In the
Supreme Court of Ohio

***State ex rel.* OHIO DEMOCRATIC PARTY, et al.,**	:	
Relators,	:	Case No. 2024-1361
v.	:	For Writ of Mandamus (Expedited Election Case Under S.Ct.Prac.R. 12.08)
OHIO SECRETARY OF STATE FRANK LAROSE,	:	
Respondent.	:	

MERIT BRIEF OF RESPONDENT OHIO SECRETARY OF STATE FRANK LAROSE

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I. INTRODUCTION

Relators seek a writ of mandamus that directs Ohio Secretary of State Frank LaRose to rescind Directive 2024-21 ("the Directive"), but Relators come to this Court too late. The wheels are in motion for absentee voting in the 2024 General Election. Absentee ballots—along with instructions consistent with the Directive's guidelines—were sent to overseas voters 21 days after Secretary LaRose issued the Directive. These same ballots and instructions are printed and set to go out to voters on October 8, one day after the close of briefing on this case. The Secretary's Office and boards of elections have developed and printed signage, also consistent with the Directive's guidelines. Yet after waiting a month, Relators want to undo all of this. Implementing these changes now, in the final stretch of a presidential election, will inevitably cost the boards time, resources, and money—all when these are at a premium. More significantly, some Ohioans *have already voted*. Thus, if Relators are successful, some Ohioans will have voted under a

different set of rules than others. All of this amounts to significant prejudice to the Secretary's Office and Ohio voters. But these consequences could have been avoided had Relators acted sooner. Relators' delay is unreasonable, and they give no excuse for it. For this reason alone, Relators' Complaint should be dismissed because it is barred by the doctrine of laches.

Even if this Court concludes that Relators acted with the extreme due diligence and promptness required in elections matters (and they did not), their claims lack merit. Relators fail to carry their burden to establish entitlement to the extraordinary relief of a writ of mandamus. Secretary LaRose did not exceed his authority by issuing a directive implementing and enforcing the near-relative restrictions in R.C. 3509.05(C)(1). Nor does the Directive violate any requirement of R.C. 3509.05(C)(3). As to their constitutional claims, Relators cannot bring these claims via mandamus, and the Court should decline to consider them. Even so, if these claims were proper here (and they are not), the Directive passes constitutional muster. It easily satisfies the Equal Protection Clause of the Ohio Constitution because it draws no distinctions amongst voters and imposes a minimal burden on voting rights. And the Directive does not violate Section 208 of the VRA because it in no way prevents disabled voters from receiving help from an assistant of their choice.

At bottom, Relators waited too long to bring these challenges. Relators have otherwise failed to carry their burden to establish entitlement to the extraordinary relief of a writ of mandamus and their request should be denied.

II. BACKGROUND

A. To prevent ballot harvesting, Ohio law limits who may deliver an absentee ballot to a county board of elections, including to a board's drop box.

To protect the integrity of Ohio elections, Ohio law prevents ballot harvesting—i.e., the collection of absentee ballots by third parties for delivery to the board of elections. Left unchecked,

ballot harvesting can undermine entire elections. Indeed, in North Carolina's 9th congressional district, a large-scale ballot-harvesting operation called into question so many ballots that an election could not be certified.[1] While Ohio has thus far avoided widespread fraud, ballot harvesting persists. Secretary LaRose has referred cases of suspected ballot harvesting to county prosecutors. Burnett Aff. at ¶ 20. In one case, an employee of a nursing home collected and returned numerous ballots from nursing home residents. *Id*. Ohio administers a special process for voters confined in nursing homes in which bipartisan teams of trained board of elections employees hand deliver absentee ballots, ensuring privacy and ballot integrity. This employee bypassed the special process, depriving a group of vulnerable voters of election officials' protection.

Together, R.C. 3599.21(A)(9)-(10) and 3509.05(C)(1)—Ohio's ballot harvesting laws—prevent this practice by limiting who may deliver an absentee ballot to a county board of elections. R.C. 3599.21(A)(9) prohibits a person from returning another person's absentee ballot unless they are an authorized relative or a person who "is, and is acting as, an employee or contractor of the United States postal service or a private carrier." R.C. 3599.21(A)(9)(a)-(b). Authorized relatives are an elector's "spouse[,] . . . father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, . . . son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece." R.C. 3509.05(C)(1). R.C. 3599.21 additionally prohibits the knowing possession of another's absentee ballot unless authorized by law. R.C. 3599.21(A)(10). A violation of R.C. 3599.21 is a felony of the fourth degree. R.C. 3599.21(C).

[1] Associated Press, *Four people plead guilty in North Carolina ballot probe of 2016 and 2018 elections* (Sept. 26, 2022), https://www.nbcnews.com/politics/elections/four-people-plead-guilty-north-carolina-ballot-probe-2016-2018-electio-rcna49534 (accessed October 2, 2024).

Relatedly, Ohio law permits—but does not require—a board of elections to "place not more than one secure receptacle outside the office of the board, on the property on which the office of the board is located, for the purpose of receiving absent voter's ballots under this section." R.C. 3509.05(C)(3)(a). These receptacles are colloquially called "drop boxes." If a board of elections chooses to utilize one, the drop box must remain open to receive ballots at all times beginning the first day after the close of voter registration through 7:30 p.m. on the day of the election. R.C. 3509.05(C)(3)(b). Absentee ballots returned to a drop box are subject to the same ballot harvesting laws as those returned directly to a board of elections office. R.C. 3509.05(C)(1) ("The return envelope shall be returned by no other person, in no other manner, and to no other location, except as otherwise provided in Section 3509.08 of the Revised Code.").

