

Attachment 1

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

NORTHEAST OHIO COALITION FOR)	
THE HOMELESS, et al.,)	
)	
<i>Plaintiffs,</i>)	Case No. 1:23-CV-26-DCN
)	
v.)	
)	
OHIO SECRETARY OF STATE FRANK)	U.S District Judge Donald C. Nugent
LaROSE,)	
)	U.S. Magistrate Judge Jonathan D.
<i>Defendant,</i>)	Greenberg
)	
and)	
)	
OHIO REPUBLICAN PARTY, SANDRA)	
FEIX, AND MICHELE LAMBO,)	
)	
<i>Intervenor-Defendants.</i>)	

**BRIEF OF *AMICUS CURIAE* THE FOUNDATION FOR GOVERNMENT
ACCOUNTABILITY IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT**

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Ohio House Bill 4582-5, 7-9

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2022 National Election Security Poll, Center for Excellence in Polling (June 2022),
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Building Confidence in U.S. Elections, Commission of Federal Election Reform (Sept.
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Jeffrey Milyo, *The Effects of Photographic Identification on Voter Turnout in Indiana: A
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2007, rev’d Dec. 2007), <https://tinyurl.com/yffbzcdb> 6

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STATEMENT OF INTEREST

The Foundation for Government Accountability (“FGA”) is a nonpartisan, nonprofit organization that seeks to improve the lives of all Americans by improving welfare, workforce, healthcare, and election integrity policy at the state and federal levels. Launched in 2011, FGA promotes policy reforms that seek to free individuals from government dependence, restore dignity and self-sufficiency, and empower individuals to take control of their futures, including through free, fair elections that inspire confidence and encourage participation.

Since its founding, FGA has helped achieve more than 700 reforms impacting policies in 42 states and the federal government in policy areas related to welfare, healthcare, workforce, and election integrity. FGA advances its mission by conducting innovative research, deploying outreach and education initiatives, and equipping policymakers with the information they need to achieve meaningful reforms. FGA recently filed *amicus curiae* briefs with, among others, the United States Supreme Court in *Loper Bright Enterprises v. Raimondo*, *CFPB v. Community Financial Services Association of America*, *Biden v. Nebraska*, and *Azar v. Gresham*; with the Supreme Court of Missouri in *Doyle v. Tidball*; and with the United States Court of Appeals for the Eleventh Circuit in *League of Women Voters v. Florida Secretary of State*.

In this case, the State of Ohio has enacted voter photo-ID legislation that strikes a constitutional, common-sense balance, making it easy to vote, but hard to cheat. By doing so, Ohio has bolstered public confidence in the integrity of its elections while helping to guard against voter fraud. Now groups that oppose all voter ID laws designed to prevent election fraud and inspire voter confidence, no matter how reasonable they are or how strong the public support they garner, have stepped forward in opposition. Since this case directly implicates FGA’s core election-integrity mission, FGA files this *amicus curiae* brief in support of Defendant’s Motion

for Summary Judgment.

INTRODUCTION AND SUMMARY OF ARGUMENT

All Ohio citizens, regardless of their age, race, sex, religion, or political party, benefit from and should demand election integrity. While maintaining election integrity has historically been a bipartisan goal,¹ in recent years there have been attempts to tear apart sound public policy advancing that objective. Fortunately, those attempts have generally failed in the courts.

The challenge brought by plaintiffs against HB 458 deserves the same fate. It re-plows ground already tilled in other courts, challenging a fair and popular voter ID policy. Plaintiffs allege that the new photo ID law will visit “particularly severe harms upon young, elderly, and Black Ohioans, who are far more likely not to possess an acceptable form of photo identification.” (Amended Complaint (“Am. Compl.”), ECF No. 13, ¶ 85.) Plaintiffs also contend that the photo ID requirement will “disproportionately impact veterans.” (*Id.* ¶ 90.) And if a complaint against one facet of HB 458 can’t compel the Court to find a constitutional violation, plaintiffs claim the provisions of HB 458 collectively “are an all-sides attack on the voting process,” and they hope that conclusory arguments with no tether to fact will persuade the Court to rule on their behalf. (*Id.* ¶ 5.) But these assertions are all without merit. Similar photo ID requirements in other states cause at most only minimal inconvenience to voters. This truth also holds when paired with HB 458’s provision abbreviating the ballot-curing process.

