

EXHIBIT A

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

NORTHEAST OHIO COALITION FOR	:	
THE HOMELESS, <i>et al.</i>,	:	Case No. 1:23-cv-00026
	:	
	:	Judge Donald C. Nugent
Plaintiffs,	:	Magistrate Judge Jonathan D. Greenberg
	:	
v.	:	
	:	
FRANK LAROSE,	:	
	:	
Defendant.	:	

**HONEST ELECTIONS PROJECT PROPOSED AMICUS BRIEF
IN SUPPORT OF DEFENDANT FRANK LAROSE’S
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

The Honest Elections Project is a nonpartisan organization devoted to supporting the right of every lawful voter to participate in free and honest elections. The Honest Elections Project will defend the fair, reasonable, and commonsense measures that voters want in place to protect the integrity of the voting process. House Bill 458 is such a fair, reasonable, and commonsense measure, and the Honest Elections Project has an interest in defending it.

No party's counsel has authored the brief in whole or in part, and no party or party's counsel has contributed money to fund the preparation or submission of the brief.

The Court should grant the motions for summary judgment and uphold HB 458's voter ID requirements as constitutional. HB 458 does not severely burden Ohioans seeking to vote. On the contrary, any burden is minimal. "Running elections state-wide is extraordinarily complicated and difficult." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stay). But Ohio has made it extraordinarily uncomplicated and easy (and free) to attain photo ID. Additionally, data from across the country indicates that the law will not depress turnout and that its photo ID requirements are popular, not burdensome. This Court should neither declare the voter ID requirements of HB 458 unconstitutional nor enjoin them. Because there are no material facts in dispute, the case should end with a favorable disposition as to the summary judgment motions of Defendant and Intervenor-Defendants.

ARGUMENT

I. HB 458's photo ID requirement is a minimal burden on Ohioans seeking to vote.

It should be easy to vote and hard to cheat. When both are true, voter confidence and voter turnout go up, not down. And while some cynics on both sides say election security efforts are intended to depress turnout, such efforts do the opposite. On the contrary, *amicus curiae* can and

here does attest that voters overwhelmingly support regulations that increase their confidence that their votes count.

In Ohio, it's "easy to vote," *Ohio Democratic Party v. Husted*, 834 F.3d 620, 628 (6th Cir. 2016), and Ohio has taken measured and tailored steps to maintain that ease while simultaneously making cheating harder. Ohio makes it free and easy to obtain photo ID to vote, photo ID laws do not suppress votes, and photo ID requirements are popular nationwide, so HB 458 does not "impose severe restrictions on the right to vote" in the vein of poll taxes or limiting access to the ballot. *Mays v. LaRose*, 951 F.3d 775, 784 (6th Cir. 2020). Rather, Ohio's photo ID law is nothing more than a reasonable nondiscriminatory regulation easily justified by the State's legitimate interest in safeguarding confidence in its elections. *See id.*

Under the *Anderson-Burdick* framework, federal courts evaluating equal protection claims against State voting laws must use a flexible standard to weigh whether any burdens on voting are justified. *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 630 (6th Cir. 2016) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 433 (1992)).

In the Sixth Circuit, the *Anderson-Burdick* framework results in three potentially applicable standards of review depending upon the severity of the burden imposed: (1) severe burdens trigger strict scrutiny; (2) reasonable nondiscriminatory restrictions trigger rational basis; and (3) if the burdens are somewhere in between those two poles, the court balances "the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Thompson v. DeWine*, 959 F.3d 804, 808 (6th Cir. 2020) (per curiam) (quoting *Burdick*, 504 U.S. at 434).

But this Circuit's esoteric approach, problematic though it may be, see *Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 561–62 (6th Cir. 2021) (Readler, J., concurring), is a

problem for another day. Ohio’s photo ID regulations fit squarely within the sphere of reasonable nondiscriminatory restrictions and are therefore subject to rational basis review.

