IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. OHIO DEMOCRATIC PARTY, et al., Relators, v. FRANK LAROSE, in his official capacity as OHIO SECRETARY OF STATE, Respondent.	Case No. 2024-1361 Original Action in Mandamus

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INTRODUCTION

Free and fair elections are a compelling government objective of the highest order. Preventing voter fraud and maintaining public confidence in electoral integrity—or shoring it up where needed—are therefore paramount objectives of the Secretary of State.

Pursuit of these objectives is particularly crucial when it comes to absentee voting. Absentee voting is more susceptible to fraud than in-person voting and, thus, presents unique challenges to maintaining public confidence in elections. In-person voting takes place in the presence of watchful election officials and involves an unbroken chain of custody of ballots from voters to those officials.[1] Absentee voting, by contrast, necessarily takes place outside the presence of election officials. As a result, States, including Ohio, often regulate the custody of absentee ballots to ensure the integrity of each voter's ballot. In general, Ohio's approach is to bar anyone other than a voter or election officials, usually in bipartisan teams, from handling a voter's ballot. *See, e.g.*, R.C. 3501.26; R.C. 3509.05(C)(1), (3); R.C. 3515.04; R.C. 3509.08(A)–(B). Ohio has also long provided a narrow exception permitting certain enumerated close family members to return a voter's absentee ballot. R.C. 3509.05(C)(1). These sensible guardrails restrict ballot harvesting and ensure that only eligible voters can access and complete ballots, that voted ballots reliably make their way to the board of elections, and that voters can be confident no one will tamper with their—or any other voter's—completed ballots.

74 days ago, on July 22, 2024, a federal court issued an injunction creating a narrow exception to Ohio's general ballot-harvesting restrictions. Now, Ohio must also allow a voter who needs assistance by reason of a disability to select a person of the voter's choice, other than the

[1] *See* Commission on Federal Election Reform, Building Confidence in U.S. Elections § 5.2 (Sept. 2005), https://www.eac.gov/sites/default/files/eac_assets/1/6/Exhibit%20M.PDF.

voter's employer or agent of that employer or officer or agent of the voter's union, to return the voter's absentee ballot during the early voting period.

35 days ago, on August 30, 2024, Secretary of State Frank LaRose issued Directive 2024-21 (the "Directive") to implement new, more-secure procedures governing the return of absentee ballots by third parties—a voter's family member, or a qualifying assistor for a voter with a disability under the federal court's injunction—during the early voting period. Under the Directive, any third-party ballot-returner must return an absentee ballot inside the board of elections office, and the third party must fill out a short form attesting that he or she is either (1) a qualifying close family member of the voter or (2) a qualifying assistor of a voter with a disability who needs assistance voting by reason of the voter's disability.

Not until seven days ago, on September 27, 2024, did Relators file this mandamus action seeking to rescind the Directive. Relators served their Complaint on the Secretary just five days ago. Even on a whirlwind schedule that will have the case fully briefed just a week after the Secretary was served, Relators leave the Court with virtually no time to decide this challenge to Ohio's early voting procedures before early voting begins on Tuesday morning—let alone for the Secretary or Ohio's 88 county boards of elections to implement any changes in any kind of an orderly fashion.

The Court should deny Relators' mandamus petition. Relators' delay is a sufficient reason to deny the petition because granting it at this late juncture will imperil the public "[c]onfidence in the integrity of our electoral processes [that] is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). This petition could have been filed a month ago; instead, Relators opted for an ambush, and this Court should not reward that choice of strategy.

In all events, Relators fail to make out a case for the extraordinary remedy of mandamus on the merits, too. Despite taking a month to ponder the Directive, Relators still have not managed to identify any legal flaws in Ohio's prompt implementation, in August, of procedures to account for a federal-court injunction that issued in late July. Each of their three challenges to the Directive fails as a matter of law.

Relators first argue that the Directive is inconsistent with the statute governing return of absentee ballots to a drop box or a board of elections office. But this argument fails to account for the Secretary's longstanding authority to issue directives prescribing election procedures that supplement statutes. Relators never attempt to square their argument with that authority.

Relators next argue that the Directive violates Ohio's equal-protection guarantee. But Relators do not bother to argue that the Directive implicates a fundamental right or a suspect class, or even that voters who are assisted in returning their ballots are similarly situated to voters who are not. Without any of those elements, the Equal Protection Clause requires only that the Directive satisfies rational basis scrutiny—if the Clause applies at all. And the Directive, which serves the State's important interest in maintaining the integrity of its elections, leaps that benchmark with miles to spare.

Finally, Relators briefly argue that the Directive violates Section 208 of the Voting Rights Act, 52 U.S.C. 10508. Relators overlook that the Directive does just what Section 208 and the federal court's injunction require: It allows voters who need assistance in voting to receive assistance from a person of their choice, and it allows that assistor to give that assistance. Relators cite just one authority for their Section 208 argument—the very federal court decision the Directive was promulgated to implement. But the Directive was not at issue in that case, and no party has argued that it *violates* the injunction it implements. And more to the point, the Directive does not

bar qualifying voters from choosing anyone to return an absentee ballot, so it complies with even the broadest possible reading of Section 208.

The Court should deny Relators' mandamus petition and uphold the Secretary's lawful and constitutional Directive.

BACKGROUND

A. Voting in Ohio

Ohio offers "generous, reasonable, and accessible voting options to all," including "many conveniences that have generously facilitated voting participation." *Ohio Dem. Party v. Husted*, 834 F.3d 620, 623, 628 (6th Cir. 2016). As a result, "it's easy to vote in Ohio. Very easy, actually." *Id.* at 628. Ohio's array of conveniences and accommodations make its elections accessible for everyone, including voters with disabilities.

Start with in-person voting. Ohio offers nearly a month of in-person voting, including four days with evening hours and four weekend days.[2] The State works hard to ensure that polling places are accessible for voters with disabilities. In-person voters who cannot enter a polling place can take advantage of curbside voting with assistance from a bipartisan team of election workers.[3] Before each election, county boards of elections must verify and attest that each polling place complies with Ohio and federal accessibility requirements through an extensive compliance

[2] Ohio Secretary of State, Voting Schedule for the 2024 Elections, https://www.ohiosos.gov/elections/voters/current-voting-schedule/2024-schedule.

