govern voters; it requires election officials to provide notice of Subsection (b)'s requirements. Moreover, Plaintiffs still waited six months to file their first lawsuit. And after the first case was dismissed, Plaintiffs waited almost two more months before filing this lawsuit—all the while the State's election officials were preparing for the 2024 Presidential primary election and other primary elections, including by providing advice and guidance to various elections officials about the laws. (Goins Decl., ¶¶ 4, 7, 8).

The second element of laches—prejudice to the defendant—is also satisfied. "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and

[3] *See* https:// jacksonsun.com/story/opinion/2022/04/15/local-elections-shouldn't-partisan-opinion/7325103001 (last checked May 28, 2024).

consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell*, 459 U.S. at 5. So, prejudice can be established here by Plaintiffs' delay alone—especially when their challenge to § 2-7-115 has already been once rebuffed. *Ashe*, 2024 WL 923771, at *14. *See Perry v .Judd*, 840 F.Supp.2d 945, 950 (E.D. Va. 2012) ("The doctrine applies with particular force in the context of preliminary injunctions against governmental action where litigants try to block imminent steps by the government."); *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980) ("[T]he state's interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made, and the [plaintiff's] claim to be a serious [plaintiff] who has received a serious injury becomes less credible by his having slept on his rights.").

Preservation of the electoral process is a legitimate and valid state goal. *Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973). In addition, the State has a legitimate interest in preserving the integrity of primary elections to ensure that a party's primary is not "raided" by another party seeking to influence that party's candidate. *Id.* at 760. A preliminary injunction would prejudice the State by frustrating those interests.

Further, as discussed below, whenever a court enjoins a State from enforcing its own laws, it suffers a form of irreparable injury. *See generally Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted); *see also Abbott v. Perez*, 585 U.S. 579, 602 (2018) (recognizing that enjoining a State from enforcing its laws would "seriously and irreparably harm the State"). "[T]he public interest necessarily weighs against enjoining a duly enacted statute." *See Priorities USA v. Nessel*, 860 F. App'x 419, 423 (6th Cir. 2021).

The Court should deny the motion because laches bars this request for preliminary relief.

II. Plaintiffs Failed to Make the Showings Necessary to Support Preliminary Relief.

"[A] preliminary injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet v. Lexington-Fayette Urban County Government*, 305 F.3d 566, 573 (6th Cir. 2002); *see D.T. by and through B.K.T. v. Sumner County Schools*, No. 3:18-CV-00388, 2019 WL 13125486, at *1 (M.D. Tenn. 2019). Courts should grant a preliminary injunction only if the plaintiff makes a "clear showing" that: (1) there is a strong likelihood of success on the merits; (2) they face irreparable harm without an injunction; (3) the balance of the equities favors them; and (4) that the public interest supports an injunction. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008); *L.W. by and through Williams v. Skrmetti*, 83 F.4th 460, 470-71 (6th Cir. 2023).[4] Even then, the Court retains discretion to deny or limit relief as it deems appropriate. *See Friendship Materials, Inc. v. Mich. Brick, Inc.*, 679 F.2d 100, 102 (6th Cir. 1982); *cf. GMA Accessories, Inc. v. Positive Impressions, Inc.*, 181 F.3d 82 (2d Cir. 1999) (unpublished) (noting that the district court could have denied equitable relief even if the plaintiff "had otherwise satisfied all of the prerequisites"). Plaintiffs have not carried their burden at any step of the analysis.

A. Plaintiffs' have no likelihood of success on the merits.

Plaintiffs cannot show a likelihood of success on the merits, both because their claims fail under the applicable law and because they run headlong into well-settled jurisdictional bars.

1. Section 2-7-115 is constitutional.

Plaintiffs have no First Amendment overbreadth claim. Plaintiffs claim that § 2-7-115(b) and (c) violate First and Fourteenth Amendment rights "to engage in the political process and

[4] Plaintiffs must establish all four factors. To the extent Sixth Circuit precedent suggests otherwise, it is inconsistent with *Winter* and should be disregarded. *See D.T. v. Sumner Cnty. Schs.*, 942 F.3d 324, 328 (6th Cir. 2019) (Nalbandian, J., concurring).

exercise their fundamental right to vote," and therefore "violate the First Amendment's overbreadth doctrine." (Compl., ECF No. 1, ¶¶ 6, 128). This claim fails.