B. The Northern District Court of Ohio issued a limited injunction of Ohio's ballot-harvesting laws.

As explained, Ohio law limits who may return another's absentee ballot to two categories of people: (1) close family members and (2) those acting in the scope of their employment with the United States postal service or a private carrier. However, a recent federal court decision announced a limited third category was required by Section 208 of the Voting Rights Act. *League of Women Voters of Ohio v. LaRose*, 1:23-cv-02414, 2024 U.S. Dist. LEXIS 128303, *60 (N.D. Ohio July 22, 2024). Section 208 provides that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508. In *League of Women Voters*, the court found that Section 208 allows "a disabled voter to select a person of their choice to assist them with . . . the return of a disabled voter's absentee ballot." 2024 U.S. Dist. LEXIS 128303 at *59. The court further found that, to the extent Ohio's ballot-harvesting laws "prohibit such assistance by limiting who a

disabled voter may select to assist them in this manner," the statutes are preempted by Section 208. *Id.* Accordingly, the court issued a limited, permanent injunction to that effect. *Id.*

C. Secretary LaRose issued the Directive and Advisory 2024-03 to comply with both *League of Women Voters* and to fulfill his duty to enforce the portions of the ballot-harvesting laws that were not enjoined.

Acting pursuant to his statutory duty to compel the observance of election laws while ensuring compliance with the *League of Women Voters* injunction, Secretary LaRose issued the Directive to Ohio's county boards of elections on August 31, 2024. Burnett Aff. at ¶ 13, Ex. 1 at 1. The Secretary noted in the Directive that while *League of Women Voters* carved out an "important exception" to Ohio's ballot-harvesting laws for disabled voters and those assisting them, those laws are "still required to be enforced with respect to voters who are not disabled." *Id*. To that end, the Directive ensures compliance with Ohio's ballot-harvesting laws and federal law, by providing that "a designated assistant delivering a ballot for another must sign an attestation that they comply with applicable law." *Id.*

Specifically, the Directive provides that individuals delivering ballots for a family member or disabled voter may either mail the ballot to the county board of elections or return the ballot to a county board of elections official at the board's office and complete an attestation form. *Id.* at 2. The individual must attest that they are either (1) returning a ballot on behalf of an authorized family member whom they have been lawfully designated to assist with the return of an absentee ballot, or (2) if the individual is assisting a disabled voter, that they are complying with Section 208 of the Voting Rights Act and are not the voter's employer, an agent of that employer, or an officer or agent of the voter's union. *Id.* The Directive further requires boards to post a weather-resistant notification at each drop box indicating that voter-assisted ballots must be returned inside the office where the assistant will be asked to complete an attestation form. *Id.*

On September 20, 2024, the Secretary issued Advisory 2024-03 ("the Advisory") as a clarification to the Directive. *See* Relators_008. The Advisory provides that boards are highly encouraged to, as best practice, develop a streamlined and convenient drive-through ballot drop-off system during periods of high-volume turnout. *Id.* The Advisory further outlines certain requirements that must be met if a board implements such a plan. Relators_009. They include, inter alia, pairing bipartisan employees to receive absentee ballots, engaging with local law enforcement to develop a traffic control plan, posting appropriate signage, and requiring voter assistants to complete the appropriate attestation form. *Id.*

D. The Secretary's Office and boards of elections began preparing for the election in compliance with the Directive and League of Women Voters.

Ohio law contains numerous provisions that require elections to be run according to specific deadlines. Burnett Aff. at ¶ 6. This is applicable for all types of voting, including early voting and absentee voting. *Id.* For instance, the deadline for Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") ballots to be ready is September 20, 2024. *Id.* at ¶ 6a. UOCAVA absentee ballots must be mailed by September 21, 2024. *Id.* at ¶ 6b. Non-UOCAVA absentee ballots must be ready by October 8, 2024. *Id.* at ¶ 6c. Early, in-person voting at the boards of elections also begins on October 8, 2024. *Id.* at ¶ 6d.

Thus, voting in the November 2024 General Election has already begun. *Id.* at ¶ 21. UOCAVA ballots were finalized on September 20, 2024, and sent out on September 21, 2024, as required by state and federal law. *Id.* The UOCAVA ballot envelopes contained instructions that were updated consistent with the *League of Women Voters* decision and the Directive. *Id.*; Ex. 2. The Secretary's Office also already updated instructions for regular absentee ballots, and the 88 county boards of elections have already printed those instructions. *Id.* at ¶ 22; Ex. 3. Drop box

signage developed by the Secretary's Office and boards of elections that complies with *League of Women Voters* has also been printed. *Id.* at ¶ 26.

III. LAW AND ARGUMENT

A. Because of Relators' inexcusable delay, their Complaint is barred by laches.

Because of Relators' inexcusable delay in filing this case, their claims are barred by the doctrine of laches and their Complaint should be dismissed. "In election cases, a relator must act with the utmost diligence." *State ex rel. Imposters, Ltd. v. Cuyahoga Cty. Bd. of Elections*, 2024-Ohio-4588, ¶ 14, citing *State ex rel. Syx v. Stow City Council*, 2020-Ohio-4393, ¶ 11. "Laches may bar relief in an election matter if the person seeking relief fails to act with such diligence." *State ex rel. Jones v. LaRose*, 2022-Ohio-2445, ¶ 11, citing *State ex rel. Monroe v. Mahoning Cty. Bd. of Elections*, 2013-Ohio-4490, ¶ 30. Thus, this Court will dismiss a claim under laches when four elements are present: "(1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party." *Id.*, citing *State ex rel. Carrier v. Hilliard City Council*, 2016-Ohio-155, ¶ 8. Because laches is not an affirmative defense, the burden lies with Relators to prove that their case should not be dismissed. *Smith v. Scioto Cty. Bd. of Elections*, 2009-Ohio-5866, ¶ 9, quoting *State ex rel. Vickers v. Summit Cty. Council*, 2002-Ohio-5583, ¶ 13 ("'[f]or election cases, laches is not an affirmative defense, and [persons seeking relief] have the burden of proving that they acted with the requisite diligence.'"). All four elements are present here, and for this reason alone, Relators' Complaint should be dismissed.

1. Relators' delay was unreasonable.

Relators' delay in filing this lawsuit was unreasonable. This Court has found that similar—and even shorter—delays are unreasonable and warrant dismissal under laches. *See Paschal v.*

Cuyahoga Cty. Bd. of Elections, 74 Ohio St. 3d 141 (1995) (nine-day delay); *State ex rel. Carberry v. Ashtabula*, 93 Ohio St.3d 522, 524 (2001) (16-day delay); *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 145 (1995) (17-day delay); *State ex rel. Fuller v. Medina Cty. Bd. of Elections*, 2002-Ohio-5922, ¶ 11 (17-day delay); *State ex rel. Landis v. Morrow County Bd. of Elections*, 88 Ohio St.3d 187, 189 (2000) (22-day delay); *Syx* at ¶ 11 (22-day delay). Common to most of the foregoing cases—as well as this case, as explained below—is the prejudice caused by their adjacency to the expiration of time for providing absentee ballots. *Polo* at 145; *Carberry* at 524-25; *Fuller* at ¶ 10-11; *Syx* at ¶ 14-16; *Landis* at 189. The Court should reach the same conclusion here.