[3] R.C. 3501.29(C); Ohio Secretary of State, *Election Official Manual* (*EOM*) 210–12 (Dec. 20, 2023), https://www.ohiosos.gov/globalassets/elections/directives/2023/eom/eom_fullversion_2023-12.pdf.

review.[4] Moreover, boards of elections must proactively "train their precinct election officials on the rights of voters with disabilities and how to assist and communicate effectively" with voters.[5]

Ohio also offers generous absentee voting options. Any Ohio voter may vote absentee by requesting an absentee ballot as long as ten months or as short as a week before an election. R.C. 3509.02, 3509.03(D). A voter with a disability may request an absentee ballot via a paper form or an electronic form that can be completed with assistive technology.[6] A voter with a disability may also request an electronically delivered ballot that can be marked electronically, then printed and returned.[7]

Ohio voters may return absentee ballots by mail, at a board of elections office, or to a secure drop box (if the voter's county board of elections exercises its discretion to offer a drop box). R.C. 3509.05(C)(1), (3). If a voter cannot leave her home, she may request that a bipartisan team of election workers bring a ballot to her home, assist with marking it if needed, and return the ballot

[4] *EOM* at 170–72; R.C. 3501.29(E); Form 16, Ohio Secretary of State Verification of Accessible Parking, https://www.ohiosos.gov/globalassets/elections/forms/16.pdf; Form 17, Ohio Secretary of State Verification of Accessible Polling Locations, https://www.ohiosos.gov/globalassets/elections/forms/17.pdf.

[5] *EOM* at 272.

[6] Form 11-A, Absentee Ballot Application, https://www.ohiosos.gov/globalassets/elections/forms/11-a_english.pdf.

[7] *See EOM* at 203–06; Form 11-G, Application for Absent Voter's Ballot by a Voter With a Disability & Request to Use Remote Ballot Marking System, https://www.ohiosos.gov/globalassets/elections/forms/11-g.pdf.

for the voter.[8] And if a voter or her minor child is unexpectedly hospitalized, she may request delivery of an absentee ballot to her hospital by a bipartisan team of election workers.[9]

B. Previous Ballot-Harvesting Litigation

In December 2023, the League of Women Voters of Ohio and a Cuyahoga County resident sued Secretary LaRose, among others, in the Northern District of Ohio, seeking to invalidate Ohio's restrictions on ballot harvesting. *See* Complaint, *League of Women Voters of Ohio v. LaRose*, Dkt. No. 23-cv-02414 (filed Dec. 19, 2023). Those restrictions prohibit knowing possession or return of absentee ballots by anyone other than the absentee voter's spouse, father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece. R.C. 3509.05(C)(1), 3599.21(A). The Republican National Committee and Republican Party of Ohio, Intervenors here, participated in the federal lawsuit as intervenor-defendants.

The lawsuit proceeded on an expedited timeline through discovery and summary judgment briefing. On July 22, 2024, the district court granted the plaintiffs' summary judgment motion on one ground, holding that Section 208 of the Voting Rights Act, 52 U.S.C. 10508, preempts the restrictions on possession and return of absentee ballots by assistors of voters who need assistance in voting by reason of disability. *See League of Women Voters of Ohio v. LaRose*, 2024 WL 3495332 (N.D. Ohio July 22, 2024). The court accordingly enjoined the Secretary from enforcing

[8] R.C. 3509.08(A); *EOM* at 213; Form 11-F, Application for Absent Voter's Ballot by Confined Voter or a Voter With a Personal Illness, Physical Disability, or Infirmity, https://www.ohiosos.gov/globalassets/elections/forms/11-f.pdf; Form 12-C, Identification Envelope For Disabled Voter Aided by Election Officials in Marking Ballot, https://www.ohiosos.gov/globalassets/elections/forms/12-c.pdf.

[9] R.C. 3509.08(B); Form 11-B, Absentee Ballot Application – Medical Emergency, https://www.ohiosos.gov/globalassets/elections/forms/11-b.pdf.

those provisions to the extent they are preempted. *See id.* No party appealed, and the time to appeal has expired. *See* 28 U.S.C. 2107(a).

C. The Secretary's Implementation of the *League of Women Voters* Injunction

In response to the *League of Women Voters* injunction, on August 30, 2024, the Secretary issued the Directive. The Directive requires anyone who is delivering an absentee ballot for another to sign an attestation verifying compliance with the law. The form thus requires the assistor returning the ballot to attest that he or she is returning the ballot on behalf of a qualifying family member, or on behalf of a voter with a disability and that the assistor is not someone disqualified from doing so by federal law. *See* Directive 2024-21 at 1–3. The Directive requires the person returning the ballot to complete the attestation form in person at the office of the county board of elections. *Id.* at 2.

Five weeks later, and just one week before early voting began, Relators served their Complaint in this lawsuit on Secretary LaRose. Even on an extremely expedited briefing schedule, the matter will be fully briefed on Monday, October 7, at 3:00 p.m.—leaving the Court just 17 hours to decide the case before early voting begins on Tuesday, October 8 at 8:00 a.m., and leaving Secretary LaRose and Ohio's 88 county boards of elections no time at all to implement any order before early voting begins and drop boxes become available for the November 5, 2024 general election.[10]

ARGUMENT

Relators seek a writ of mandamus, which requires them to show "(1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent official or governmental

[10] *See* Ohio Secretary of State, Voting Schedule for the 2024 Elections, https://www.ohiosos.gov/elections/voters/current-voting-schedule.

unit to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law." *State ex rel. Manley v. Walsh*, 2014-Ohio-4563, ¶ 18. "[M]andamus is not a writ of right and its allowance or refusal is a matter of discretion with the court." *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141, 160 (1967) (citation omitted). It is "an extraordinary remedy 'to be issued with great caution and discretion and only when the way is clear.'" *Manley* at ¶ 18. "[T]o prevail, any legal right claimed by relators must be clear: unclouded, easy to perceive and understand, and free from obscurity or ambiguity." *State ex rel. DeMora v. LaRose*, 2022-Ohio-2173, ¶ 85 (Fischer, J., concurring in part and dissenting in part); *see, e.g.*, *State ex rel. Pike Cty. Conv. and Visitor's Bureau v. Pike Cty. Bd. of Commrs.*, 2021-Ohio-4031, ¶ 20 (per curiam) (denying mandamus because the "absence of statutory guidance" on a point conferred "discretion" and meant the relator lacked a "clear legal right" to the relief it sought). Relators have the burden to establish all elements of the legal test for mandamus by "clear and convincing evidence." *DeMora* at ¶ 29; *see Manley* at ¶ 24–26 (denying mandamus when facts were unsettled).