Insofar as Plaintiffs' claim is based on the right to vote, a First Amendment overbreadth claim is the wrong legal theory. As the Sixth Circuit has made clear, voting-rights claims—even those that might implicate First Amendment rights—are subject to the Supreme Court's *Anderson-Burdick* framework, not the usual First Amendment analyses. *Lichtenstein v. Hargett*, 83 F.4th 575, 589 (6th Cir. 2023). And for the reasons Defendants have discussed in support of their motion to dismiss, Plaintiffs cannot repackage a voting-rights claim as a First Amendment overbreadth claim. *See* Defs.' Mem. of Law, D.E. 50, PageID# 343-346. This is reason enough to deny the motion.

In any event, Plaintiffs' claim fails under *Anderson-Burdick*. *See* Def.'s Mem. of Law, D.E. 50, PageID# 345-346. Plaintiffs must show a burden on the right to vote that cannot be justified by countervailing state interests. *See Lichteinstein*, 83 F.4th at 590. Plaintiffs come nowhere close to making this showing. Instead, they make a conclusory allegation that § 2-7-115(b) "penalizes or deters an extraordinary range of protected voting conduct." (Compl., ECF No. 1, ¶ 125.) But they do not explain what "protected voting conduct" is impaired, identify the severity of any burden § 2-7-115(b) might impose, or grapple with the State's compelling interests in "preserving the integrity of the electoral process" and "ensuring that its elections are run fairly and honestly." *Thompson v. Dewine*, 959 F.3d 804, 811 (6th Cir. 2020). They simply allege that § 2-7-115(b) will deter the "direct voting behavior" of unidentified "voters who have never voted before" and "voters who may wish to switch parties."(Compl., ECF No. 1, ¶¶ 102-03.) At most, then, Plaintiffs allege the existence of a possible burden on the voting rights of unidentified non-plaintiffs. *Anderson-Burdick* requires more. *Cf. Lichteinstein*, 83 F.4th at 590 (explaining that

courts "must identify the 'character and magnitude' of the harm to the rights and compare that harm to the 'precise interests' that the state used to justify the law" (quotations omitted)).

Finally, to the extent Plaintiffs' First Amendment claim is premised on the right to speech or expressive conduct, (Compl., ECF No. 1, ¶ 127), their allegations still don't warrant injunctive relief. Section 2-7-115(b) "prohibits no spoken or written expression whatsoever." *Lichtenstein v. Hargett*, 489 F. Supp. 3d 742, 765 (M.D. Tenn. 2020). With no restriction on speech, Plaintiffs claim that the statute causes "chill." (Pls.' Mem. in Supp. of Mot. for Prelim. Inj., D.E. No. 44, PageID# 263.) Voters, they say, "*may* be less likely to engage in non-conforming or idiosyncratic political expression if it *might* call their bona fides into question and *threaten* their ability to participate in the primary." (*Id.* (emphasis added).) But to support these assertions (which appear nowhere in the Complaint), Plaintiffs offer only abstraction and speculative, unsubstantiated fears.[5] That is not enough: The plaintiffs need to show that § 2-7-115(b) *objectively* chills constitutionally protected expression. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 418 (2013).

Even accepting Plaintiffs' extra-Complaint speculation, Plaintiffs have asserted—at most—that a prohibition on conduct (cross-over voting) may incidentally burden protected speech or conduct. But "[t]he Supreme Court has never applied exacting free-speech scrutiny to laws that bar conduct based on the harm that the conduct causes apart from the message it conveys," *Lichtenstein*, 83 F.4th at 583, and that remains "true even if the ban on conduct imposes 'incidental burdens on speech,'" *id.* (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011)).

Plaintiffs have no void-for-vagueness claim. Plaintiffs also claim that § 2-7-115(b) "is void for vagueness" because it "imposes criminal punishment and fails to provide fair notice to

[5] Debbie Gould refers to some rumors of voters perhaps being deterred, but Coordinator Goins confirms that the voting numbers are in line with past similar elections. (See, Gould Decl., DE 43-5; Goins Decl.).

citizens of what conduct is prohibited" and because "it is so standardless it invites arbitrary enforcement. (Compl., D.E. No. 1, ¶¶ 80, 120.) This claim fails on numerous grounds.