Secretary LaRose issued the Directive on August 31, 2024. Relators filed this lawsuit *27 days later*. Perhaps recognizing their lack of diligence, Relators rely heavily on when Secretary LaRose issued the Advisory (September 20), which clarified the Directive. Relators' Br. at p. 6-7. But this argument carries no weight. The Advisory is not on trial here; the Directive is. *See State ex rel. Citizens for Responsible Green Govt. v. City of Green*, 2018-Ohio-3489, ¶ 17 (laches was measured from date referendum petition was rejected rather than from subsequent date committee requested law director to file lawsuit). Relators' Prayer for Relief, which only asks that the Directive be rescinded, confirms as much. *See* Compl., Prayer for Relief.

The Directive has been on the books since August 31, 2024. It was not issued in the dead of night or otherwise buried to hide it from the general public or anyone else. Relators' own evidence proves that the media covered the Directive no later than September 3, 2024. *See* Relators_023. Even if Relators first learned of the Directive with the media coverage, they still waited 24 days to file, as the time before the Election Day ticked down. This delay is simply unreasonable.

2. Relators give no excuse for their delay, nor can they claim lack of knowledge of the alleged wrong.

Relators provide no excuse justifying their failure to act diligently. At a minimum, Relators learned of the Directive when the general public did, with the media coverage beginning on September 3. Relators offer no evidence to contradict this. Even if their claims were not "ripe" until Secretary LaRose issued the Advisory on September 20, Relators continued to sit on their claims for a full week. And again, Relators give no excuse for this delay.

These facts are even more striking considering who Relators are: one of Ohio's two legally recognized major political parties, which devotes significant resources to support and educate its "thousands of members across the state," "several million Ohio voters who support Democratic candidates," and Democratic candidates themselves. Relators_010-011. Relators cannot claim with any credibility that they were in the dark about the Directive and its perceived impact. To be sure, it appears Relators were indeed aware of the Directive and were responding to it well before they filed this lawsuit. *See* Relators_012 (detailing how ODP's members have already reached out about the Directive). And the Directive was hardly a secret – each of Ohio's 88 boards of elections have two of its four members from each major political party.

Relators cannot claim lack of knowledge and provide no excuse for their delay in bringing this lawsuit.

3. Relators' delay causes significant prejudice to the Secretary's Office and Ohio voters.

Finally, and perhaps most significantly, consider the prejudice to the Secretary's Office and the millions of Ohio's voters that may result from Relators' delay. Relators filed their lawsuit seven days after the deadline for finalizing UOCAVA ballots. *See* Burnett Aff. at ¶ 6a. Those ballots contained the instructions implementing the Directive and have already been sent to voters.

Id. at ¶ 21. Notably, UOCAVA ballots must be returned to the boards of elections in the same manner as normal absentee ballots. R.C. 3511.09(D) ("The elector shall cause the uniformed services or overseas absent voter's ballots to be returned to the office of the board of elections in a manner described in division (C) of section 3509.05 of the Revised Code"). Therefore, this Court cannot ignore that UOCAVA ballots have already been distributed.

Moreover, regular absentee ballots must be finalized by October 8, which is the day after briefing in this case closes. Burnett Aff. at ¶ 6c. Even if the Court issues an opinion that day, it is highly unlikely, if not impossible, that absentee ballots with the proper instructions would be ready the same day. First, Secretary LaRose would have to update the instructions for both UOCAVA and regular absentee ballots. *Id.* at ¶ 25. Those instructions would then need to be sent to the 88 boards of elections who would have to print off as many instructions as needed, which will vary from county to county. *Id.* at ¶ 26-27. Only then could the boards send ballots out to Ohio's voters who requested them. Because these steps could not occur by October 8, this alone requires dismissal of Relators' claims. "An unreasonable delay that prevents a court decision before the deadline for distributing absentee ballots is prejudicial." *Jones* at ¶ 16, citing *State ex rel. Valore v. Summit Cty. Bd. of Elections*, 87 Ohio St.3d 144, 146 (1999); *see also Imposters*, 2024-Ohio-4588, ¶ 16, quoting *State ex rel. Steele v. Morrissey*, 2004-Ohio-4960, ¶ 14 ("When this court has found laches dispositive, it is generally because of 'prejudice to the respondents in their statutory obligation to absentee voters to have absentee ballots printed and ready for use.'"). In *Jones*, this Court found prejudice where the relator waited until after UOCAVA ballots had been finalized to file his lawsuit. *Id.* Compare *Jones* to *Steele*, where the Court found laches did not apply, reasoning that "the schedule for evidence and briefs in [that] case was completed *before* the passage of the absentee-ballot date." (Emphasis in original.) *Steele* at ¶ 14.

But, even if the Court, Secretary LaRose, and the boards of elections can accomplish these Herculean tasks, this does not change the fact that voting has already begun. UOCAVA ballots have already gone out, and UOCAVA voters might have already returned their ballots pursuant to instructions that implement the Directive. In other words, if the Directive is rescinded, UOCAVA voters would have been subject to different rules than voters that waited until later to vote, which is expressly prohibited. *See State ex rel. Skaggs v. Brunner*, 2008-Ohio-6333, ¶ 58. In *Skaggs*, the secretary of state at that time instructed Franklin County to count votes that she previously instructed Franklin County, and all the other 87 counties, not to count. *Id.* at ¶ 56-57. Once challenged, this Court found that this was unreasonable, reasoning that "[b]y changing her instructions for one county but not for others after the election at the request of a candidate, the secretary of state failed to ensure that the same rules would be applied to each provisional voter of every county in the state." *Id.* at ¶ 58. If the Court were to change the rules at the eleventh hour, which is generally frowned upon, the same would happen here. *See Democratic Natl. Commt. v. Wisconsin State Legislature*, __ U.S. __, 141 S.Ct. 28, 30 (2020) (Kavanaugh, J., concurring) ("When an election is close at hand, the rules of the road should be clear and settled."); *see also Ohio Democratic Party v. LaRose*, 2020-Ohio-4664, ¶ 82 (10th Dist.) ("The unrebutted evidence in this case clearly demonstrated how issuing an injunction close to an election increases the harm to the boards of elections and, as a result, the general public by placing the security and administration of the election at risk."); *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam). If the Court allows some voters to use assistants who do not have to attest that they are complying with the law while other assistants very well may have, then the Court would be permitting two sets of rules for this election if the writ is granted, which it cannot under *Skaggs* and its progeny.