Relators have failed to carry their demanding burden. Relators' dilatoriness in seeking relief alone dooms their mandamus petition. And on the merits, Relators have failed to show any violation of law sufficient to warrant that extraordinary relief. The Court should deny the petition.

I. THE COURT SHOULD REJECT RELATORS' LAST-MINUTE REQUEST TO CHANGE THE RULES GOVERNING THE 2024 GENERAL ELECTION.

Just last week, the Relators filed a petition for mandamus against a directive published a month ago, claiming that the Directive violates Ohio's Election Code, the Ohio Constitution, and the Voting Rights Act. With less than forty days until Election Day, and with early voting beginning early next week, the Relators would have the Court adjudicate these novel challenges, find that the Relators have a "clear legal right" to mandamus, and order the Secretary to set aside

his Directive and come up with a new way to run the election, "ensure compliance with state and federal law," and "protect the security of absentee ballot delivery." Directive 2024-21 at 2.

Of course, the Relators' legal arguments come nowhere close to establishing that the Directive is unlawful, let alone "clearly" so. But the Court need not—and should not—reach the merits at all in this case. The Relators are too late. Early voting is just days away, and Ohioans deserve clarity on the rules by which it will be conducted. Those rules should be set by the Legislature and, as needed, by the Secretary elected to serve as the State's chief election officer—not by this Court and certainly not in late-breaking litigation. The Court should dismiss the petition.

To begin, Relators' month-long delay alone disqualifies them from receiving mandamus relief. "[I]t is well settled that an application for the writ must be made within a reasonable time after the alleged fault," and "delay in making an application may afford sufficient cause for its denial." *State ex rel. Moore v. Sanders*, 65 Ohio St.2d 72, 75 (1981); *see also Paschal v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 141, 142 (1995) (denying mandamus because relators "delayed nine days before filing their complaint in this case"). Here, it is ironic that Relators urge the Court to grant mandamus because of "the need to resolve this election dispute in a timely fashion." Compl. ¶ 73 (quoting *State ex rel. Painter v. Brunner*, 2011-Ohio-35, ¶ 30 (2011)). It is *Relators* who, when the Secretary issued his Directive over two months before the election, decided to sit on their putative rights for half that time. They cannot now use their extraordinary delay to justify their request for extraordinary relief.

But even aside from the specific request for mandamus relief, the Relators' claims should be rejected for an even more fundamental reason. According to what has become known as the *Purcell* principle, courts ordinarily decline to alter state election procedures in the period close to an election. *See Purcell*, 549 U.S. 1 (per curiam); *Democratic Natl. Commt. v. Wis. State*

Legislature, 141 S.Ct. 28, 30 (2020) (Kavanaugh, J., concurring); *see also Republican Natl. Commt. v. Democratic Natl. Commt.*, 589 U.S. 423, 424 (2020) (per curiam); *Merrill v. Milligan*, 142 S.Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (collecting cases). Thus, where (as here) a litigant comes forward at the eleventh hour to challenge the State's chosen election rules, there is a strong presumption against granting the requested relief, irrespective of the merits.

The *Purcell* principle flows naturally from three related insights. *First*, it is a "basic tenet of election law" that, when "an election is close at hand, the rules of the road should be clear and settled." *Democratic Natl. Commt.*, 141 S.Ct. at 31 (Kavanaugh, J., concurring). Last-minute judicial intervention is often antithetical to that end. *Republican Natl. Commt.*, 589 U.S. at 425 (the *Purcell* principle "seeks to avoid . . . judicially created confusion"). "Court orders affecting elections" can "result in voter confusion," and "[a]s an election draws closer, that risk will increase." *Purcell*, 549 U.S. at 4–5.

Second, "[e]ven seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences." *Democratic Natl. Commt.*, 141 S.Ct. at 31. "If a court alters election laws near an election," election administrators must scramble to "devise plans to implement" the court's order. *Id.* The *Purcell* principle thus also "prevents election administrator confusion—and thereby protects the State's interest in running an orderly, efficient election." *Id.* Because last-minute changes can have drastic repercussions, sometimes unforeseen to the judicial branch, the prerogative for making such decisions belongs to officials who are most likely to be able to spot and solve practical election-administration problems and who can "bear the responsibility for any unintended consequences." *Id.*; *see also id.* at 30 (Gorsuch, J., concurring) (*Purcell* principle guards against

"individual judges . . . improvis[ing] with their own election rules in place of those the people's representatives have adopted").

And *third*, refraining from late judicial tinkering with elections "discourages last-minute litigation and instead encourages litigants to bring any substantial challenges to election rules ahead of time, in the ordinary litigation process." *Id.* at 31 (Kavanaugh, J., concurring).

Three Justices of this Court have already recognized that these principles apply with full force to a last-minute mandamus petition in Ohio's courts. *See Demora*, 2022-Ohio-2173, ¶ 72 (Kennedy, J., concurring in part and dissenting in part); ¶ 95–98 (Fischer, J., concurring in part and dissenting in part); ¶ 127–33 (DeWine, J., concurring in part and dissenting in part). And for good reason. Every one of the principles mentioned above finds a ready home in Ohio law. This Court has recognized the "important state interest[]" in "avoiding voter confusion," as well as the "compelling state interest for the state, the Secretary of State and county boards of elections, to see that elections are conducted in an orderly manner." *State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St.3d 338, 344, 346 n.1 (1996). Along similar lines, Ohio courts are sensitive to the administrative difficulties state officials face when confronted with late-breaking judicial orders in the election context. For that reason, this Court has frequently noted that "[e]xtreme diligence and promptness are required in election-related matters," *State ex rel. Commt. for the Charter Amendment v. City of Westlake*, 2002-Ohio-5302, ¶ 16, because "relators' delay" in such cases can "prejudice[] respondents" by forcing the courts to hear the case in a rush and by "impair[ing] boards of elections' ability" to prepare for the election, *see State ex rel. Willke v. Taft*, 2005-Ohio-5303, ¶ 18; *see also State ex rel. Syx v. Stow City Council*, 2020-Ohio-4393, ¶ 11 ("In elections cases, relators must act with the utmost diligence.").