First, Plaintiffs cannot plead a facial vagueness challenge. *See* Def.'s Mem. of Law, D.E. 50, PageID# 346-347. "Vagueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand." *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests.*, 455 U.S. 489, 495 n.7 (1982) (citation omitted). And as explained above and in support of Defendants' motion to dismiss, Plaintiffs did not allege any infringement of their "First Amendment freedoms," so "the vagueness claim must be evaluated as the statute is applied to the facts of this case." *Chapman v. United States*, 500 U.S. 453, 467 (1991); *see* Def.'s Mem. of Law, D.E. 50, PageID 346-347. Plaintiffs should have brought as-applied challenges—a facial vagueness challenge is not cognizable. *Maynard v. Cartwright*, 486 U.S. 356, 361 (1988).

Second, even if Plaintiffs could bring a facial vagueness challenge, § 2-7-115(b) is not unconstitutionally vague. *See* Def.'s Mem. of Law, D.E. 50, PageID# 347-349. The "void for vagueness" doctrine ensures that a "person of ordinary intelligence [has] a reasonable opportunity to know what is prohibited." *Grayned v. Rockford*, 408 U.S. 104, 108 (1972). None of the terms in § 2-7-115(b) are so vague that a "person of ordinary intelligence" would not have "a reasonable opportunity to know what is prohibited"—a reality confirmed by the 50 years that this law has been on the books without incident.

Dictionaries define "bona fide" to mean "[m]ade in good faith; without fraud or deceit," or "[s]incere; genuine." *Bona Fide*, Black's Law Dictionary (11th ed. 2019); *see also, e.g.*, Webster's New Universal Unabridged Dictionary (1996) (similarly defining "bona fide" to mean "sincere" or "genuine"). The term "affiliate" is defined to mean "to adhere or belong to an organization or group," or "to be a part of something." *Affiliate*, Oxford English Dictionary; *see also* Webster's

Third New International Dictionary 35 (1993) (defining the verb "affiliate" primarily as "to attach as a member or branch"); Merriam-Webster's Collegiate Dictionary (10th ed. 1993) (similar). Finally, "allegiance" is commonly defined to mean "loyalty or devotion" to some person, group, or cause. Webster's New Universal Unabridged Dictionary (1996); *see* Webster's New Twentieth Century Dictionary (2d ed. 1970) (defining allegiance to mean "loyalty and devotion in general, as to a church, *a political party*, a principle, a leader" (emphasis added)).

With these definitions in hand, the meaning of § 2-7-115(b) is clear. The first provision—§ 2-7-115(b)(1)—allows voters to participate in a party's primary election when the voter sincerely and in good faith belongs to that party. And the second provision—§ 2-7-115(b)(2)—permits a voter to vote in a party's primary when, "at the time the voter seeks to vote," he or she expresses loyalty to that party. Understood this way, § 2-7-115(b) does exactly what the General Assembly sought to do: deter voters of one party from "crossing over" to vote in the other party's primary for the purpose of subverting that party's election of their preferred candidate. A "person of ordinary intelligence" knows what the statute prohibits.[6]

The applicable scienter requirements—particularly when combined with the "good faith" and "sincerity" components of the statutory language—serve to further "alleviate [any] vagueness concerns." *See Gonzales v. Carhart*, 550 U.S. 124, 149-50 (2007). The statutes that make it a criminal offense to violate § 2-7-115(b) include just such requirements. *See* Def.'s Mem. of Law,

[6] In addition to their claim that § 2-7-115(b) fails to give adequate notice, Plaintiffs say that § 2-7-115(c) "requires false notice" by reiterating the requirements of Subsection (b) in the disjunctive. (Pls.' Mem. in Supp. of Mot. for Prelim. Inj., D.E. No. 44, PageID# 259.) This point seemingly appears nowhere in Plaintiffs' complaint, but even if it did, it defies logic. Section 2-7-115(b) requires that a primary voter be a "bona fide member of *and* affiliated with" the party whose primary they are voting in. So it is entirely correct to say, as § 2-7-115(c) does, that a voter would violate the statute by voting in the primary without being a bona fide member *or* without being affiliated with the party—because both are required, failure to comply with either violates the law.