The prejudice that will result from Relators' delay is significant. Relators' own evidence establishes that they could have sought their requested relief several weeks earlier. Instead, they waited until the wheels of the 2024 General Election were already moving. These facts are not incidental. With the tight deadlines in elections administration, days, even hours, matter.[2]

Relators' delay serves as a glaring example of why Ohio courts recognize the doctrine of laches and, importantly, apply it with greater weight in elections cases. All four elements of laches are present here, and the Court should dismiss Relators' Complaint.

B. Relators fail to carry their burden to establish entitlement to a writ of mandamus.

Relators seek a writ of mandamus compelling Secretary LaRose to (1) "rescind Directive 2024-21" and (2) "instruct county election officials to accept absentee ballots from voters and their authorized family members and assistants without the Directive's legally unauthorized attestation, including via drop box." *See* Compl., Prayer for Relief. However, they have not, and cannot, carry their heavy burden.

1. Standard of review.

The purpose of a writ of mandamus is to compel a public officer to perform an act the law requires him or her to do. *See State ex rel. Husted v. Brunner*, 2009-Ohio-4805, ¶ 17. To obtain an extraordinary writ, Relators must establish: (1) a clear legal right to the requested relief; (2) a clear legal duty owed by Secretary LaRose to perform the requested relief; and (3) that they lack an adequate remedy at law. *See State ex rel. Evans v. Blackwell*, 2006-Ohio-5439, ¶ 18, citing *State*

[2] The prejudice here is even more egregious considering Relators' failure to notify Secretary LaRose. Relators filed this lawsuit late in the day on September 27. To the best of Respondent's counsel's knowledge, counsel for Relators did not send a courtesy copy of the Complaint to either the Secretary's Office or the Attorney General's Office. Instead, both offices learned of the lawsuit through the media. A summons was not issued for another three days, September 30, which the Secretary's Office has yet to receive because Relators used the wrong mailing address. Stated differently, Relators did nothing to get this case before the Court faster.

ex rel. Marsalek v. S. Euclid City Council, 2006-Ohio-4973, ¶ 8. Relators shoulder the heavy burden of demonstrating entitlement to mandamus relief by clear and convincing evidence. *State ex rel. Doner v. Zody*, 2011-Ohio-6117, ¶ 55.

2. Secretary LaRose has no clear legal duty to rescind the Directive (nor do Relators have a corresponding legal right) because it complies with state and federal law.

Even if Relators' delay does not preclude them from seeking mandamus relief, their mandamus claims fail regardless. First, the Directive was issued pursuant to Secretary LaRose's authority and is consistent with R.C. 3509.05. Second, Relators cannot use mandamus to mount a challenge under the Ohio Constitution or Section 208 of the VRA. Finally, the Directive does not violate either the Ohio Constitution or Section 208 of the VRA. Accordingly, Relators have no clear legal right to rescission of the Directive, and Secretary LaRose has no clear legal duty to rescind it.

a. The Directive complies with state law.

Relators' claim that the Directive violates state law requires the resolution of two interrelated questions. First, did Secretary LaRose exceed his authority by instructing boards of elections through the Directive to confirm that voters comply with R.C. 3509.05(C)(1)? Second, does the directive violate the statutory requirements of R.C. 3509.05(C)(3)? As to the first question, Secretary LaRose may issue a directive implementing and enforcing the near-relative restrictions in R.C. 3509.05(C)(1). As to the second question, nothing in the directive violates any requirement of R.C. 3509.05(C)(3).

i. By issuing Directive 2024-21, Secretary LaRose acted within his statutory authority to instruct the boards of elections as to the proper method of conducting elections under R.C. 3509.05(C)(1) and the League of Women Voters injunction.

We begin with the Secretary's authority under the Revised Code. "As the state's chief election officer pursuant to R.C. 3501.04, the secretary of state has many election-related duties, including the duties to '[i]ssue instructions by directives and advisories * * * to members of the boards as to the proper methods of conducting elections,' '[p]repare rules and instructions for the conduct of elections,' and '[c]ompel the observance by election officers in the several counties of the requirements of the election laws.'" *State ex rel. Painter v. Brunner*, 2011-Ohio-35, ¶ 37, quoting R.C. 3501.05(B), (C), and (M).

The Secretary's authority to issue instructions and directives exists within the confines of the Revised Code. Generally speaking, "election statutes are mandatory and must be strictly complied with." *Painter* at ¶ 35. Accordingly, any directive that adds an exception not contained in statute or purports to vary a statutory provision exceeds the Secretary's statutory authority. *See, e.g.*, *id.* at ¶ 35-36 (compelling the Secretary to rescind a directive that instructed boards to count provisional ballots not authorized by the Revised Code); *Skaggs*, 2008-Ohio-6333, ¶ 63 (same); *State ex rel. Maras v. LaRose*, 2022-Ohio-3295, ¶ 28 (concluding that the Secretary's directive "effectively rewrote" statutory language by requiring petition signatures to be submitted ten days before the date set forth in statute).