If ever the *Purcell* principle counseled in favor of dismissing an election challenge, it does so here. The Directive is a prime example of state officials making "difficult decisions about how best to structure and conduct the election." *Democratic Natl. Commt.*, 141 S.Ct. at 31 (Kavanaugh, J., concurring). In order to "ensure compliance with state and federal law"—including a recent federal district court order—and "to protect the security of absentee ballot delivery," the Secretary designed an attestation requirement and funneled third-party ballot returners towards it by making drop boxes off-limits. Directive 2024-21 at 2. Relators could have filed their complaint challenging this decision a month ago. Instead, they bided their time until last week to ask this Court to overturn that judgment call.

"This is exactly the type of case in which the court should exercise judicial restraint to prevent further voter and election-administrator confusion." *Demora* at ¶ 98 (Fischer, J., concurring in part and dissenting in part). Voters and state officials have already had to grapple with changes to Ohio's election rules caused by the district court's order in *League of Women Voters*. Without a hint of self-awareness, Relators' amici complain that, because the Secretary issued *clarifying* guidance "a mere two and a half weeks before early voting is sent to begin," the Directive is engendering "confusion, anger, and frustration" among election officials. Br. of Amici Curiae League of Women Voters of Ohio and Ohio State Conference of the NAACP 8. But if Relators and their amici had their way, this Court would force the Secretary to come up on the fly with a new method of ensuring the "security of absentee ballot delivery" with at most just *a few hours* before early voting begins to communicate the new rules to on-the-ground election officials at each of Ohio's 88 county boards of elections. And all that is not even to speak of informing voters that the old rules are no longer in effect and how to comply with the new rules. The Court

can judge for itself which approach would cause more "confusion, anger, and frustration" among Ohio's voters and election officials.

And humoring Relators' belated suit will only spawn imitators. If the Court were to grant mandamus (or even entertain the request), this Court—no stranger to being inundated with a "plethora of election cases" in October, *Purdy*, 77 Ohio St.3d at 346 n.1—could very well be treated to a host of similar challenges. That last-minute election litigation is especially likely to be funneled to this Court because the federal courts' adherence to the *Purcell* principle discourages tardy federal-court election challenges.

Fortunately, this case presents the ideal vehicle for recognizing the special need in the election context to discourage litigants from waiting until the last minute to challenge the State's election procedures. The authority to prescribe the rules of the road and the responsibility for executing them belong to the state legislature and executive—not the judiciary. This Court should deny the writ.

II. THE SECRETARY OF STATE HAS AUTHORITY TO ISSUE DIRECTIVES GOVERNING THE CONDUCT OF ELECTIONS.

Relators argue that Secretary LaRose lacked authority to issue the Directive because it supposedly contradicts the statute permitting county boards of elections to offer drop boxes for absentee voters. But Relators never so much as mention the Secretary's authority to issue directives just like the Directive or the Ohio decisions upholding that authority. And as those decisions confirm, the Directive is well within the Secretary's authority because it does not contradict the statute.

A. The Secretary has statutory authority to issue directives.

Secretary LaRose is the State's "chief election officer," R.C. 3501.04, and has express statutory authority to issue directives governing the conduct of elections. The Legislature has

authorized the Secretary of State to "[p]repare rules and instructions for the conduct of elections," "[i]ssue instructions by directives . . . to members of the boards as to the proper methods of conducting elections," and "[c]ompel the observance by election officers in the several counties of the requirements of the election laws." R.C. 3501.05(B), (C), (M).

The Secretary exercises that authority frequently to augment the statutes governing the conduct of elections, ensuring prompt responses to changing circumstances and uniform election administration statewide. For instance, the Secretary has issued a 400-plus page Election Official Manual as a permanent directive to guide boards of elections through the minutiae of election administration. *See* Ohio Secretary of State, *Directives, Advisories, Memos & Tie Votes*, https://www.ohiosos.gov/elections/elections-officials/rules/#manual. Invalidating it in whole or even in part, just as the election begins, would be disastrous. The Secretary has also issued more than two dozen temporary directives this calendar year on matters ranging from voter database maintenance (Directive 2024-08) to implementation of recently enacted legislation (Directive 2024-18) to canvass procedures (Directive 2024-22) to ballot language (Directive 2024-25) and beyond. These matters are granular, time-sensitive, and critical to conducting any fair, trustworthy election. Authority to prescribe statewide rules and procedures for these everyday matters of election administration is essential for effectuating the Secretary's role as the State's "chief election officer." R.C. 3501.04.

The Secretary's directive authority necessarily permits him to speak on an issue when a statute does not, as courts have recognized in rejecting challenges to other directives. For example, in 2020, the Tenth District rejected a similar challenge brought by one of the Relators here to a directive that limited counties to just one drop box each, even though the relevant statute did not then contain that limitation. As the Tenth District reasoned, statutory silence "does not compel the

conclusion that the Secretary cannot regulate the use of drop boxes" via his directive authority. *Ohio Dem. Party v. LaRose*, 2020-Ohio-4778, ¶ 39, 41–44 (10th Dist.). Similarly, in a separate case with identical lead parties, the Tenth District upheld a directive limiting the ways in which voters could return voter registration forms even though "the statute did not" impose any limits on how the forms could be delivered. *Ohio Dem. Party v. LaRose*, 2020-Ohio-4664, ¶ 46–48 (10th Dist.).

That only makes sense—otherwise, the Secretary's directive authority could add nothing to statutes and would ultimately mean nothing. A holding that statutory silence prohibits the Secretary from issuing directives would thus vitiate the Secretary's statutory authority to impose those very rules and limits in the election context. *See, e.g.*, *State ex rel. Dreamer v. Mason*, 2011-Ohio-2318, ¶ 23 ("[S]tatutory authority over the boards of elections is vested in the secretary of state. Among other duties, the secretary of state . . . issues directives and advisories to board members [and] compels observance of election laws." (citations omitted)).