D.E. 50, PageID# 348-349. The "knowing" and "intentional" scienter requirements of § 2-19-102 and § 2-19-107 "mitigate[]" any vagueness by limiting punishment to voters who understand that they are violating § 2-7-115(b)'s restrictions. *Village of Hoffman Estates v. Flipside, 455 U.S. 489, 499 (1982)*

Third, even if Plaintiffs could mount a facial challenge and even if § 2-7-115(b) could be considered impermissibly vague in certain applications, Plaintiffs have failed to carry their burden of establishing *facial* invalidity. *See* Def.'s Mem. of Law, D.E. 50, PageID#349-350. Plaintiffs must show that the challenged provisions are "impermissibly vague in all of [their] applications." *Hoffman Ests.*, 455 U.S. at 497. Many unambiguous applications of § 2-7-115(b) exist. *See* Def.'s Mem. of Law, D.E. 50, PageID# 349-350. For example, if a candidate running as a republican were to vote in their district's democratic primary, or vice versa, that conduct would fall squarely within the scope of § 2-7-115(b). Because Plaintiffs' claims fail on the merits, their request for injunctive relief should be denied.

2. Plaintiffs lack standing to sue.

Plaintiffs have also not shown a strong likelihood of success on the merits because they have failed to show a likelihood of success in establishing standing. *See Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 900 F.3d 250, 256 n.4 (6th Cir. 2018) (stating that the "burden of showing a likelihood of success on the merits . . . necessarily includes a likelihood of the court's *reaching* the merits, which in turn depends on a likelihood that plaintiff has standing") (cleaned up) (emphasis in original).

To establish standing, Plaintiffs must show that they "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). An Article

III injury can sometimes be established *before* the enforcement of a statute. To do so, however, a plaintiff must prove "an intention to engage in a course of conduct arguably affected with a constitutional interest[] but proscribed by" some provision of the Act. *Crawford v. U.S. Dep't of Treasury*, 868 F.3d 438, 454 (6th Cir. 2017) (quotations omitted). A plaintiff must then prove "a *certain* threat of prosecution if the plaintiff does indeed engage in that conduct." *Id.* at 455.

Because "standing is not dispensed in gross," *Universal Life Church Monastery Storehouse v. Nabors*, 35 F.4th 1021, 1031 (6th Cir. 2022) (quotations omitted), Plaintiffs "must demonstrate standing for each claim they seek to press." *Id.* (cleaned up). They must "address[] the injury in fact question on a provision-specific basis," *Prime Media v. Brentwood*, 485 F.3d 343, 351 (6th Cir. 2007), and show "how the requested relief against *each* of the defendants could redress [their] alleged injuries-in-fact." *Id.* (emphasis in original). Plaintiffs have not carried their burden.

a. All Plaintiffs lack standing to challenge § 2-7-115(c).

In Plaintiffs' prior lawsuit, the Court held that "Plaintiffs do not have standing to sue Defendants under Section 115(c)." *Ashe*, 2024 WL 923771, at *14. Section 2-7-115(c) requires the officer of elections at each polling place to post a sign informing voters of the restrictions on cross-over voting, but there is no officer of elections who is a defendant. Further, the sign "does not require or prohibit anything (beyond what is already required/prohibited in Section 115(b))." *Id.* "Nor does Section 115(c) threaten any civil fines or criminal punishment against individual voters." *Id.* Plaintiffs, then, can point to no injury tied to § 2-7-115(c).

b. All Plaintiffs lack standing as to Secretary Hargett and Coordinator Goins.

Plaintiffs seek an injunction against all Defendants based on alleged "threats of prosecution." (Compl., ECF No. 1, ¶¶ 6, 70.) But Secretary Hargett and Coordinator Goins have no prosecutorial authority. As was true when the Court dismissed Plaintiffs' prior lawsuit,

Plaintiffs now cannot "establish standing [to sue Secretary Hargett or Coordinator Goins] because they have not shown that their purported injury (i.e., fear of prosecution under 115(b)) is fairly traceable to Defendants or likely to be redressed by an injunction prohibiting Defendants from doing something they already lack the power to do—namely, prosecuting Plaintiffs under 115(b)." *Ashe*, 2024 WL 923771, at *6-8. Plaintiffs' new complaint changes nothing.

c. The Individual Plaintiffs lack standing to challenge § 2-7-115(b) against the Defendant District Attorneys General.

The Individual Plaintiffs (Lawson, Ashe, Palmer, and Hart) lack standing to sue the Defendant District Attorneys General.