By contrast, the Secretary acts within his statutory authority when he issues directives that do not enlarge, contract, or otherwise vary the statutes he seeks to implement or enforce. For example, the Tenth District Court of Appeals concluded that Secretary LaRose could "issue a directive supplying the methods of [absentee ballot] delivery where the statute did not." *Ohio Democratic Party*, 2020-Ohio-4664, ¶ 46. The Secretary lawfully issued a directive "limiting county boards to accepting [absentee ballot] application deliveries by mail and in-person delivery." *Id*. at ¶ 49. Likewise, in a case that predated the current statutory scheme governing drop boxes,

Secretary LaRose acted within his statutory authority by issuing a directive limiting the number of drop boxes to one per county. *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778, ¶ 1 (10th Dist.). Again, this directive did not modify any of the requirements of the Revised Code. It simply provided a set of uniform instructions to the boards in an area where the underlying statute was silent.

Here, the Directive paints within the lines of the Revised Code. Everyone agrees that R.C. 3509.05 allows the following people—and *only* the following people—to return a non-disabled voter's absentee ballot to the office of a board of elections: the voter or the voter's father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, sister, half-brother, half-sister, son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece. R.C. 3509.05(C)(1).[3] And everyone agrees that under the permanent injunction issued in *League of Women Voters*, a person of a disabled voter's choosing—other than the voter's employer or union—may return the disabled voter's absentee ballot to the board of elections. The Directive neither adds to nor subtracts from the persons permitted to return an absentee ballot. All persons allowed to return absentee ballots under R.C. 3509.05(C)(1) and the court's injunction in *League of Women Voters* are permitted to return absentee ballots under the Directive. Unlike *Painter*, *Skaggs*, and *Maras*, the Directive does not vary the requirements of the Revised Code in any way.

But R.C. 3509.05(C)(1) and the *League of Women Voters* injunction are silent on implementation. Neither instructs the Secretary nor the boards *how* to ensure that voters are complying with restrictions on absentee-ballot return. This leaves the Secretary and the boards

[3] This renders Relators' proclamation that "[o]nly the General Assembly has the power criminalize conduct," Relators' Br. at 14, fn. 1, meaningless. Subject to *League of Women Voters*, the General Assembly has already criminalized the return of ballots by anyone other than those authorized by law. R.C. 3599.21(A)(9)-(10) & (C).

caught between a rock and a hard place. On the one hand, they must administer elections in accordance with Title 35 of the Revised Code and investigate any violations. R.C. 3501.05(B), (C), (M), (N); R.C. 3501.11(J), (P). This, of course, includes the near-relative provision in R.C. 3509.05(C)(1). But, on the other hand, they cannot enforce the near-relative provision against disabled voters and those assisting disabled voters under the plain terms of the *League of Women Voters* injunction. It is impossible to execute both duties unless the boards know—or have a way to determine—who is authorized to return an absentee ballot.

The Directive fills this gap. It requires a person to affirm that either R.C. 3509.05(C)(1) or the *League of Women Voters* injunction permits that person to return an absentee ballot. In this way, the boards can balance their responsibility to accept all absentee ballots returned by an authorized person against their duty to ensure that no one returns a ballot who is not permitted to do so. Without the Directive, the boards would have no way of knowing whether a disabled voter's ballot has been returned by his employer, in defiance of Section 208 of the Voting Rights Act. Nor could the boards detect whether a non-relative nursing-home employee unlawfully seeks to deposit harvested ballots from her residents.

These are not idle concerns. Before the *League of Women Voters* injunction, the Summit County Prosecutor's Office indicted an employee of a nursing home for allegedly depositing the absentee ballots of nursing homes residents in the county's drop box. *See, e.g.*, *State v. Cronin*, No. 2023-08-2879 (Summit C.P.); *see also* Burnett Aff. at ¶ 20. Ultimately, the prosecutor had to dismiss the indictment with prejudice "pursuant to" the injunction in *League of Women Voters*. *Id.*; Ex. 6. Because the State cannot enforce ballot-harvesting laws against disabled voters and their assistants, the prosecution believed it could not continue, lest it result in a violation of the injunction. The Directive would have prevented this entire scenario, had it been in place. The

nursing-home employee could have filled out attestations for all the disabled voters who authorized her to return their absentee ballots, and she could have lawfully returned those ballots. Or, if she had refused to sign an attestation and did not have authorization, the board could have been immediately alerted to a potential ballot-harvesting scenario.

In short, the Directive lawfully instructs boards on the proper method of conducting elections under R.C. 3509.05(C)(1), consistent with the *League of Women Voters* injunction. Issuing the Directive fits well within the Secretary's authority under R.C. 3501.05(B), (C), and (M), and he has no clear legal duty to rescind it.

ii. Directive 2024-21 does not violate the drop box provisions in R.C. 3509.05(C)(3).

Having established that Secretary LaRose had the authority to issue the Directive, we now consider whether the directive violates the statutory requirements governing drop boxes. Under the statute's plain language, the answer is no. In full, the relevant drop box provisions of R.C. 3509.05 provide as follows:

> (3)(a) The board of elections may place not more than one secure receptacle outside the office of the board, on the property on which the office of the board is located, for the purpose of receiving absent voter's ballots under this section.
>
> (b) A secure receptacle shall be open to receive ballots only during the period beginning on the first day after the close of voter registration before the election and ending at seven-thirty p.m. on the day of the election. The receptacle shall be open to receive ballots at all times during that period.

R.C. 3509.05(C)(3)(a)-(b).

There are four key phrases here. First, under R.C. 3509.05(C)(3)(a), a drop box "may" be placed at the board of elections. Drop boxes themselves are discretionary—the boards "may," but

need not, place them at their offices.[4] Second, a drop box exists "for the purpose of receiving" absentee ballots. This means that drop boxes cannot be used for other purposes like petition submissions, voter registrations, and waste disposal. They may only be used "for the purpose of" receiving absentee ballots. Third, drop boxes receive absentee ballots "under this section." "[T]his section," of course, is R.C. 3509.05. Accordingly, a drop box can only receive ballots "under" R.C. 3509.05, not under other statutes—like R.C. 3509.08—that authorize the return of absentee ballots in other ways. Fourth, the drop box "shall be open" during the early-voting period.