Relators wholly ignore the Secretary's directive authority in this section of their brief, instead complaining that the Directive "imposes entirely atextual attestation and temporal requirements" on the return of a voter's absentee ballot by someone other than the voter. Relators' Br. 12. But the Secretary's directive authority *is* the authority to issue directives on matters not resolved by statutes. Relators' argument on this front cannot be squared with the Secretary's longstanding role. Accepting it would write the Secretary's directive authority out of the Ohio Revised Code. And doing so would invalidate not just this Directive, but many others the Secretary has issued or will issue, and would even imperil the Election Official Manual. Relators' *sub silentio* request for such a radical and far-reaching step, just as voting begins in a presidential election year, is unusually audacious. The Court should reject it.

B. Directive 2024-21 does not contradict any statute.

Instead of confronting the Secretary's authority to issue directives supplementing statutes, Relators mount a strained argument that the Directive contradicts Ohio's provisions for returning absentee ballots. It does not.

Ohio law permits county boards of elections, if they so chose, to allow voters to return absentee ballots in a single drop box placed outside one office of the county board of elections. R.C. 3509.05(C)(3). In particular, the statute provides:

> (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.
>
> (c) A secure receptacle shall be monitored by recorded video surveillance at all times. . . .
>
> (d) Only a bipartisan team of election officials may open a secure receptacle or handle its contents. . . .

The statute's plain text does not require any board of elections to offer a drop box—instead, it *authorizes* use of drop boxes. That means Relators' argument does not get off the starting blocks, because their reasoning starts with the claim that the "ab[ility] to utilize a drop box when doing so works for their schedule" is a "benefit expressly afforded to . . . all voters under Ohio law." Relators' Br. 2. Relators' contrary claim is simply wrong. And the plain text of R.C. 3509.05 never forbids the Secretary or a board of elections from setting additional rules governing the safe, secure use of drop boxes. If Relators are disappointed that such rules impact one group of voters differently than another, their complaint must be based on some external source—such as equal protection, *see infra* Section III—not on the statute's mere *authorization* of drop boxes. Finally, at

absolute minimum, Relators cannot and do not argue that the statute speaks to whether drop boxes can be used by non-family member assistors returning absentee ballots for voters with disabilities under the *League of Women Voters* injunction. Because the statute does not speak to that circumstance, it can hardly contradict the Secretary's Directive governing that circumstance.

Relators' argument is that R.C. 3509.05(C)(1) and (C)(3) "unambiguously provide[] for a voter's family member to return that voter's absentee ballot inside the board's office or via drop box." Relators' Br. 10. Relators are right about the first claim: R.C. 3509.05(C)(1) allows for a voter or her enumerated family member to deliver an absentee ballot "to the office of the board." But Relators' second claim is wrong. Subsection (C)(1) says nothing about drop boxes, and subsection (C)(3) provides only that boards of elections "may" provide a drop box "for the purpose of receiving absent voter's ballots under this section." It does not say that a voter's family member, let alone an unrelated assistor authorized by an injunction, *must be permitted* to return an absentee ballot to a drop box. It does not require drop boxes at all.

Perhaps recognizing this problem, Relators try to backfill their argument by claiming that subsection (C)(3) is not even needed, because the phrase "office of the board" in subsection (C)(1) already "plainly" permits family members to return absentee ballots to drop boxes. Relators' Br. 11. That is so, Relators say, because drop boxes are *part of* the "office of the board." *Id.* That argument is cryptic at best. Certainly, any drop boxes must be placed "on the property on which the office of the board is located." R.C. 3509.05(C)(3)(a). But that is a spatial proximity requirement, not a conceptual merger of identities—it does not mean drop boxes become part of the "office of the board." In fact, drop boxes must be placed "*outside* the office of the board," which would require a miracle of physics to achieve if Relators were right that a drop box *is* the office of the board. Relators' emphatic assertion (at 11) that drop boxes are "located *at* the office

of the board" similarly belies their argument. The statute's requirement to place any drop box "at" and "outside" the "office of the board" indicates that the drop box and the office of the board are separate, not that the statute merges them into each other.

Failing that, Relators drop back to their last refuge—a plea for the Court to "liberally construe" the law "in favor of the right to vote." Relators' Br. 11 (quoting *State ex rel. Skaggs v. Brunner*, 2008-Ohio-6333, ¶ 50). The Court need not and should not put a thumb on the scale. *Cf.* Antonin Scalia, *Assorted Canards of Contemporary Legal Analysis*, 40 Case. W. Res. L. Rev. 581, 582 (1989) (arguing that judges' role is neither "liberally to expand nor strictly to constrict" a statute's meaning by "laying a judicial thumb on . . . the scales," "but rather to get the [statute's] meaning precisely right"). But regardless, that canon of construction does not favor Relators. They identify no risk that anyone will be deprived of the right to vote under the Secretary's Directive. Ohio provides many avenues for voting and many accommodations for voters with disabilities. Asking an assistor to return an absentee ballot is just one of those ways. By contrast, invalidating election-integrity protections like the Directive, and increasing the risks of voter fraud the Directive seeks to prevent, itself imperils the right to vote by discouraging voters from turning out and by diluting valid votes. *See Purcell*, 549 U.S. at 4. If anything, Relators' plea for liberal construction cuts against them.

III. THE SECRETARY'S DIRECTIVE DOES NOT VIOLATE OHIO'S EQUAL PROTECTION CLAUSE.

The Court should also reject Relators' Equal Protection claim. The Ohio Constitution's Equal Protection Clause "require[s] that all similarly situated individuals be treated in a similar manner." *Ohio Apt. Assn. v. Levin*, 2010-Ohio-4414, ¶ 33; *see also McCrone v. Bank One Corp.*, 2005-Ohio-6505, ¶ 7 (noting that "[t]he limitations placed upon governmental action by the federal and state Equal Protection Clauses are essentially the same"). In other words, the Equal Protection

guarantee "does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." *Ferguson v. State*, 2017-Ohio-7844, ¶ 30.