First, the Individual Plaintiffs face no threat of prosecution from District Attorneys General in jurisdictions in which they do not reside. Plaintiffs Ashe and Lawson live in Knox County (6th Judicial District) (Compl., ECF No. 1, ¶¶ 15, 18); Plaintiff Palmer lives in Roane County (9th Judicial District) (*id.* at ¶19); and Plaintiff Hart lives in Madison County (26th Judicial District) (*id.* at ¶16). None of the individual Plaintiffs live (or vote) in the judicial districts of the other Defendant District Attorneys General—Judicial Districts 1, 2, 4, 5, 7, 8, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 25, 27, 30, and 32. Accordingly, the Individual Plaintiffs have no standing to sue the District Attorneys General for these 21 judicial districts. *Universal Life*, 35 F.4th at 1033-34 (concluding that plaintiffs lacked standing to sue a district attorney for a district in which no plaintiff resided or intended to engage in potentially prosecutable conduct).

Second, the Individual Plaintiffs cannot show a *certain* threat of prosecution from the District Attorneys General in their respective districts. Plaintiffs Ashe, Lawson, Palmer, and Hart—who live and vote in the 6th, 9th, and 26th Judicial Districts respectively—allege that they fear "prosecution" for violating § 2-7-115(b), but their allegations do not suffice to establish "a *certain* threat of prosecution." *Crawford*, 868 F.3d at 455. "When a plaintiff brings a pre-

enforcement challenge, 'an allegation of future injury may suffice' to show an injury in fact 'if the threatened injury is 'certainly impending,' or there is a substantial risk that the harm will occur.'" *Block v. Canepa*, 74 F.4th 400, 408-09 (6th Cir. 2023). But courts analyzing pre-enforcement challenges do not assume that every breach of the law will result in prosecution. *See McKay v. Federspiel*, 823 F.3d 862, 868 (6th Cir. 2016). Instead, they assess the imminence of enforcement through a holistic, four-part framework—the "*McKay* factors." *Online Merchs. Guild v. Cameron*, 995 F.3d 540, 550 (6th Cir. 2021). Specifically, courts require "some combination" of the following factors: "(1) 'a history of past enforcement against the plaintiffs or others'; (2) 'enforcement warning letters sent to the plaintiffs regarding their specific conduct'; (3) 'an attribute of the challenged statute that makes enforcement easier or more likely, such as a provision allowing any member of the public to initiate an enforcement action'; and (4) the 'defendant's refusal to disavow enforcement of the challenged statute against a particular plaintiff.'" *Id.* (quoting *McKay*, 823 F.3d at 869).

As Defendants have noted, see Def.'s Mem. of Law, D.E. 50, PageID# 335-337, each of these factors cuts against standing for the Individual Plaintiffs: (1) there is no history of past enforcement; (2) there have been no warning letters sent to any of the Plaintiffs; (3) there are no attributes that make enforcement of the laws any easier; and (4) none of the Plaintiffs have indicated that they have asked their respective District Attorneys General if they disavow prosecution. The concerns of Ashe and Lawson that the Republican or the Democratic Parties may prosecute them is entirely fanciful; Plaintiff Palmer's concern about being "embarrassed" is not a true fear of "prosecution"; and Plaintiff Hart's concerns about things that occurred two years ago do not show a true threat of *certain* prosecution. Further, despite their alleged allegations of "concerns," Plaintiffs Gould, Ashe, Hart, and Lawson, all voted in the March 2024 primary without

incident. (Goins Decl., ¶13).

d. The League of Women Voters lacks standing.

Where a plaintiff is an organization, the standing requirements of Article III can be satisfied in two ways. "Either the organization can claim that it suffered an injury in its own right or, alternatively, it can assert 'standing solely as the representative of its members.'" *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 143 S.Ct. 2141, 2157 (2023) (citing *Warth v. Seldin*, 422 U.S. 490, 511 (1975)). Plaintiff League appears to proceed down both paths, but neither leads to establishing the organization's standing to sue.

The League cannot show organizational standing. Organizations can establish standing through "the same inquiry" that applies to "individual[s]," because organizations can suffer legally redressable harms. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378 (1982). But Article III prevents organizations from bringing lawsuits on public-policy issues if success would not give them "some relief other than the satisfaction of making the government comply with the law." *Fair Elections Ohio v. Husted*, 770 F.3d 456, 460 (6th Cir. 2014). Said another way, an organization must show "far more than simply a setback to the organization's abstract social interests"; it must establish that "its ability to further its goals has been percepti[bly] impaired." *Greater Cincinnati Coal. for the Homeless v. City of Cincinnati*, 56 F.3d 710, 716 (6th Cir. 1995) (quoting *Havens*, 455 U.S. at 379) (cleaned up). Here, just as it did in the previously dismissed lawsuit, the League asserts "two injuries": (1) "it may need to divert its resources away from expenditures it would make in the absence of Defendants' conduct" and (2) "it cannot fulfill its organizational mission without knowing what Section 115(b) prohibits." *Ashe*, 2024 WL 923771 at *9. Neither suffices.