A burden is “minimal” under the law of this Circuit when the State “enacted a generally applicable, nondiscriminatory voting regulation.” *Ohio Democratic Party*, 834 F.3d at 631. Minimal restrictions include laws imposing generally applicable deadlines for requesting absentee ballots. *Mays*, 951 F.3d at 786. Such hurdles remain in the realm of the “merely inconvenient.” *See Daunt v. Benson*, 999 F.3d 299, 329 (6th Cir. 2021) (Readler, J., concurring) (quoting *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 205 (2008) (Scalia, J., concurring in the judgment) (citation omitted)). The *Crawford* Court upheld Indiana’s photo ID requirements. 553 U.S. 181. A majority of the Court found the Indiana law’s requirements of obtaining a free photo ID—or, in the absence of a valid ID, filing a provisional ballot—to be at most a “limited burden on voters’ rights.” *Id.* at 202–03 (opinion of Stevens, J.); *id.* at 209 (Scalia, J., concurring in the judgment) (“The burden of acquiring, possessing, and showing a free photo identification is simply not severe,” and “the State’s interests are sufficient to sustain that minimal burden”). Other Circuits have upheld photo ID laws under *Anderson-Burdick* as minimal burdens triggering only rational basis review. *See Lee v. Va. State Bd. of Elections*, 843 F.3d 592, 606 (4th Cir. 2016); *Frank v. Walker*, 768 F.3d 744, 748 (7th Cir. 2014); *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1354 (11th Cir. 2009).

A. HB 458 imposes no fees or bureaucratic roadblocks to obtain a photo ID.

Under HB 458, absolutely no fee is required to obtain a photo ID at any point. Previously, Ohio did not pay for eligible voters to attain documents required to get a free photo ID. No longer. After the enactment of HB 458, all documentation required to obtain a free photo ID is exempted from fees. Off. of the Ohio Sec’y of State, Directive 2023-03 at 1 (Feb. 7, 2023). Additionally,

while eliminating non-photo ID options, Ohio has increased the list of acceptable photo IDs and laid out straightforward requirements detailing how a voter can get an acceptable form of photo ID and register to vote. *See id.* at 3. The acceptable options include: an Ohio driver’s license (including commercial licenses, motorcycle licenses, and permits), other state ID cards, or even an interim ID form from the BMV while the citizen waits for a permanent ID; passports; and military IDs. *Id.* The Secretary’s website and guidance makes it breezily simple (and free) to obtain all necessary documents. Eligible voters are given instructions, phone numbers, email addresses, and online forms to help them navigate the system. And if a problem arises, voters without an acceptable photo ID may still cast a provisional ballot with a four-day grace period after Election Day to cure by providing photo ID to the board of elections office or providing additional information. *Id.* at 4–5.

Gathering required documents, posing for photographs, and visiting—virtually or otherwise—state agencies “surely do[] not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.” *Crawford*, 553 U.S. at 198 (opinion of Stevens, J.). Gone are the days when obtaining a photo ID took months of complicated procedures or money out of a voter’s wallet.

B. There’s no evidence HB 458 will depress voter turnout.

Data show HB 458 will not burden the right to vote by disincentivizing voters from voting. Around two-thirds of states now require voter ID—half of which require photo ID—and voter turnout in 2018 surged. Pew Research Center analysts noted jumps among every racial group, although the increase “was particularly pronounced among Hispanics and Asians.” Jens Manuel Krogstad, Luis Noe-Bustamante, & Antonio Flores, *Historic Highs in 2018 Voter Turnout Extended across Racial and Ethnic Groups*, Pew Rsch. Ctr. (May 1, 2019),

<https://www.pewresearch.org/fact-tank/2019/05/01/historic-highs-in-2018-voter-turnout-extended-across-racial-and-ethnic-groups/>. Black turnout rose nearly 27% from 2014 levels, nearly matching the increase in White turnout over the same timeframe. *Id.*

A study of voters in Florida—a state with photo ID requirements essentially identical to Ohio’s, including allowing provisional ballots and signature-matching—found that from 2004 to 2016 “no more than 0.1% of votes cast in Florida . . . were due to the lack of appropriate identification.” Mark Hoekstra & Vijetha Koppa, *Strict Voter Identification Laws, Turnout, and Election Outcomes* 14 (Nat’l Bureau of Econ. Rsch., Working Paper No. 26206, 2019) <https://www.nber.org/papers/w26206>. In other words, a tiny fraction of people who wanted to vote voted provisionally without photo ID, and they still retained the option for their provisional ballot to be counted through signature-matching. If Ohio’s numbers are even remotely similar, almost no Ohioans seeking to vote will be affected by HB 458’s photo ID requirement at all.