Thus, failure to show that the two classes of persons created by the government action are "similarly situated" will "foreclos[e]" an "equal protection challenge." *GTE N., Inc. v. Zaino*, 2002-Ohio-2984, ¶ 30; *see also State ex rel. Riter v. Indus. Comm.*, 91 Ohio St.3d 89, 92 (2001) (noting that the presence of "similarly situated" individuals is "an equal protection prerequisite"). If the different classes of persons are similarly situated, the Court must then "determin[e] the proper standard of review." *Arbino v. Johnson & Johnson*, 2007-Ohio-6948, ¶ 64; *see also In re Adoption of Y.E.F.*, 2020-Ohio-6785, ¶ 27–32. The appropriate level of scrutiny depends on whether the claim involves "a fundamental right or a suspect class." *Sherman v. Ohio Pub. Emps. Retirement Sys.*, 2020-Ohio-4960, ¶ 14. "[W]hen no such right or class is involved, the government's action is subject to rational-basis review," and "it will be upheld 'if it is rationally related to a legitimate government interest.'" (Citation omitted.) *Sherman* at ¶ 14.

Under these principles, Relators' equal protection challenge to the Directive must fail. Voters who personally submit their own ballots are not similarly situated to those who engage others to submit their ballots for them. Even if they were, the Directive involves neither a fundamental right nor a suspect class, and easily satisfies rational basis scrutiny.

A. Voters who submit their own ballots are not similarly situated to voters who rely on others to submit their ballots on their behalf.

"The comparison of only similarly situated entities is integral to an equal protection analysis," and "equal protection does not require things which are different in fact to be treated in law as though they were the same." *Y.E.F.* at ¶ 27 (internal quotation marks omitted). In this case, the differential treatment alleged in the complaint arises because, under the Directive, voters

submitting their own ballots may do so by drop box while "voters with disabilities and voters who rely on a designated family member to return their ballots" may not. Compl. ¶ 63. Instead, the persons assisting the voters in the latter group must fill out an attestation form confirming that they are complying either with Ohio law or Section 208 of the Voting Rights Act in returning the ballot. Directive 2024-21 at 2–3.

Relators' claim fails from the start. Voters who submit their own ballots and voters who have others submit their ballots for them are not in "all relevant respects alike." *Ferguson*, 2017-Ohio-7844, at ¶ 30, quoting *Park Corp. v. City of Brook Park*, 2014-Ohio-2237, ¶ 10. Here, the "relevant" respect is the government's interest in preventing voter fraud. The Directive expressly provides that, "to protect *the security of absentee ballot delivery*, the only individual who may use a drop box to return the ballot is the voter." (Emphasis added.) Directive 2024-21 at 2. The attestation requirement serves the same purpose. Third parties must attest, "under penalty of election falsification," that they are either "lawfully designated to assist another voter with the return of an absentee ballot" under Ohio law, or that "they are complying with Section 208 of the Voting Rights Act." *Id.* at 2–3.

From a fraud-prevention standpoint, the two classes of voters recognized by the Directive are not similarly situated. Multiple courts have recognized that "voter fraud has occurred in the past in relation to voter assistance." *Mich. Alliance for Retired Ams. v. Secy. of State*, 334 Mich.App. 238, 259 (2020); *see also In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 577 Pa. 231, 246 (2004) (observing that limiting third-person delivery of ballots has the "obvious and salutary purpose" of reducing fraud); *New Ga. Project v. Raffensperger*, 484 F.Supp.3d 1265, 1300–01 (N.D. Ga. 2020) (noting that limiting third-person collection of ballots serves the state interest in preventing voter fraud), *stayed in part*, 976 F.3d 1278 (11th Cir. 2020).

Because ballots submitted by a third party are more susceptible to fraud than ballots submitted by the voter, there is nothing "unequal" about the Secretary imposing its attestation requirement on the first group but not the second.

Indeed, imposing an attestation requirement across the board would be to "'require things which are different in fact to be treated in law as though they were the same.'" (Alterations omitted.) *Y.E.F.*, 2020-Ohio-6785, at ¶ 27, quoting *T. Ryan Legg Irrevocable Trust v. Testa*, 2016-Ohio-8418, ¶ 73. A voter who herself appeared at the board of elections could *not* attest that she was acting pursuant to Ohio's third-party ballot collection laws or pursuant to Section 208 of the Voting Rights Act. That it is nonsensical to apply the Directive's requirements on both purported classes of voters confirms that the two are dissimilarly situated.

No one disputes that "similarly situated individuals" should "be treated in a similar manner." *Ohio Apt. Assn.* 2010-Ohio-4414, at ¶ 33. But nothing prohibits the Secretary from treating differently situated individuals in a different manner. Relators do not even attempt to argue that these two groups of voters are similarly situated. Because they are not, Relators' equal protection challenge is "foreclos[ed]." *GTE N.*, 2002-Ohio-2984, at ¶ 30.

B. The Directive satisfies rational basis scrutiny.

Even assuming Relators have satisfied the similarly situated prerequisite, their equal protection challenge fails for another reason. Any differential treatment of voters who return their own ballots and voters who return their ballots via third party at most triggers rational basis scrutiny and easily satisfies that lenient standard.

1. The Directive does not implicate a fundamental right or a suspect class.

This Court applies rational basis scrutiny when the government's classification "does not involve a fundamental right or a suspect class." *Ferguson*, 2017-Ohio-7844, at ¶ 31. No such right

and no such class are implicated by the Directive.

First, the Directive's challenged instructions do not involve a fundamental right. Fundamental rights are those that are "objectively, deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." (Alterations accepted; citation omitted.) *State v. Aalim*, 2017-Ohio-2956, ¶ 16. Nothing nearly that dramatic is implicated in this case. Relators cannot rely on the right to vote, because that does not include the "right to receive absentee ballots." *McDonald v. Bd. of Election Commrs.*, 394 U.S. 802, 807 (1969); *see also Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (noting that the right to vote does not include "the right to vote in any manner"); *Griffin v. Roupas*, 385 F.3d 1128, 1130–33 (7th Cir. 2004) (holding that there is no constitutional right to "unlimited absentee voting"). But, in fact, this case does not concern a putative right to absentee ballots, drop boxes, or even third-party ballot delivery. The only "right" at stake is the voter's right to have a third party submit her absentee ballot in a drop box without attesting to compliance with ballot-delivery laws. *See Aalim* at ¶ 16 (requiring a "careful description of the asserted fundamental liberty interest" (internal quotation marks omitted)). Relators have not attempted to argue that this is a "fundamental" right, nor can they.