First, the League cannot establish an injury through a diversion-of-resources theory that

rests on *Havens*. For one, "in *Havens*, the plaintiff organization sought damages, not an injunction" like that sought by the League here, *Husted*, 770 F.3d at 460 n.1. For two, the League "relies on an overly speculative fear as triggering the League's anticipated diversion of organizational resources." *Ashe*, 2024 WL 923771 at *10. Section 2-7-115(b) has been in effect for 50 years, and there is no basis to infer that "widespread intimidation or confusion currently exists among voters." *Id.* at *11. Accordingly, "there is no clear impetus for the League to divert its resources." (*Id.)* For three, the League cannot "tie its alleged injury to a legally recognized right." *id.* at *12; *Fair Elections Ohio*, 770 F.3d at 460, n.1. Unlike in *Havens*, the League has not pointed to any statute that grants *it* any rights. *Husted*, 770 F.3d at 460, n.1.

Second, the League cannot establish standing by merely claiming that § 2-7-115(b) "prevents [it] from fulfilling its primary function of providing voter information." (Compl., ECF No. 1, ¶24.) As Plaintiffs assert in the Complaint, the League's mission is empowering voters, defending democracy, helping citizens to vote, educating voters, and encouraging voters to be active participants in democracy through engaging with elected officials and their policy decisions. (Compl., ECF 1, ¶ 20.) The "enforcement of Section 115(b) would not hamstring the League's ability to engage in any of the conduct that (according to the Complaint) furthers its mission." *Ashe*, 2024 WL 923771 at *13. For one thing, "[t]he League's purpose is not to offer legal advice." *See id.* And for another, Plaintiffs do not allege that the League has encountered any difficulties over the past 50 years informing its members and the public about voting issues, primary elections, or § 2-7-115(b). "The enforcement of Section 115(b) does not 'perceptibly impair' [the League's] mission. Rather, the League may continue to engage in all of the conduct described above as furthering its mission regardless of its purported confusion as to what Section 115(b) prohibits." *See Ashe*, 2024 WL 923771, at *13.

The Sixth Circuit has already warned that the limits on organizational standing "would be eviscerated if an advisor or organization can be deemed to have Article III standing merely by virtue of its efforts and expense to advise others how to comport with the law, or by virtue of its efforts and expense to change the law." *Husted*, 770 F.3d at 460. And, heeding that warning, the Court in *Ashe* previously rejected the League's impairment-of-mission arguments. 2024 WL 923771, at *13-*14. This Court should do so again here.

The League cannot show associational standing. Organizations can also establish standing to vindicate the rights of their members. *But see Ass'n of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 542 (6th Cir. 2021) (questioning the viability of associational standing). The Supreme Court, though, has unequivocally rejected probabilistic theories of associational standing. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 497-98 (2009). To establish associational standing, a plaintiff "must do more than identify a likelihood that" the defendant's conduct "will harm an unknown member"; the plaintiff organization must actually "identify a member who has suffered (or is about to suffer) a concrete and particularized injury from the defendant's conduct." *Ass'n of Am. Physicians*, 13 F.4th at 543. That is, "an association cannot just *describe* the characteristics of specific members with cognizable injuries; it must identify at least one by name." *Do No Harm v. Pfizer Inc.*, 96 F.4th 106, 115 (2d Cir. 2024). "Standing . . . requires . . . a factual showing of perceptible harm," so the plaintiff must specifically "identify members who have [or will] suffer[] the requisite harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009) (internal citations omitted). The mere "possib[ility] . . . that one individual will meet all of th[e] criteria . . . does not suffice." *Id.*; *see also Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 602 (8th Cir. 2022) (same).