Even a study concluding “strict” voter ID laws suppress minority turnout conceded that the difference between Black turnout in general elections in “strict” voter ID states and Black turnout in other states is “negligible.” Zoltan Hajnal et al., *Voter Identification Laws and the Suppression of Minority Votes*, 79 J. Pol. 363, 368 (2017). Any gaps between minority turnout in voter ID and minority turnout in non-voter ID states, the paper notes, “could have little to do with voter ID laws themselves and could instead be a factor of any number of different and unique features of states that pass strict voter ID laws or of the minorities who live in them.” *Id.* A more recent study examining turnout from 2008 to 2018 concluded that “fears that strict ID requirements would disenfranchise disadvantaged populations have not materialized.” Enrico Cantoni & Vincent Pons, *Strict ID Laws Don’t Stop Voters: Evidence from a U.S. Nationwide Panel, 2008–2018*, 136 Q. J. Econ. 2615, 2653 (2021).

All across the country, including in Ohio, more and more voters are participating in elections. HB 458, which only further secures Ohio elections, will not change that.

C. Photo ID laws like HB 458 are wildly popular.

The overwhelming popularity of photo ID laws across the country indicates that such laws bolster voter confidence in the security of elections, and it makes little sense to find Ohio voters heavily burdened by requirements they overwhelmingly favor.

Recent polls affirm the popularity of photo ID. The Associated Press reported in early 2022 that 70% of Americans nationwide favor the policy. Nicholas Riccardi & Hannah Fingerhut, *Poll: Equality Concerns Rise, But Few Say Voting Is Too Hard*, Associated Press (Mar. 10, 2022), <https://apnorc.org/poll-equality-concerns-rise-but-few-say-voting-is-too-hard/>. Later that same year, Gallup released a poll finding the nationwide favorability of photo ID laws even higher, at 79%. Nicole Willcoxon & Lydia Saad, *Eight in 10 Americans Favor Early Voting, Photo ID Laws*, GALLUP (Oct. 14, 2022), <https://news.gallup.com/poll/403052/eight-americans-favor-early-voting-photo-laws.aspx>. A nationwide poll of 1,600 randomly selected voters conducted from July 13-16 of this year by amicus curiae found that 88% of voters support photo ID laws, including 82% of Black voters and 83% of Hispanic voters polled. See Honest Elections Project, July 2023 Polling Memorandum (July 31, 2023), https://www.honestelections.org/wp-content/uploads/2023/07/July_2023_HEP-_Polling_Memo.pdf.

Such popularity is legally relevant. Voters that support photo ID laws will be more confident in their respective states' election processes when such a requirement is fully implemented. See *Crawford*, 553 U.S. at 197 (opinion of Stevens, J.) (Increased confidence in the elector system because of photo ID laws “has independent significance, because it encourages citizen participation in the democratic process”); *Frank*, 768 F.3d at 751 (“If the public thinks that

photo ID makes elections cleaner, then people are more likely to vote or, if they stay home, to place more confidence in the outcomes.”). As more photo ID laws are enacted nationally, public confidence in the security of elections will increase, along with increases in citizen participation in elections that will better our democracy. A strong majority of voters in Ohio and the nation at large wants photo ID, so HB 458 does not burden the right to vote but rather bolsters confidence in voting.

II. HB 458 is constitutional under rational basis review.

Because HB 458’s voter ID requirements impose only a minimal burden on Ohioans’ exercise of the franchise, they must be upheld if Ohio’s important regulatory interests are sufficient to justify them. *Mays*, 951 F.3d at 784. It is difficult to argue that combatting election fraud, including by adopting proactive measures, is not within that ambit. *See Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2340, 2342–43 (2021) (“One strong and entirely legitimate state interest is the prevention of fraud. Fraud can affect the outcome of a close election, and fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight. Fraud can also undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome.”). Therefore, fortifying public faith in the integrity of Ohio’s elections is a legitimate goal. Furthermore, there is little doubt that HB 458’s photo ID requirements are a straightforward method that “furthers Ohio’s interest.” *Ohio Council 8 Am. Fed’n of State v. Husted*, 814 F.3d 329, 339 (6th Cir. 2016). The requirements prevent identity fraud at polling places, and, as very popular security measures, increase Ohioans’ confidence in the fair and honest execution of their elections.

Because HB 458’s commonsense requirements do not offend the constitutional rights of Ohioans to exercise their right to vote, the regulations must be upheld.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* respectfully requests this Court grant the motions for summary judgment and decline to declare HB 458's voter ID requirements unconstitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed with the United States District Court, Northern District of Ohio, on October 13, 2023, and served upon all parties of record via the Court's electronic filing system.

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