Neither can they show that the Directive implicates a suspect class. A suspect class is "one saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." (Citation omitted.) *Aalim* at ¶ 33. There is no such class here. Relators suggest that the relevant class here is "voters with disabilities," Compl. ¶ 63, but disabled persons are not a suspect class. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441–43 (1985); *accord S.S. v. E. Ky. Univ.*, 532 F.3d 445, 457 (6th Cir. 2008) ("Disabled

persons are not a suspect class for purposes of an equal protection challenge."). More to the point, the Directive does not draw the line at disabilities; it distinguishes between voters based on whether they returned their own ballot.

The fact that the Directive's line is based not on who the voters *are* but on what the voters have *done* confirms that Relators' equal protection challenge is meritless. In fact, every voter—disabled or not—may deliver her ballot through a third party under the Directive. And every voter—disabled or not—may deliver her ballot to a drop box. And no voter—disabled or not—may deliver her ballot to a drop box *by a third party*. Because the Directive hinges on how the voter chose to deliver her ballot rather than any pre-existing condition, it is debatable whether the Directive singles out any class at all. But even if the Court does consider the group of voters who *chose* to deliver their ballots by third parties to be a class, there is no basis for finding that this class is a suspect one.

2. The Directive is rationally related to a legitimate government interest.

Because neither a fundamental right nor a suspect class is implicated by the Directive, this Court will uphold the Directive's classification if it survives rational basis scrutiny. *Ferguson*, 2017-Ohio-7844, at ¶ 31. "Where the traditional rational basis test is used great deference is paid to the state, the only requirement being to show that the differential treatment is rationally related to some legitimate state interest." *Conley v. Shearer*, 64 Ohio St.3d 284, 289 (1992), quoting *State ex rel. Heller v. Miller*, 61 Ohio St.2d 6, 11 (1980). Under that test, the State's classification must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." (Citation omitted.) *State v. Batista*, 2017-Ohio-8304, ¶ 22.

The Directive easily clears this low bar. Start with the State's "compelling interest in preserving the integrity of its election process." (Citation omitted.) *Purcell*, 549 U.S. at 4. "Voter fraud drives honest citizens out of the democratic process," and "[v]oters who fear their legitimate

votes will be outweighed by fraudulent ones will feel disenfranchised." *Id.* Furthermore, absentee voting and third-person ballot delivery present especial risks of voting fraud. *See Griffin*, 385 F.3d at 1130; *supra* at 1.

Next, consider the Directive's relation to that interest. An attestation that the third party *is* in fact lawfully delivering someone else's vote is a commonsense anti-fraud measure. And the Secretary's decision to disallow drop-box voting for third-party deliveries is equally understandable. Drop boxes are required by law to be "monitored by recorded video surveillance at all times," and the video must be made available for inspection upon request. R.C. 3509.05(C)(3)(c). If third parties were allowed to submit absentee ballots via drop box, anyone watching the surveillance video would be unable to tell whether a person placing multiple ballots into the drop box was engaging in voter fraud or legitimately submitting ballots on someone else's behalf. *See also Batista* at ¶ 22 (a classification subject to rational basis scrutiny "is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data" (Citation omitted.)).

In short, the Secretary's decision not to permit third-party ballot deliveries to drop boxes is a judgment call in support of a compelling governmental interest. And the balance the Directive struck was perfectly rational, to say the least. The Court should therefore reject Relators' equal protection challenge.

C. Relators' arguments to the contrary are unconvincing.

Very little of what Relators say in their opening brief is responsive to these points. Even though this Court has said that it is an "equal protection prerequisite" for the two classes of individuals to be "similarly situated," *Riter*, 91 Ohio St.3d at 92, Relators say nothing about whether voters who deliver their own ballots are different than voters who have someone else deliver their ballots for them. And even though this Court has said that "[t]he first step in an equal-

protection analysis is determining the proper standard of review," *Arbino*, 2007-Ohio-6948, ¶ 64, Relators never give any indication what level of scrutiny they think applies here, let alone how the Directive would fare under it.

In fact, Relators never even attempt to argue that a fundamental right or a suspect class is involved. The only right Relators even mention in connection with their equal protection challenge is "the right to cast their [absentee] ballot via drop box." Relators' Br. 16. But that is a misleading and inaccurate description. All voters retain "the right to cast their [absentee] ballot via drop box." The only "right" at stake here is the right to *have a third party return a voter's absentee ballot to a drop box*. And since there is no fundamental right to cast absentee ballots *at all*, *see McDonald*, 394 U.S. at 807, there clearly is no fundamental right to have a third party return an absentee ballot to a drop box.

Rather than apply this Court's equal protection framework, Relators appear to urge one of their own making. Apparently, Relators believe that, because Ohio had *previously* permitted individuals to return their ballots to drop boxes personally or via third parties, it violates equal protection to withdraw that permission for "voters who rely on assistance." Relators' Br. 16–17. In Relators' view, then, once a State creates *any* pathway to voting, that pathway becomes, effectively, irrevocable.

Equal protection does not require this kind of ossification. Indeed, Relators' implicit premise that voting by drop box via third parties has suddenly become a fundamental right cannot be squared with the fact that fundamental rights must be "*deeply* rooted in this Nation's history." (Emphasis added; citation omitted.) *Aalim* at ¶ 16. Nor do any of Relators' cited cases support their novel rule. Each of those cases necessarily depended upon a finding that the differently treated voters were similarly situated. In *Obama for America v. Husted*, 697 F.3d 423, 435 (6th Cir. 2012),

the court held that military and overseas voters present in Ohio were similarly situated to other Ohio voters present in Ohio, and it therefore violated equal protection to give the option of in-person early voting to one group but not the other. In *Bush v. Gore*, 531 U.S. 98, 107 (2000), the Supreme Court found an equal protection problem because a voter in one county might have her ballot's validity decided differently than a similarly situated voter in a different county. Here, by contrast, Relators did not—and cannot—show that a voter who returns her own ballot is similarly situated to a voter who has someone else return it for her.