The League has failed to satisfy these requirements: It never "identif[ies] a member who has suffered (or is about to suffer) a concrete and particularized injury." *Friends of Georges, Inc. v. Mulroy*, 675 F. Supp. 3d 831, 851 (W.D. Tenn. 2023). It alleges only that some unnamed members "may be subject to prosecution" for violating the statute and that "Sections 115(b) and (c) are likely to prevent some League members from voting." (Compl., ECF No. 1, ¶ 24.) Because the League failed to point to even "one specifically-identified member [who will] suffer[] an injury-in-fact," *Am. Chem. Council v. Dep't of Transp.*, 468 F.3d 810, 820 (D.C. Cir. 2006), it cannot establish associational standing. What's more, even if the League *had* identified a member, it would still be unable to establish standing without showing that this member "inten[ds] to engage in a course of conduct" proscribed by § 2-7-115(b) and is subject to "a certain threat of prosecution" for doing so. *Crawford*, 868 F.3d at 454-55 (quotations omitted). The League, though, has not even alleged—let alone established—that sort of intent or risk to a member.

3. Defendants are entitled to sovereign immunity.

Finally, Defendants, all of whom are sued in their official capacities only, enjoy sovereign immunity from suit. The exception to sovereign immunity under *Ex parte Young*, 209 U.S. 123 (1908), does not apply. This, too, is fatal to Plaintiffs' chances of success on the merits.

Generally, a State is not "amenable to the suit of an individual without its consent." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996) (quoting *Hans v. Louisiana*, 134 U.S. 1, 13 (1890)). A suit against a state official in his official capacity is considered to be a suit against the State. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989); *Wells v. Brown*, 891 F.2d 591, 592-94 (6th Cir. 1989). "However, there is an exception to the State's sovereign immunity under *Ex Parte Young* . . . whereby 'a suit challenging the constitutionality of a state official's action is not one against the State." *Russell*, 784 F.3d at 1046-47 (cleaned up). "In order to fall

under the *Ex Parte Young* exception, a claim must seek prospective relief to end a continuing violation of federal law." *Id.* at 1047.

The exception does not apply, however, "when a defendant state official has neither enforced nor threatened to enforce the allegedly unconstitutional statute." *Id.* A plaintiff must show that the state official has threatened and is "about to commence proceedings" in order to overcome the sovereign immunity defense. *EMW Women's Surgical Center v. Beshear*, 920 F.3d 421, 445 (6th Cir. 2019). Plaintiffs cannot carry this burden.

Defendants Hargett and Goins do not have authority to prosecute. Merely claiming that a state official has an obligation to execute the laws is not sufficient. A defendant need not have "direct criminal enforcement authority," but there must be "'a realistic possibility the official will take legal or administrative actions against the plaintiff's interests[.]'" *Universal Life*, 35 F.4th at 1040 (quoting *Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1048 (6th Cir. 2015)); *see Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 828 (10th Cir. 2007) ("[S]tate officials must have a particular duty to 'enforce' the statute in question and a demonstrated willingness to exercise that duty.").

As discussed above with respect to Plaintiffs' lack of standing, Secretary Hargett and Coordinator Goins do not have authority to prosecute violations of § 2-7-115(b). Nor have Plaintiffs pointed to any legal or administrative action Secretary Hargett and Coordinator Goins can take against them. Plaintiffs have alleged that Defendant Hargett "gave a speech" a year and a half ago "in which he emphasized his intent to begin enforcing Section 115(b)" (Compl., ECF No. 1, ¶ 71), but Secretary Hargett referenced *a district attorney's* ability to prosecute, not *his* ability to prosecute—he has no such authority. The *Ex parte Young* exception does not apply to Defendants Hargett and Goins.

Plaintiffs have not shown that the Defendant District Attorneys General have enforced or threatened to enforce the statute. Plaintiffs have named 24 District Attorneys General as Defendants, but the only allegation Plaintiffs make regarding any District Attorney General's enforcing or threatening to enforce § 2-7-115(b) is that the District Attorney General for the 15th Judicial District, Jason Lawson, issued a letter threatening enforcement. (Compl., ECF 1, ¶ 23.) But, as discussed above, no Plaintiff has standing to sue the District Attorney General for Judicial District 15, and there are no allegations that the District Attorneys General in the remaining judicial districts have enforced or threatened to enforce the statute.