Synthesizing these phrases, it is simply not true, as Relators argue, that a drop box must accept the return of all absentee ballots, even those ballots unaccompanied by the attestation required by the Directive. Drop boxes are wholly discretionary. And if they exist at all, R.C. 3509.05(C)(3) does not state that drop boxes must accept *all* absentee ballots under R.C. 3509.05. Had the General Assembly intended this construction, it would have mandated drop boxes and required drop boxes to accept all absentee ballots returned under R.C. 3509.05. It did not. Instead, the General Assembly *allowed* boards to place drop boxes at their offices *in order to* receive absentee ballots (and absentee ballots only). And of course, nothing in the Directive varies those requirements.

In fact, the Directive ensures that all ballots deposited in drop boxes are lawfully returned ballots. Absentee ballots received via drop box are "received under this section," i.e., R.C. 3509.05. Accordingly, any absentee ballot placed in a drop box must comply with the near-relative requirements of R.C. 3509.05(C)(1). And as set forth at length above, the boards cannot ensure

[4] That drop boxes are discretionary makes Relators' argument that the term "'office of the board' includ[es] a drop box located *at* the office of the board," Relators' Br. at 11 (emphasis in original), confusing. Moreover, "[w]hen the legislature uses different terms, a court must give each of them meaning." *Ohio Democratic Party*, 2020-Ohio-4778, ¶ 28 (10th Dist.).

compliance with both R.C. 3509.05(C)(1) and the *League of Women Voters* injunction without the attestation process in the Directive. As Relators correctly note, this means that, in practice, a voter may only return the voter's own ballot to the drop box under the Directive. But the drop box provisions do not require drop boxes to receive *all* ballots returned under R.C. 3509.05. So, it is no violation to exclude the use of drop boxes for certain kinds of absentee ballots returned under R.C. 3509.05.

On this point, Relators cite *In re Election of Member of Rock Hill Bd. of Edn.*, 76 Ohio St. 3d 601 (1996), Relators' Br. at 14, but that case is distinguishable for two reasons. First, in *Rock Hill*, votes were incorrectly discounted because former R.C. 3509.05 allowed an absentee voter to either "mail" or "personally deliver" an absentee ballot to the board of elections, but there was no basis in law to require the voter to "personally mail" the ballot—i.e., to drop it in the mail themselves. *Rock Hill* at 608. Thus, the board's interpretation in *Rock Hill* read an extra-statutory requirement into R.C. 3509.05 that did not exist in its text. Here, the opposite is true—under the Revised Code and federal law, only a voter's near-relative or a disabled voter's assistant of choice can deliver the voter's absentee ballot. R.C. 3505.09(C)(1); R.C. 3599.21(A)(9)-(10); *League of Women Voters*, 2024 U.S. Dist. LEXIS 128303 at *59. This dovetails into the second distinguishing point: the Secretary has a statutory duty to compel the observance of those laws. R.C. 3505.01(M). So, where *Rock Hill* saw the board read an extra-statutory requirement into the law at the point of counting ballots, *Rock Hill* at 603-04, the Directive facilitates clear preexisting statutory requirements at the point of returning ballots—because, as mentioned, that is the only way the Secretary can fulfill his statutory duty.

In resolving Relators' mandamus claim, the key question is whether the Directive complies with state law, including the drop box provisions. And as set forth above, it unquestionably does.

But no less important is the Directive's role in ensuring drop box security. Although drop boxes are under 24-hour video surveillance, R.C. 3509.05(C)(3) does not require boards of elections to station elections officials at drop boxes. R.C. 3509.05(C)(3)(c). Accordingly, without the Directive, when a person attempts to return the absentee ballot of another to a drop box, no one can confirm whether the person is authorized to do so. Boards of elections have a duty to conduct elections in conformity with Title 35 and they cannot do so if they have no mechanism to ensure that ballots received via drop box comply with R.C. 3509.05(C)(1). The Directive provides that mechanism.

At bottom, Secretary LaRose lawfully issued the Directive. Because the Directive does not vary the requirements of state law, he has no clear legal duty to rescind it.

iii. Relators' arguments that the Directive violates state law do not convince.

First, Relators argue that the Directive adds a requirement that does not exist in statute. They characterize the attestation process as "new requirements and voting restrictions" that Secretary LaRose made up "out of whole cloth." Compl., ¶ 57. Stated differently, Relators appear to argue that Secretary LaRose may not issue any directive instructing the boards how to conduct elections unless each part of the directive tracks the language of the Revised Code.

A few examples illustrate why this position simply does not work. Take, for example, the laws governing initiative and referenda petitions. All signers of initiative or referendum petitions "must be a qualified elector of the state." R.C. 3519.10. The signers must affix their signatures in ink and provide an address that must match the address appearing in the records of the board of elections. R.C. 3501.29(B)-(C). Signers cannot sign a petition more than once. Like R.C. 3509.05(C)(1)'s near-relative restrictions, these are clear statutory requirements. But like R.C. 3509.05(C)(1), these statutes do not describe *how* the boards should ensure that petition signatures

comply with these statutory requirements. As he is permitted to do, the Secretary issued these instructions through the Election Official Manual ("EOM"). The EOM instructs the boards of elections how to review petition signatures for statutory compliance, mark the signatures that do not comply with specific codes, and tally up the valid signatures. The EOM does not expand or contract the characteristics of a valid signature that are set forth in the Revised Code. Rather, the EOM instructs boards how to process signatures and ensure that all signatures comply with the requirements of the Revised Code. Applying Relators' logic here, the Secretary could not issue signature-counting instructions to the boards of elections because these instructions "add" requirements that do not exist in statute. The Directive, like the signature-counting requirements, instructs the boards of elections how to conduct elections in compliance with both R.C. 3509.05 and the *League of Women Voters* injunction.

Next, Relators argue that the Directive violates the drop box provisions of R.C. 3509.05(C)(3). Specifically, they point to subsection (b)'s requirement that the drop box "shall be open to receive ballots" during the early-voting period. Relators argue that this section shows that boards must accept *all* absentee ballots during the early-voting period, even those ballots lacking the attestation required by the Directive. But subsection (b) mandates hours of operation, not the receipt of any particular ballot. It states that the drop box "shall be open," not that it "shall receive ballots" or "shall receive all ballots."

For the foregoing reasons, the Directive is consistent with Ohio law.

C. Even if Relators' claims under the Ohio Constitution or Section 208 of the VRA were cognizable in mandamus, the Directive violates neither.