The plaintiffs in this case assert that the photo ID requirement in HB 458 will result in

¹ For example, in 2005, a bipartisan Commission on Federal Election Reform chaired by former President Jimmy Carter and former Secretary of State James A. Baker III, recognized the importance of election integrity: “There is no evidence of extensive fraud in U.S. elections or of multiple voting, *but both occur*, and it could affect the outcome of a close election. The electoral system *cannot inspire public confidence if no safeguards exist to deter or detect fraud* or to confirm the identity of voters.” *Building Confidence in U.S. Elections* § 2.5 (Sept. 2005), App. 136-37 (“Carter-Baker Report”) (emphasis added).

various disparate impacts violating the equal protection rights of portions of the aforementioned groups. But even if that were the case (it is not), the Supreme Court has made clear that such claims are not viable under the federal constitution. In *Lewis v. Casey*, 518 U.S. 343 (1996), the Court restated its holding in *Washington v. Davis*:

There we flatly rejected the idea that “a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another.” We held that, absent proof of discriminatory purpose, a law or official act does not violate the Constitution, “solely because it has a . . . disproportionate impact.”

518 U.S. at 375 (internal citations omitted).

Further, plaintiffs seem to argue that voter fraud does not exist in Ohio, a dubious claim given numerous instances of fraud in Ohio and across the country. With no voter fraud to deter, their argument goes, the state lacks the legitimate state interest necessary to justify this new, improved version of Ohio’s voter ID reform. This argument fails. Here again, the Supreme Court has noted that election fraud has had “serious consequences” in other states and that legislatures are not “obligated to wait for something similar to happen closer to home” before taken preventive action. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2348 (2021). Ohio’s photo ID requirement is an even-handed policy enacted to strengthen Ohio’s deterrence against voter fraud and thereby increase confidence in elections. It by no means runs afoul of the federal constitution.

ARGUMENT

I. AT WORST, THE VOTER ID PROVISION OF HB 458 IMPOSES NO MORE THAN THE USUAL BURDENS OF VOTING AND THEREFORE NO CONSTITUTIONAL VIOLATION HAS OCCURRED.

A. The Challenged Provision and the Usual Burdens of Voting.

Like the Indiana photo ID law at issue in *Crawford v. Marion County*, 553 U.S. 181 (2008), the Ohio photo ID provision is a generally applicable, nondiscriminatory voting regulation. The

Supreme Court has established that voting comes with certain burdens. “[B]ecause voting necessarily requires some effort and compliance with some rules, the concept of a voting system that is ‘equally open’ and that furnishes an equal ‘opportunity’ to cast a ballot must tolerate the ‘usual burdens of voting.’” *Brnovich*, 141 S. Ct. at 2338, (quoting *Crawford*, 553 U.S. at 198). In elaborating on what the “usual burdens” might be, the Supreme Court has stated that “the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.” *Id.* at 198.

Further, the Sixth Circuit has established that, “[w]hen a plaintiff alleges that a state has burdened voting rights through the disparate treatment of voters, we review the claim using the ‘flexible standard’ outlined in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992).” *Obama for Am. v. Husted*, 697 F.3d 423, 429 (6th Cir. 2012), (parallel citations omitted.) The Anderson-Burdick test requires that a court: 1) consider the character and magnitude of the asserted injury to the constitutional right; 2) identify and evaluate the state’s interest in justifying the regulation, and 3) determine the legitimacy and strength of the state’s interests which make the burden of the regulation necessary. *Id.*

Plaintiffs contend that certain demographic populations are less likely to have appropriate IDs for voting and are also less likely to have access to the transportation necessary to obtain a photo ID. (Am. Compl., ECF No. 13, ¶ 94.) But even if that were true, such a burden is no more significant than the “usual burdens of voting.” *See Crawford*, 553 U.S. at 198. Moreover, under Ohio’s new law, HB 458, voters that cast their vote by mail absentee ballot are not required to provide a photo ID, merely the last four digits of their social security number. In other words, for hypothetical voters that find it too difficult to access the transportation needed to secure an ID,

mail-in absentee voting remains a readily available option. By voting by mail-in absentee ballot, these hypothetical voters can avoid the need for securing either transportation or a photo ID. Hypothetical problem solved.

B. Plaintiffs Have Alleged Insufficient Facts to Support Their Claim of Unconstitutionality.

Where, as here, there is no proof of discriminatory intent, “a generally applicable law with disparate impact is not unconstitutional . . . even when [its] burdens purportedly fall disproportionately on a protected class.” *Crawford*, 553 U.S. at 207 (Scalia, J., concurring) (citing *Washington v. Davis*, 426 U.S. 229, 248 (1976)). Here, plaintiffs have alleged insufficient facts to plausibly show discriminatory intent, and the facts show that the challenged provisions are neutral and generally applicable. The Court should thus recognize that “[i]t is for state legislatures to weigh the costs and benefits of possible changes to their election codes, and their judgment must prevail unless it imposes a severe and unjustified overall burden upon the right to vote, or is intended to disadvantage a particular class.” *Crawford*, 553 U.S. at 208 (Scalia, J., concurring).