Plaintiff Hart does allege that two years ago the District Attorney General for Judicial District 26, Jody Pickens, told Hart that "there is heat on me to prosecute you." (Compl., ECF 1, ¶ 16.) But there is no allegation that General Pickens has ever actually enforced the statute. There is also no allegation that General Pickens has really threatened Plaintiff Hart—he has allegedly stated only that he had "heat" on him to prosecute. Further, Plaintiff Hart has not met his burden to show that General Pickens is "*about to commence proceedings*." *EMW*, 920 F.3d at 445 (emphasis added). Plaintiffs Hart's allegations pertain to things that happened in 2022—two years ago. (Compl., ECF No. 1, ¶¶ 16, 17.) And Plaintiff Hart voted in person in the March 2024 primary, with no ill effects. (Goins Decl. ¶ 13.)

B. Plaintiffs will not suffer irreparable harm if no injunction issues.

A preliminary injunction is also not warranted because Plaintiffs will not suffer irreparable harm in the absence of an injunction. Again, § 2-7-115(b)'s provisions have been in place for 50 years—there is no reason now to suddenly conclude that the statute causes harm, let alone irreparable harm. As discussed above, the statute does not violate Plaintiffs' constitutional rights. If the Individual Plaintiffs are concerned that their "bona fide" membership in a party may be

questioned for purposes of primary voting, they need only declare allegiance to that party at the primary election and state that they intend to affiliate with the party. *See* Tenn. Code Ann. § 2-7-115(b)(2). The League may likewise offer that same advice to its members. As to the League's complaints about the loss or diversion of funds to educate the voting public (Gould Decl.), such alleged financial harm is not irreparable for purposes of seeking injunctive relief. *See Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992).

C. The issuance of an injunction would harm the State and the public interest.

On the other hand, and as discussed in Sections I.A and B, above, the issuance of an injunction at this time would cause substantial harm to the State's election process, including unchecked party raiding and potential voter confusion due to conflicting orders. "[E]lections are complex and election calendars are finely calibrated processes, and significant upheaval and voter confusion can result if changes are made late in the process." *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 587 F.Supp.3d 1222, 1324 (N.D. Ga. 2022); *see also id.* at 1326-27 (finding that "due to the mechanics of State election requirements, there is insufficient time to effectuate remedial relief for purposes of the 2022 election cycle"). Thus, courts have found injunctive relief to be inappropriate when an election is too close for the State realistically to be able to implement the necessary changes before the election. *See e.g., Williams*, 393 U.S. at 35 ("[A]t this late date it would be extremely difficult, if not impossible, for Ohio to provide still another set of ballots. Moreover, the confusion that would attend such a last-minute change poses a risk of interference with the rights of other Ohio citizens, for example, absentee voters.").

III. Any Preliminary Injunction Should Be Narrowly Tailored.

If this Court were to decide to grant Plaintiffs' motion, any injunctive relief should be narrowly tailored: It should be directed against only those Defendants, if any, whom Plaintiffs have standing to sue and who are not entitled to sovereign immunity, and it should be entered in

favor of only those Plaintiffs, if any, who have demonstrated standing to sue.

As the Sixth Circuit recently explained: "A court order that goes beyond the injuries of a particular plaintiff to enjoin government action against nonparties exceeds the norms of judicial power." *L.W.*, 83 F.4th at 490; *see also DHS v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., joined by Thomas, J., concurring). "[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief *to the plaintiffs*." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (emphasis added); *see also Kentucky v. Biden*, 57 F.4th 545, 556 (6th Cir. 2023) (stating that "federal courts should not issue relief that extends further than necessary to remedy the plaintiff's injury"). That is, injunctive relief "'must . . . be limited to the inadequacy that produced the injury in fact that the plaintiff has established.'" *Gill v. Whitford*, 138 S.Ct. 1916, 1931 (2018) (quotations omitted).

That Plaintiffs raised a facial challenge changes nothing. In *L.W.*, the Sixth Circuit considered a facial challenge to a Tennessee law that prohibited healthcare providers from performing certain medical procedures. 83 F.4th at 412-13. Upon finding that the statute was facially unconstitutional, the district court issued a statewide injunction. *Id.* The Sixth Circuit reversed, making clear that injunctive relief must operate in "a party-specific and injury-focused manner"—not on a statewide basis. *L.W.*, 83 F.4th at 490. A sweeping injunction that applies to Secretary Hargett, Coordinator Goins, and 24 District Attorneys General would be just as improper here.

CONCLUSION

For the reasons stated, Plaintiffs' Motion for Preliminary Injunction should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been filed electronically on June 10, 2024. Parties may access this filing through the Court's electronic filing system.

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