Relators raise two constitutional claims: (1) the Directive violates the Ohio Constitution; and (2) Section 208 of the Voting Rights Act of 1965. Compl., ¶ 50. These claims have several problems. First and foremost, this Court does not have jurisdiction to hear these claims because

what Relators actually seek is a declaration that the Directive is unconstitutional. "In general, if the allegations of a complaint for a writ of mandamus indicate that the real objects sought are a declaratory judgment and a prohibitory injunction, the complaint does not state a cause of action in mandamus and must be dismissed for want of jurisdiction." *State ex rel. Grendell v. Davidson*, 86 Ohio St.3d 629, 634 (1999). That is exactly what Relators seek here: a declaratory judgment that the Directive violates federal law and a prohibitory injunction preventing election officials from enforcing it. The Court should thus decline to hear consider these claims.

Second, even if Relators could bring their claims under the Ohio Constitution or Section 208 of the VRA in mandamus, those claims would fail. The Directive easily satisfies the Equal Protection Clause of the Ohio Constitution because it draws no distinction amongst voters and imposes a minimal burden on voting rights, and no burden whatsoever on the actual voter. Further, the Directive does not violate Section 208 of the VRA because it in no way prevents disabled voters from receiving help from an assistant of their choice.

1. The Directive does not violate the Ohio Constitution because it treats all absentee voters the same and does not impermissibly interfere with the right to vote.

The Equal Protection Clause in Article I, Section 2 of the Ohio Constitution "require[s] that all similarly situated individuals be treated in a similar manner." *Discount Cellular, Inc. v. PUC*, 2007-Ohio-53, ¶ 31, citing *McCrone v. Bank One Corp.*, 2005-Ohio-6505, ¶ 6. An equal protection analysis begins with a determination of the appropriate level of scrutiny. *Maras*, 2022-Ohio-3852, at ¶ 17. If the state's actions infringe on a fundamental constitutional right or the rights of a suspect class, strict scrutiny applies. *Id.*, quoting *Arbino v. Johnson & Johnson*, 2007-Ohio-6948, ¶ 64. "If neither a fundamental right nor a suspect class is involved, a rational-basis test is used." *Id.*

The premise of Relators' equal protection claim is that the Directive "permit[s] certain voters to vote by delivering their ballot via drop box while prohibiting others from doing so." Compl., ¶ 63. According to Relators, the Directive deprives "voters with disabilities" and "voters who rely on a designated family member" the ability to "return their ballots for them via drop box." *Id.* However, Relators failed to articulate an equal protection claim that would subject the Directive to any form of heightened scrutiny.

First, the Directive does not implicate any suspect class. Suspect classes have been "traditionally defined" as "race, national origin, religion, or sex." *Adamsky v. Buckeye Local School Dist.*, 73 Ohio St.3d 360, 362 (1995). "Disabled persons are not a suspect class for purposes of an equal protection challenge." *S.S. v. E. Kentucky Univ.*, 532 F.3d 445, 457 (6th Cir. 2008). Likewise, there is no authority to suggest that "voters who rely on a designated family member," Compl., ¶ 63, is a suspect classification.

Nor does the Directive infringe on a fundamental right. To be sure, "[t]he right to vote is a fundamental right." *Desenco, Inc. v. Akron*, 84 Ohio St.3d 535, 544 (1999), citing *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). And equal protection applies to the right to vote itself "as well to the manner of its exercise." *Bush v. Gore*, 531 U.S. 98, 104-105 (2000). That said, state action does not trigger strict scrutiny "simply because it applies to elections." *Maras*, 2022-Ohio-3852, at ¶ 19. After all, every election law "inevitably affects—at least to some degree—the individual's right to vote." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992), quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). Accordingly, election-related state action "must 'impermissibly interfere'" with the fundamental right to vote "[b]efore strict scrutiny will apply." *Maras* at ¶ 19, citing *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976).

As this Court explained, due to the "unique burdens that control the adjudication of original actions in this court," the standards announced in *Anderson* and *Burdick* do not neatly fit into writ actions; nonetheless, they "inform [the Court's] analysis." *State ex rel. Brown v. Ashtabula Cty. Bd. of Elections*, 2014-Ohio-4022, ¶ 22 (plurality opinion). Relevant here is *Anderson-Burdick*'s first step: considering the "'character and magnitude of' the claimant's alleged injury." *Id.* at ¶ 14, quoting *Anderson* at 789. Under *Anderson-Burdick*, a law that severely burdens voting rights is subject to strict scrutiny. *Id.*, citing *Burdick* at 434. This Court has held that "a law severely burdens voting rights if it discriminates based on political content instead of neutral factors or if there are few alternative means of access to the ballot." *State ex rel. Watson v. Hamilton Cty. Bd. of Elections*, 88 Ohio St.3d 239, 243 (2000).

Applying these principles here, the Directive imposes a minimal burden that does not amount to impermissible interference with voting rights. *Maras* at ¶ 19-20. It is therefore subject to rational-basis review. *Id.* at ¶ 21. The Directive does not discriminate. It treats all Ohio voters the same—that is, it "applies equally to every voter needing assistance in delivering a ballot." *In re DSCC*, 950 N.W.2d 280, 292 (Minn. 2020), citing *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 205 (2008) (Scalia, J., concurring) (Indiana voter identification law "draws no classifications" because "*everyone* must have and present a photo identification. . . ."). It draws no content-based distinctions (nor have Relators alleged that it does). Relators' argument that the Directive treats "those returning their own ballot via drop box" and "those returning their family member's ballot" differently, Relators' Br. at 17, is not persuasive. The "different ways in which" the Directive "affects different voters are no more than different impacts of the single burden that the law uniformly imposes on all voters." *Crawford* at 185 (Scalia, J., concurring). Everyone returning someone else's ballot must sign an attestation that they are complying with state and

federal law. Put another way, the directive is "a generally applicable, nondiscriminatory voting regulation." *See id.*

Further, notwithstanding the Directive, there are alternative means of ballot access available to voters who require assistance aside from an assistant utilizing a drop box. They may mail their ballot to the board of elections' office. R.C. 3509.05(C)(1). They may have an assistant help them personally deliver it to the board of elections' office or to a drop box themselves. *Id.* True, courts assessing the burden imposed on voters by electoral mechanisms may consider whether the mechanisms will cause long lines or delays at polling places. *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477-78 (6th Cir. 2008). But Relators offer only conclusory speculation on this point. Compl., Ex. B at ¶ 11. And Relators assume significantly burdensome lines while ignoring the appreciable opportunities for early and absentee voting provided by state law. Early in-person absentee voting begins October 8, 2024, and absentee voting is available until 7:30 p.m. on the day of the election. Burnett Aff. at ¶ 8. And voters have until November 4, 2024, to postmark absentee ballots returned by mail. *Id.* Thus, any burden on ballot access imposed by the Directive is minimal. It does not, in any event, rise to the level of impermissible interference with the right to vote that would warrant strict scrutiny. Therefore, the rational basis test applies.