Based on the facts alleged by Plaintiffs, the challenged provision does not result in a severe burden and is clearly justified by the State’s interests. *See, e.g., Richardson v. Hughs*, 978 F.3d 220, 235-36 (5th Cir. 2020).

C. Voter ID Laws Do Not Discourage Voter Turnout. In Fact, They May Actually Encourage It.

The thrust of plaintiff’s argument—that the burden of the photo ID requirement in HB 458 will cause many not to vote who otherwise would have—is a conclusory statement with no empirical data to support it. In fact, photo ID laws don’t discourage voters from voting. A recent report from the National Bureau of Economic Research found that even strict photo ID

requirements have “no negative effect on registration or turnout, overall or for any group defined by race, gender, age, or party affiliation.”²

Not only is there evidence showing that voter ID requirements have no negative effect on voter turnout, but there is evidence to suggest such requirements *encourage* voter participation. Following the enactment of the Indiana law upheld in *Crawford*, the Institute of Public Policy at the University of Missouri released a study on voter turnout post-implementation of the voter-ID law. The study showed that statewide voter turnout had *increased* by about two percentage points after the requirement’s enactment and that there was “no consistent evidence that counties that have higher percentages of minority, poor, elderly or less-educated population suffer any reduction in voter turnout relative to other counties.”³

Further, despite 34 states having voter ID requirements in place during the 2020 election, census data shows that 67% of all citizens aged 18 and older voted in that election, an increase of 5% over turnout in 2016.⁴ This was the highest national voter turnout rate since 1900, and it came on the heels of a 2018 midterm election with a turnout of 49%, the highest rate for a midterm since 1914.⁵

Ohio’s improvement to its voter ID law is a natural next step in the legislature’s continuing effort to implement common-sense reforms that promote election integrity and voter confidence

² Enrico Cantoni and Vincent Pons, *Strict ID Laws Don’t Stop Voters: Evidence from a U.S. Nationwide Panel, 2008-2018*. National Bureau of Economic Research (Feb. 2019, rev’d May 2021), <https://tinyurl.com/4hm6chmj>.

³ Jeffrey Milyo, *The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis*, Institute of Public Policy, University of Missouri (Oct. 2007, rev’d Dec. 2007), <https://tinyurl.com/yffbzcdb>.

⁴ Jacob Fabina, *Despite Pandemic Challenges, 2020 Election Had Largest Increase in Voting Between Presidential Elections on Record*, United States Census Bureau, <https://tinyurl.com/4zseh7n>.

⁵ *Republican Gains in 2022 Midterms Driven Mostly by Turnout Advantage*, Pew Research (July 12, 2023), <https://tinyurl.com/ynd9van4>.

in a continually changing world. Ohio’s new law merely brings Ohio in line with scores of other states with similar ID laws—laws that multiple courts have found to be constitutionally proper, including similar laws enacted in Indiana, Virginia, Georgia, Wisconsin, and Nebraska.

Never mind turnout numbers, what about voter experience? Voters may still be turning up to vote, but are these new laws still creating the significant burdens Plaintiffs claim? Polls conducted in Georgia following enactment of its voter ID reform—a stricter law than that at issue in this case—make clear that the answer is no. Voters do not view such laws as unduly burdensome. Results from the polls reveal that passage of a new voter ID law did not result in a negative voter experience.⁶ A poll conducted by the University of Georgia after the 2022 mid-term elections found that, of the 1,253 Georgia voters polled (63.5% white, 36.5% non-white), 0% of minority voters reported a “poor” experience voting, while 0.9% of white voters rated their experience as poor.⁷ Nearly universally, then, voters simply do not feel burdened, in plain contradiction of Plaintiffs’ claim.

II. PHOTO ID REQUIREMENTS LIKE THOSE IN HB 458 DETER FRAUD AND PROMOTE CONFIDENCE IN THE SECURITY OF ELECTIONS.

Plaintiffs contend that, without evidence of voter fraud, the legislature is without cause to enact new reforms to deter future bad action. But it wasn’t long ago that a bipartisan commission released a report stating that while it was unaware of any evidence of “extensive” voter fraud or multiple voting, nevertheless “both occur, and it could affect the outcome of a close election. The

⁶ Jane C. Timm, *Republicans claim some blue states have stricter voting laws. “In some cases, they’re right.* Yahoo! News (April 8, 2021), <https://tinyurl.com/yk8jxb29>.