In short, there is nothing "arbitrary" about the Directive's treatment of voters. *Contra* Relators' Br. 17. Every voter has the right to vote in person. Every absentee voter has the right to return her ballot via drop box. Every absentee voter can ask an eligible third party to return her ballot for her. And no voter can have a third party return her ballot to a drop box and thereby skirt the attestation process. "Equal protection of the law means the protection of equal laws." *Conley*, 64 Ohio St.3d at 288 (citation omitted). That is what voters in Ohio have received, and Relators' challenge should be rejected.

IV. THE DIRECTIVE DOES NOT VIOLATE SECTION 208.

Last (and least), Relators briefly argue—in just two paragraphs—that the Directive violates Section 208 of the Voting Rights Act. Relators' Br. 18–19; *see* Compl. ¶ 65–68. Section 208 provides that voters who "require[] assistance to vote by reason of" disability "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.

Relators' abbreviated Section 208 argument lacks merit because there is no conflict between Section 208 and the Directive. Section 208 requires the State to allow voters with disabilities to receive assistance by a person of the voter's choice. The Directive allows that assistance, including assistance in returning the voter's absentee ballot.

The only authority Relators cite to support their reading of Section 208 is *League of Women Voters*, but that decision gets them nowhere. The district court in *League of Women Voters* considered Ohio's former rule prohibiting non-family members from possessing or returning absentee ballots. 2024 WL 3495332, at *2. *League of Women Voters* never addressed the Directive, which did not exist at the time. And the Directive is an entirely different kind of rule than Ohio's former pre-injunction rule. The former rule entirely foreclosed some would-be assistors from assisting voters with disabilities, and that was the reason that *League of Women Voters* held it conflicted with Section 208. *See* 2024 WL 3495332, at *15 ("Section 208 unambiguously recognizes that disabled voters have a right to choose their own facilitator. The Challenged Ohio Law directly contravenes that mandate."). By contrast, the Directive allows just what Section 208 requires: A voter with a disability can choose anyone to give assistance, and that person is allowed to give that assistance if willing and able to do so.

Tellingly, Relators do not so much as suggest that the Directive violates the injunction in *League of Women Voters*, which it in fact implements. No party to *League of Women Voters* has made that suggestion either, in this Court or in the federal district court. In fact, one *League of Women Voters* plaintiff is participating in this case as an amicus, but that plaintiff does not endorse Relators' Section 208 challenge to the Directive. *See generally* Br. of Amici Curiae League of Women Voters of Ohio and Ohio State Conference of the NAACP.

Relators, moreover, identify no support for their apparent view that Ohio's election procedures are invalid unless they maximize convenience for particular would-be assistors. Such a requirement would be boundless. Relators' view could require Ohio to extend the early voting period if a voter's preferred assistor could deliver a ballot on October 7 but not after early voting begins on October 8, for example. Or Relators' view could require Ohio to permit a voter's

preferred assistor to deliver a ballot in a different county if the assistor could more easily return the ballot there. And Relators' view would be impossible to square with not just Ohio's laws, but also the laws of other States that impose reasonable, modest requirements on third parties who agree to deliver a voter's absentee ballot—like requiring an assistor to turn in a ballot within a few days of receiving it, or preventing assistors from requiring payment to turn in ballots. *See* Natl. Conf. of State Legislatures, *Table 10: Ballot Collection Laws*, https://www.ncsl.org/elections-and-campaigns/table-10-ballot-collection-laws (collecting States' laws). The Court should reject Relators' argument as both groundless and boundless.

That conclusion should be especially easy for the Court to reach because Relator Duffy's concerns about the burdens his preferred assistor may experience—the only concerns Relators discuss in support of their request for *statewide* relief on this argument—also appear to be unfounded. At minimum, the burdens Relators assert are not "clear" as the facts must be in order to warrant mandamus relief. *See supra* at 7–8. Existing guidance already instructs Ohio's election officials to "make sure chairs are available for voters with mobility-type disabilities" or who "cannot stand for a long period of time" for other reasons. *EOM* at 171. Relator Duffy's preferred assistor says she suffers from such a mobility problem, Relators_018–19, ¶ 4–5, 8 (describing "mobility issues" preventing assistor from standing for more than 10 minutes), so she appears to qualify for this accommodation.

Relator Duffy's preferred assistor also expresses concern about parking and "potentially walk[ing] up to several blocks" to reach the board of elections office, Relators_019, ¶ 8, but Ohio already requires boards of elections to provide sufficient accessible parking for those with mobility problems. *See EOM* at 168–71. Moreover, Franklin County, where Relator Duffy lives, may permit assistants to deliver others' ballots via "a streamlined, convenient drive-through ballot drop-off

system" as Secretary LaRose has recommended. *See* Advisory 2024-03. Relator Duffy's preferred assistor expressed no concerns about whether she could deliver a ballot using that system. But even apart from that possibility, Relators never even hazard a guess about how long lines are likely to be at Relator Duffy's polling place, nor do they identify the likelihood that a line of that length will be prohibitive for Relator Duffy's preferred assistor.

Furthermore, Ohio already makes alternatives to absentee voting readily available for voters like Relator Duffy, such as having a bipartisan team of election workers deliver a ballot to the voter's home and return it to the board of elections, or having such a team deliver and return a ballot if the voter is unexpectedly hospitalized on Election Day or shortly before. *See supra* at 4–6.

Ultimately, the Directive sensibly responds to the risks of election fraud associated with ballot harvesting and promotes election integrity and public confidence in elections. Those are compelling interests of the highest order, necessary to maintain our representative form of government. *See State v. Jackson*, 2004-Ohio-3206, ¶ 37 (2004) ("[T]he integrity of the election and its results . . . is critical to our democratic form of government."); *State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St.3d 338, 346 n.1 (1996) (acknowledging the "compelling state interest" in conducting elections "in an orderly manner"); *see also Eu v. San Francisco Cty. Democratic Cent. Commt.*, 489 U.S. 214, 231 (1989) ("[P]reserving the integrity" of elections is "indisputably . . . a compelling interest."); *Purcell*, 549 U.S. at 4 (recognizing that maintaining "[c]onfidence in the integrity of our electoral processes," or shoring it up when needed, "is essential to the functioning of our participatory democracy"). And at absolute minimum, Relators are not clearly entitled to relief, let alone statewide relief, when they have failed to offer any viable evidence that anyone will be harmed. *See supra* at 7–8.

CONCLUSION

The Court should deny Relators' request for a writ of mandamus.

Respectfully submitted,

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