"Under rational-basis review, a statute will be upheld if it is rationally related to a legitimate government purpose." *Maras* at ¶ 21, citing *Arbino*, 2007-Ohio-6948, ¶ 66. A regulation will not be invalidated under rational basis "if it is grounded on a reasonable justification, even if its classifications are not precise." *Arbino* at ¶ 66, citing *McCrone*, 2005-Ohio-6505, ¶ 8. The state's interest here is ensuring election integrity and preventing fraud by preventing ballot harvesting. Burnett Aff. at ¶ 16-19. "It is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal." *Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973); *see also, e.g.*,

John Doe No. 1 v. Reed, 561 U.S. 186, 186 ("The State's interest in preserving the integrity of the electoral process is undoubtedly important."). Further, the Directive is rationally related to that important interest. Drop boxes are monitored by video and typically unstaffed, providing an increased opportunity for unscrupulous individuals to return ballots in violation of Ohio's ballot harvesting laws. Burnett Aff. at ¶ 16. Indeed, without the Directive, there is no means for the Secretary to effectively enforce Ohio's ballot harvesting laws with respect to absentee ballots returned via drop boxes. *Id*. at ¶ 19. By requiring voter-assistant attestation, the Directive provides a simple and clear solution to that enforcement problem, *id.*, and is rationally related to the State's important interest in preserving election integrity. It therefore passes constitutional muster.

Notably, Relators cite *Obama for America v. Husted*, 697 F.3d 423 (6th Cir. 2012) and *Bush v. Gore*, 531 U.S. 98 (2000) to support their equal protection claim. Relators' Br. at 16-17. The irony there is that the only Equal Protection problem presented in this case is that which would arise under *Bush v. Gore*, if Relators' requested relief is granted. As explained, because of Relators' unjustifiable delay in bringing this action after UOCAVA ballots have been issued and on the eve of early voting, rescinding the directive at this point would inevitably result in voters being subject to different standards during the same election. *See supra* at p. 10-12. *That* is the relevant Equal Protection problem in this case: the "uneven treatment" and "varying standards," *see Bush*, 531 U.S. at 108, that Ohio voters will experience if the Directive is rescinded at this juncture. Relators present an Equal Protection problem. The Directive does not.

2. The Directive does not violate Section 208 of the VRA because disabled persons are free to received assistance from anyone they so choose.

Section 208 of the VRA permits voters who require "assistance to vote by reason of blindness, disability, or inability to read or write" to receive assistance from "a person of the voter's choice." 52 U.S.C. § 10508. Generally, courts hold that state election laws run afoul of Section

208 where they facially restrict or narrow the pool of people from whom a disabled person can receive assistance. For example, the Fifth Circuit held that requiring an assistant to be registered in the same county as the voter impermissibly narrowed the right conferred by Section 208. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 615 (5th Cir. 2017). An Arkansas law limiting the number of voters an assistant can aid was similarly enjoined for the same reason. *Arkansas United v. Thurston*, 626 F. Supp. 3d 1064, 1089 (W.D.Ark. 2022). Likewise for a North Carolina law restricting "who may assist a 208-voter in delivering their absentee ballot by only allowing a delineated list of people to deliver an absentee ballot to the county board of elections." *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, 476 F. Supp. 3d 158, 235 (M.D.N.C. 2020). The principle drawn from these cases is that a state impermissibly narrows the right provided by Section 208 where it diminishes the pool of people from which a disabled voter can receive assistance.

In contrast, administrative requirements, such as requiring poll workers "to make and maintain a list of the names and addresses of all persons assisting voters . . . does not prevent any voter from selecting the assistor of their choice." *Arkansas United* at 1088. (quotation marks omitted.). Indeed, the legislative history of Section 208 contemplates such state regulations: a state does not run afoul of Section 208 if it does not "unduly burden the right recognized in this section, with that determination being a practical one dependent upon facts." *Id.*, citing S. Rep. No. 97-417, at *63 (1982), as reprinted in 1982 U.S.C.C.A.N. 177, 241.

The Directive is one such permissible administrative regulation; it does not narrow or limit the right provided by Section 208 in any way. Nothing in the Directive inhibits a disabled voter from selecting anyone they wish to assist them in dropping off an absentee ballot. The Directive says nothing about *who* may assist a disabled voter. Like in *Arkansas United*, it is an administrative

requirement; it merely requires an attestation from the assistant chosen by the disabled voter—whomever that may be. The Directive is the type of permissible election-administration rule "contemplated by the legislative history to § 208." *See Arkansas United* at 1088.

In support of their claim that the Directive impermissibly narrows Section 208, Relators offer the affidavit of Relator Duffy. He attests that he "will no longer be able to receive assistance from a person of [his] choice" because his preferred assistant has difficulty walking and standing for long periods of time. Relators_016. He adds that he would be uncomfortable asking them for assistance as a result. *Id.* But, again, nothing in the Directive prevents Relator Duffy from selecting this person as his assistant. While his preferred assistant's health may make Relator Duffy apprehensive about asking for assistance, this is not a fault of the Directive. The Directive does not preclude Relator Duffy from using his preferred assistant any more than a distant polling location precludes a voter from using an assistant who cannot drive.

The Directive says nothing about who a disabled voter may use an assistant. Accordingly, it does not violate Section 208 of the VRA.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court dismiss the Complaint and enter judgment in his favor.

Respectfully submitted,

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