⁷ M.V. Hood III, *2022 Georgia Post-Election Survey*, University of Georgia, School of Public & International Affairs, Spia Survey Research Center, (Jan. 17, 2023), <https://tinyurl.com/246pncvr>.

electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters.”⁸

This sentiment has been echoed by the Supreme Court, which has confirmed the legitimacy of the States’ interest in combatting negative impacts on “public confidence in the fairness of elections and the *perceived* legitimacy of the announced outcome.” *Brnovich*, 141 S. Ct. at 2340 (emphasis added). “[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.” *Crawford*, 553 U.S. at 197 (Stevens, J., plurality). Confidence in the integrity of the election draws people to the polls, much more so than even the ease and convenience of voting.

In other words, while it is extremely difficult to measure the amount of fraud that is deterred by photo ID laws like Ohio’s new law, and even harder to measure the level of impact these laws have on voter confidence, there can be no doubt that photo ID laws work to advance the important purposes just discussed. What opponents quibble about is whether the benefits provided by laws like HB 458 outweigh the costs. But absent facts to plausibly demonstrate discriminatory intent, “[i]t is for state legislatures [not corporate Plaintiffs whose litigation is funded by out-of-state progressive groups] to weigh the costs and benefits of possible changes to their election codes” *Crawford*, 553 U.S. at 208 (Scalia, J., concurring). And it is the judgment of the state legislature, not these Plaintiff groups, that “must prevail unless it imposes a severe and unjustified overall burden upon the right to vote, or is intended to disadvantage a particular class.” *Id.* The legislature has expressed its judgment by passing HB 458, a nondiscriminatory law applicable to all voters. That judgment must prevail.

⁸ *Building Confidence in U.S Elections*, § 2.5 (Sept. 2005), App. 136-137. (Carter-Baker Report).

III. THE VAST MAJORITY OF AMERICANS STRONGLY SUPPORT PHOTO ID REQUIREMENTS LIKE HB 458.

It comes as no surprise that laws requiring a photo ID to vote are wildly popular across the country. A 2022 national poll conducted by the Center for Excellence in Polling found that 63% of likely voters surveyed support requiring a valid, government-issued photo ID for in-person voting.⁹ A 2022 Gallup poll found that eight out of ten Americans support voter ID laws.¹⁰ This includes 97% of Republicans, 84% of Independents and 53% of Democrats.

These overwhelmingly favorable attitudes toward photo ID policies are at least in part due to the comfort the American people have in producing an ID, given that they are required to do so for a wide range of important activities they routinely engage in such as getting on a plane, checking into a hotel, applying for a mortgage, opening a bank account, or even buying alcohol. It is, therefore, only right and natural that, reflective of the will of the people, so many democratically elected state legislatures across the country, including Ohio's, would gravitate toward instituting an ID requirement for voting.

In adopting photo ID requirements like those in HB 458, states are not only protecting the integrity of the electoral process in their respective states; they are also doing their part to help ensure more accurate and fair outcomes in nationwide elections.¹¹ Congress, recognizing the importance of state photo ID laws in helping to promote nationwide election integrity, has ensured its federal election-related legislation can be leveraged by and work alongside photo ID requirements in the states. In *Crawford*, Justice Stevens, writing the lead opinion, observed that

⁹2022 *National Election Security Poll*, Center for Excellence in Polling (June 2022), <https://tinyurl.com/j6b49ftk>. The Center for Excellence in Polling is a project of Amici, Foundation for Government Accountability.

¹⁰ Nicole Willcoxon and Lydia Saad, *Eight in 10 Americans Favor Early Voting, Photo ID Laws*, Gallup (Oct. 14, 2022), <https://tinyurl.com/mrxrkm45>.

¹¹ See *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 192 (2008).

both the National Voter Registration Act and the Help America Vote Act include provisions “consistent with a State’s choice to use government-issued photo identification as a relevant source of information concerning a citizen’s eligibility to vote.” *Id* at 192.

Not only are photo ID requirements easy, effective, and fair, they are wildly popular with the vast majority of American voters, including voters in Ohio. This indicates that the vast majority of voters recognize that what minimal burden voter ID laws might place on a small group of voters, that burden is outweighed by the advantages these laws bring to promoting free and fair elections.

CONCLUSION

For the foregoing reasons, FGA respectfully urges the Court to grant Defendant’s motion for summary judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record by means of the Court's electronic filing system on this 13th day of October 2023.

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CERTIFICATE OF COMPLIANCE

I certify that this case has been assigned to the standard case management track and that the memorandum adheres to the page limitation specifications of Local Civ. R. 7.1(f).

/s/ Emmet E. Robinson
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